Docket #1228 Date Filed: 06/04/2025

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
Debtors.	§	(Jointly Administered)

THE AD HOC GROUP OF SAFE PARTIES' AMENDED WITNESS AND EXHIBIT LIST FOR THE HEARING SCHEDULED FOR JUNE 4, 2025 AT 2:30 P.M. CT

Case No. 24-90448 (ARP)	Name of Debtor: Rhodium Encore LLC, et al.
Adversary No: n/a	Style of Adversary: n/a
Witnesses: 1. Charles Topping; 2. Any witness called or designated by any other party; and 3. Any rebuttal witnesses as necessary The SAFE AHG reserves the right to cross-examine any witness called by any other party.	
	Judge: Honorable Alfredo R. Pérez
	Hearing Date: June 4, 2025
	Hearing Time: 2:30 p.m. CT
	Party's Name: The Ad Hoc Group of SAFE Parties (the "**SAFE AHG**") [2]
	Attorney's Name: Sarah Link Schultz
	Attorney's Phone: 214-969-4367

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

[2] As defined in the *First Supplemental Verified Statement of Ad Hoc Group of SAFE Parties Pursuant to Bankruptcy Rule 2019* [Docket No. 607].

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	Nature of Proceeding: Hearing on Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 835]

EXHIBIT LIST

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
1.	Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief [Docket No. 35]				
2.	Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 173]				
3.	Order Granting the Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 263]				
4.	LKC Engagement Letter with Debtors, dated May 16, 2023				
5.	LKC Revised Engagement Letter, dated March 4, 2025				
6.	Redline of LKC Engagement Letters				
7.	Letter from the SAFE AHG to Debtors (Mar. 10, 2025)				
8.	Email from the SAFE AHG to Debtors (Mar. 20, 2025)				
9.	Email from the SAFE AHG to Debtors (Feb. 18, 2025)				
10.	**Declaration of Charles Topping (May 14, 2025) [Docket No. 1105-1, 1111-1][3]**				

[3] At ECF No. 1220, the SAFE AHG filed Exhibits 1-9. The SAFE AHG is adding, to this Amended Witness and Exhibit List, Exhibits 10-18 (as indicated in bold lettering).

EXHIBIT LIST

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
11.	**Stipulated Protective Order [Docket No. 152]**				
12.	**Email from Debtors to LKC (Sept. 22, 2024) (redacted)**				
13.	**Email from Debtors to LKC (Sept. 22, 2024) (unredacted)**				
14.	**Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 835]**				
15.	**Reply in Support of Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 1105]**				
16.	**Debtors' Reply in Support of Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel [Docket No. 1111]**				
17.	**September 14, 2024 Draft Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel**				
18.	**Letter from Debtors to the SAFE AHG (May 30, 2025)**				
19.	Any document or pleading filed in the above-captioned case				
20.	Any exhibit designated by any other party				

EXHIBIT LIST

Ex. #	Description	Offered	Objection	Admitted / Not Admitted	Disposition
21.	Any exhibit necessary to rebut the evidence or testimony of any witness offered or designated by any other party				

RESERVATION OF RIGHTS

The SAFE AHG reserves all rights, including, but not limited to, the right to amend, revise, or supplement this Witness and Exhibit List at any time, to designate additional witnesses and exhibits, and to call any person identified as a witness by any other party in interest or introduce any document identified as an exhibit by any other party in interest for any permissible purpose under the Federal Rules of Bankruptcy Procedure and the Federal Rules of Evidence.

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Date: June 4, 2025

Respectfully Submitted,

AKIN GUMP STRAUSS HAUER & FELD LLP

/s/ *Sarah Link Schultz*
Sarah Link Schultz (State Bar No. 24033047; S.D. Tex. 30555)
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- and -

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Counsel to the Ad Hoc Group of SAFE Parties

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2025, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Sarah Link Schultz
Sarah Link Schultz

EXHIBIT 10

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

DECLARATION OF CHARLES TOPPING

I, Charles R. Topping, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am General Counsel and Secretary of Rhodium Enterprises, Inc., which directly or indirectly manages other Rhodium-family entities, including but not limited to Rhodium 30MW LLC, Rhodium JV LLC; Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium Encore LLC, Jordan HPC LLC, and Air HPC LLC (collectively referred to as "Rhodium" herein). Except for any matters stated to be based upon information and belief, I have personal knowledge of the facts set forth below, and if called as a witness, I could and would competently attest to them.

2. I submit this Declaration in support of Debtors' Response to the Objection of the Ad Hoc Group of Safe Parties to Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel.

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

3. On May 16, 2023, Rhodium retained Lehotsky Keller Cohn LLP ("LKC") to represent Rhodium in connection with a lawsuit that Whinstone commenced in Milam County, Texas, on May 2, 2023.

4. Rhodium and LKC negotiated the terms of the engagement at arms' length. Rhodium and LKC agreed that LKC would provide a significant discount on its hourly rates in exchange for a potential success fee. The potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages. The success fee is described in Rhodium's May 16, 2023 engagement letter with LKC. At the time, I understood that Rhodium's management team was unsure whether such a claim would be necessary because Rhodium's management team hoped instead that a good relationship with Whinstone could be restored.

5. LKC's discounted fees benefitted Rhodium by preserving cash flow. And indeed, over the course of the litigation, Whinstone's aggressive tactics, including refusal to arbitrate and self-help shutdowns, impinged on Rhodium's cash flow. The potential success fee aligned Rhodium's and LKC's incentives if Rhodium later pursued affirmative claims against Whinstone. The engagement letter also included a fixed fee for Jonathan Cohn's time that was intended to approximate his expected monthly fees at discounted rates.

6. Over the course of the engagement, LKC helped Rhodium successfully defend itself against Whinstone. LKC and Stris & Maher LLP obtained a temporary restraining order and three different injunctions, including two emergency injunctions after Whinstone shut down Rhodium's power. It is my belief that without the injunctions, Rhodium would likely have been forced out of business.

7. After Rhodium filed for bankruptcy, on September 14, 2024, Jonathan Cohn prepared a draft LKC retention application that set forth the specific terms of the May 2023 engagement letter, including the rate discounts and specific components of the potential success fee. At that time, the Rhodium-Whinstone dispute was in active litigation. It was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC. Ultimately, Rhodium via its bankruptcy counsel filed a retention application for LKC that disclosed that Rhodium's agreement with LKC included discounted hourly rates in exchange for a partial contingency fee based upon the successful outcome of the litigation. The retention application did not, however, disclose the specific details of the success fee.

8. It was my understanding at the time that the initial retention application was filed that its description of the partial contingency fee based upon the outcome of the litigation was sufficient to inform creditors and other interested parties about the existence of the success fee. This continued to be my understanding at least until February 2025.

9. To my knowledge, no issue was raised by a creditor or any other interested party with respect to payment of a contingency fee to LKC until around February 2025. On or around February 17, 2025, which was just two days before the scheduled mediation on February 19, 2025, I learned that counsel for the Ad Hoc Group had recently asserted that the details of the LKC contingency fee had to be disclosed in order for LKC to be paid any contingency fee. At that time I also learned that the Ad Hoc Group further asserted that because LKC's retention application did not disclose additional details, LKC should not be paid any contingency fee.

10. After Rhodium became aware that the Ad Hoc Group had raised this issue, Rhodium decided to address it regardless of whether the Ad Hoc Group's belatedly expressed concern was valid.

11. One option for Rhodium was to seek to amend the LKC retention application to include the specific terms of the May 2023 engagement letter. At that point, however, it appeared to be possible that Rhodium and Whinstone might reach a settlement involving *both* the affirmative case for damages *and* the sale to Whinstone of the Rhodium assets in Rockdale. Rhodium was concerned that the transaction documents might not identify what portion of the total proceeds is attributable to the affirmative case and what portion is attributable to the Rockdale assets. Although the engagement letter did not explicitly address this scenario (because Rhodium and LKC did not attempt to address every conceivable scenario that might hypothetically arise when they entered into the engagement in May 2023), Rhodium believed that LKC was owed a contingency fee under the terms of the agreement. A settlement on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone. Paying the contingency fee under those circumstances was thus consistent with Rhodium and LKC's intent at the outset.

12. Accordingly, Rhodium and LKC decided to amend the May 2023 engagement letter to expressly address this potential settlement scenario. Rhodium then submitted a proposed amendment to LKC's retention that both disclosed the original May 2023 engagement letter and the amended March 4, 2025 engagement letter.

13. Rhodium fully recognizes the value of the services that LKC provided over the past two years and also recognizes that LKC provided those services at a discounted rate in reliance on the potential success fee. LKC helped save Rhodium from going out of business multiple times and paved the way for a settlement with Whinstone. The value of LKC's services includes the affirmative claims against Whinstone that LKC helped develop and pursue in both the arbitration and the bankruptcy proceeding.

14. Rhodium had no intent to structure a deal with Whinstone that would attempt to circumvent LKC's success fee. Not paying the fee would be inconsistent with my understanding of Rhodium and LKC's intent. It is my opinion that it would also be unfair in light of LKC's successes and the discounted rates it provided for nearly two years.

15. Rhodium and LKC negotiated the language of the March 4, 2025 engagement letter in good faith and at arms' length. Rhodium and LKC also made other minor clarifying changes to the letter, including, for instance, specifying more precisely the trigger for the fee related to prevailing on Rhodium's interpretation of the contracts, which this Court addressed in resolving Debtors' Motion to Assume. The clarifying changes were consistent with the parties' intent from the beginning of the engagement, and in Rhodium's view, it was in the best interest of the estates to provide clarification.

16. Finally, although the objection to LKC's fee is being pressed by the Ad Hoc Group, I do not view payment of the fee as a matter between LKC and the Ad Hoc Group. LKC has represented Rhodium for two years through multiple periods of time when the survival of Rhodium's business was on the line. Together with Stris & Maher LLP, LKC obtained exceptional results for Rhodium and doing so often meant meeting imminent, after-hours needs and taking on emergency filings and emergency hearings on short notice. Rhodium has a reciprocal obligation to LKC and is committed to having LKC fully compensated for the work it has done and the success fee it has earned.

Dated: May 14, 2025

/s/Charles R. Topping
Charles R. Topping

EXHIBIT 11

Docket #0152 Date Filed: 09/18/2024
United States Bankruptcy Court
Southern District of Texas
ENTERED
September 18, 2024
Nathan Ochsner, Clerk

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

STIPULATED PROTECTIVE ORDER

Subject to the approval of the Court, (a) Rhodium Encore LLC and its debtor affiliates (collectively, the "***Debtors***" or the "***Company***"); (b) Whinstone U.S., Inc.; and (c) any other persons or entities who become bound by this Order by signifying their assent through execution of Exhibit A hereto (the "***Acknowledgement***"), hereby stipulate and agree as follows:

1. DEFINITIONS

1.1 "Party": means Debtors, Whinstone U.S. Inc. and any other signatory to this Order. Any party to this Stipulated Protective Order, includes successors in interest, officers, directors, investment advisors or managers, and employees.

1.2 "Discovery Material": All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony, transcripts, or tangible things) that are produced or generated in disclosures, responses to discovery (including responses to third-party or non-party subpoenas), in deposition testimony and transcripts, through

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deposition exhibits, any examination under Federal Rule of Bankruptcy Procedure 2004, or other requests for documentation in the Contested Matter, or the Main Case, including informal requests.

1.3 "Confidential Information": All Discovery Material that has not been publicly disclosed and contains proprietary business information, competitively sensitive information, and/or other non-public commercial, financial, research or technical information, including a Party's customers, suppliers, joint venture partners, affiliates, or other parties to whom a party may, in good faith, owe a duty of confidentiality. Any copies or reproductions, excerpts, summaries, or other documents or media that paraphrase, excerpt, or contain Confidential Information shall be treated as Confidential Information.

1.4 "Receiving Party": A Party or non-party that receives Discovery Material from a Producing Party.

1.5 "Producing Party": A Party or non-party that produces Discovery Material in the Contested Matter or in connection with the Main Case.

1.6 "Designating Party": A Party or non-party that designates information or items that it produces in disclosures or in response to discovery as Confidential Information or Highly Confidential – Professionals' Eyes Only Information.

1.7 "Highly Confidential – Professionals' Eyes Only Information": All Discovery Material that contains Confidential Information that a Designating Party reasonably and in good faith believes constitutes and/or contains non-public, highly sensitive and/or strictly proprietary information of a Party, including but not limited to trade secrets, current or future business and/or current or future plans for products or services, third-party agreements and their terms, employment agreements and their terms, customer lists, trading or investment strategies, or other

financial information that would be likely to cause harm to a Party's competitive position if disclosed outside the Contested Matter.

1.8 "Outside Counsel": Attorneys who are not employees of a Party but who are retained to represent or advise a Party in the Contested Matter or the Main Case.

1.9 "In-House Counsel": Attorneys who are employees of a Party or its affiliates..

1.10 "Expert": A person with specialized knowledge or experience in a matter pertinent to the Contested Matter or the Main Case who has been retained by a Party or its counsel to serve as an expert witness or as a consultant in the Contested Matter or the Main Case. This definition includes any technical experts, discovery experts, and professional jury or trial consultants retained in connection with the Contested Matter or the Main Case.

1.11 "Professional Vendors": Persons or entities that provide litigation support services (*e.g.*, photocopying, videotaping, translating, preparing exhibits or demonstrations, organizing, storing, retrieving data in any form or medium, etc.) and their employees and subcontractors.

1.12 "Contested Matter": Debtors' Motion to Assume and Supplement to Motion to Assume, ECF Nos. 7 and 32, in the above-captioned chapter 11 cases styled: *In re*: *Rhodium Encore LLC et al.*, Case No. 24-90448 (ARP).

1.13 "Main Case": The above captioned chapter 11 cases that are being jointly administered under *In re*: *Rhodium Encore LLC et al.*, Case No. 24-90448 (ARP).

1.14 "Arbitration": The action styled *Rhodium JV LLC, Air HPC LLC, Rhodium 30MW LLC, Rhodium Encore LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, and Jordan HPC LLC v. Whinstone US, Inc.*, American Arbitration Association Case Number: 01-23-0005-7116.

1.15 "Arbitration Discovery Material": All items or information, regardless of the medium or manner generated, stored, or maintained (including, among other things, testimony,

transcripts, or tangible things) that are or have been produced or generated in disclosures, responses to discovery (including responses to third-party or non-party subpoenas), in deposition testimony and transcripts, through deposition exhibits, or other requests for documentation in the Arbitration.

2. SCOPE

All Discovery Material produced or adduced in the Contested Matter or in connection with the Main Case shall be subject to this Order. All Confidential Information and Highly Confidential – Professionals' Eyes Only Information shall be used solely for the purpose of prosecuting, defending, or otherwise seeking adjudication of the Contested Matter or the Main Case, including, but not limited to, and as applicable, investigations of potential estate claims, motions, contested matters, plan confirmation, discovery, mediation, trial preparation, trial, and appeal. The protections conferred by this Order extend to any information copied in whole or in part from Discovery Material, including metadata, as well as all copies, excerpts, summaries, or compilations thereof, plus testimony, conversations, or presentations by Parties or professionals to or in court or in other settings that might reveal Confidential Information or Highly Confidential – Attorneys' Eyes Only Information.

3. UNIFORM DISCLOSURE IN THE CONTESTED MATTER

3.1 Every Producing Party that is a party to the Contested Matter must share all of the Discovery Material produced by such Producing Party with every other party to the Contested Matter, regardless of the requestor's identity.

3.2 Where the Producing Party in the Contested Matter is a Subpoenaed Party (as defined below), the Issuing Party (as defined below) shall be responsible for sharing all Discovery Material produced by the Subpoenaed Party in response to a third-party subpoena issued by the Issuing Party in the Contested Matter.

3.3 All Arbitration Discovery Material produced by a Party shall be deemed Discovery Material in the Contested Matter and Main Case, as though all such information, documents, and other records produced by such Party in the Arbitration were produced in the Contested Matter by such Party.

4. DESIGNATING CONFIDENTIAL INFORMATION AND HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY INFORMATION

4.1 Manner and Timing of Designation. Except as otherwise provided in this Order, or as otherwise stipulated or ordered, material that qualifies for protection under this Order must be clearly so designated before the material is disclosed or produced.

4.2 Designation of Confidential Information and Highly Confidential – Professionals' Eyes Only Information. Any Discovery Material produced, served, or otherwise disclosed to a Receiving Party by a Producing Party during the Contested Matter or in connection with the Main Case and designated as Confidential Information or Highly Confidential – Professionals' Eyes Only Information shall be treated in a manner that is consistent with the definitions and procedures set forth in this Order.

(A) *Documents*. Documents containing Confidential Information or Highly Confidential – Professionals' Eyes Only Information, and any copies thereof, shall be designated as such by including a legend of "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" at the bottom of each page that contains such information, and for multi-page documents, on the first page of such documents. Said legend shall be made so as not to obscure any of the Confidential Information's or Highly Confidential – Professionals' Eyes Only Information's content. A Party or non-party that makes original documents or materials available for inspection need not designate them for protection until after the inspecting Party has indicated which material it would like copied and produced.

During the inspection and before the designation, all of the material made available for inspection shall be deemed Highly Confidential – Professionals' Eyes Only Information. After the inspecting Party has identified the document(s) it would like copied and produced, the Producing Party must determine which documents, or portions thereof, qualify for protection under this Order. Then, before producing the specified documents, the Producing Party must affix the "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" legend at the bottom of each page that contains Confidential Information.

(B) *ESI*. With respect to any Confidential Information or Highly Confidential – Professionals' Eyes Only Information that is produced as electronically stored information ("***ESI***") and is not susceptible to the imprinting of a stamp signifying its confidential nature, the Designating Party may label the production media "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" and/or alter the file name of the native ESI to include the designation and shall inform all recipients in writing of the designation at the time that Confidential Information or Highly Confidential – Professionals' Eyes Only Information is produced. Otherwise, the ESI shall be marked with the legend as provided in Section 4.2(A) of this Order.

(C) *Tangible Objects*. Tangible objects may be designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" by affixing to the object or its container an appropriate label or tag bearing the designation.

(D) *Depositions*. Portions of a deposition may be designated as "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" by counsel during or at the conclusion of the deposition, or by denominating by page and line those portions of the deposition which are to be considered Confidential Information or Highly

Confidential – Professionals' Eyes Only Information within three (3) days of receiving the final transcript and exhibits and so informing all Parties of the designation. Until the 3-day period has passed, each deposition transcript shall be treated as Highly Confidential – Professionals' Eyes Only Information. Any portion of a deposition so designated shall not be filed with the Court, except in accordance with Section 4.2(E) of this Order.

(E) *Documents Generated During Suit*. All pleadings, memoranda supporting motions, briefs, deposition transcripts, discovery requests and responses, exhibits, and other documents that quote information from Confidential Information or Highly Confidential – Professionals' Eyes Only Information and Confidential Information and Highly Confidential – Professionals' Eyes Only Information if filed with the Court, shall be redacted from the Court filing (either by redacting the relevant text of the submission or redacting the entirety of any exhibit that has been designated as containing Confidential Information or Highly Confidential – Professionals' Eyes Only Information) or filed under seal pursuant to the Court's rules governing sealed documents, unless the Designating Party consents in writing to such Confidential Information or Highly Confidential – Professionals' Eyes Only Information being filed publicly.

4.3 Restrictions on Use of Confidential Information and Highly Confidential Professionals' Eyes Only Information. Except as agreed to in writing by the Designating Party or its counsel or as otherwise provided herein, Confidential Information and Highly Confidential – Professionals' Eyes Only Information:

(A) shall be maintained in confidence;

(B) may be disclosed only to persons entitled to access thereto under the terms of this Order; and

(C) shall be used by such persons to whom it is disclosed only for the purposes of prosecuting or defending the Contested Matter or the Main Case, including appeals, and for no other purpose. Nothing herein shall prevent disclosure beyond the terms of this Order if the Designating Party consents in writing to such disclosure of its designated material.

4.4 Inadvertent Failure to Designate. If material is produced in the Contested Matter or in connection with the Main Case without a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" designation, it does not, standing alone, waive, in whole or in part, the Designating Party's right to secure protection under this Order for such material. Upon discovery of the inadvertent failure to designate, a Designating Party may advise the Receiving Party of the fact that the information should have been designated and may retroactively designate the material by notice in writing by Bates number or such other means that will allow for the identification of such documents. The inadvertent failure of a Party or non-party to designate specific documents or materials as containing Confidential Information or Highly Confidential – Professionals' Eyes Only Information shall not be deemed a waiver, in whole or in part, of a claim of confidentiality as to such documents or materials. Upon notice to each Party of such failure to designate, each Party shall cooperate to restore the confidentiality of the inadvertently disclosed information. Should the Parties disagree as to the appropriate designation of material that was inadvertently not designated, the Designating Party's proposed designation shall be maintained until the Parties reach an agreement of the appropriate designation, or until the Court assigns a designation. Each Party or non-party that designates material for protection under this Order agrees to act in good faith in applying the standards set forth herein.

4.5 Exercise of Restraint and Care in Designating Material for Protection. Any Party or non-party that designates information or items for protection under this Order must take care to

limit any such designation to specific material that qualifies under the appropriate standards. To the extent it is practical to do so, the Designating Party must designate for protection only those parts of material, documents, items, or oral or written communications that qualify, so that other portions of the material, documents, items, or oral or written communications for which protection is not warranted are not swept unjustifiably within the ambit of this Order. If it comes to a Designating Party's attention that information or items that it designated for protection do not qualify for protection at all or do not qualify for the level of protection initially asserted, that Designating Party must promptly notify all other parties that it is withdrawing the mistaken designation.

5. AUTHORIZED USERS OF CONFIDENTIAL INFORMATION OR HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY INFORMATION

5.1 Basic Principles. A Receiving Party may only use Confidential Information or Highly Confidential – Professionals' Eyes Only Information that is disclosed or produced by another Party or by a non-party in connection with: (i) the Contested Matter only for prosecuting, defending, appealing, attempting to settle, or otherwise seeking the adjudication of the Contested Matter; and/or (ii) the Main Case only for prosecuting, defending, appealing, attempting to settle, or otherwise seeking the adjudication of any dispute or contested matter in the Main Case. Such Confidential Information or Highly Confidential – Professionals' Eyes Only Information may be disclosed only to the categories of persons and under the conditions described in this Order. When the Contested Matter or the Main Case, as the case may be, has been terminated, a Receiving Party must comply with the provisions of Section 7. Confidential Information and Highly Confidential – Professionals' Eyes Only Information must be stored and maintained by a Receiving Party at a location and in a secure manner that ensures that access is limited to the persons authorized under this Order.

5.2 Disclosure of Confidential Information. No person subject to this Order other than the Designating Party shall disclose any material designated as "CONFIDENTIAL" to any person, other than to:

(A) In-House Counsel for any Party engaged in the Contested Matter or the Main Case and the employees and personnel who work with such attorneys to whom it is necessary that the material be shown for purposes of the Contested Matter or the Main Case.

(B) Outside Counsel for any Party engaged in the Contested Matter or the Main Case and the employees and personnel who work with such attorneys to whom it is necessary that the material be shown for purposes of the Contested Matter or the Main Case.

(C) The directors, officers, or employees of the Receiving Party or the Receiving Party's subsidiaries or affiliates engaged in assisting the Receiving Party's counsel during the Contested Matter or the Main Case after such director, officer, or employee has signed a statement in the form annexed hereto as Exhibit A.

(D) The members of any potential creditors' committee and their counsel, but with respect to each member's counsel, only after each member's counsel has signed a statement in the form annexed hereto as Exhibit A.

(E) Financial advisors, accounting advisors, investment bankers and consultants (and their respective staff) that are retained by a Party in connection with the Contested Matter or the Main Case.

(F) Experts, including their staff, consulted by any Party to assist with the prosecution or defense of the Contested Matter or the Main Case after such Expert has signed a statement in the form annexed hereto as Exhibit A.

(G) A Party's Professional Vendors and outside service providers and consultants, which includes any e-discovery consultants and trial consultants, provided such persons have signed a statement in the form annexed hereto as Exhibit A. For purposes of this subsection, it is sufficient that a single "project manager" or "team leader" sign the form annexed hereto as Exhibit A on behalf of the entity providing document and ESI processing, hosting, review, or production or trial consultants (and the like) services.

(H) An author, signatory, or prior recipient of the document or the original source of the information.

(I) Deponents and trial witnesses, after such deponent has signed a statement in the form annexed hereto as Exhibit A (except that deponents or trial witnesses that are representatives of or affiliated with a Designating Party shall not be required to sign the form annexed as Exhibit A in order to be shown material produced by such Designating Party).

(J) The Court, officers of the Court, Court personnel (including court reporters, persons operating video recording equipment at depositions, and any special master or referee appointed by the Court), and the trier of fact.

(K) Other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered, including the completion of the form annexed hereto as Exhibit A.

5.3 Disclosure of Highly Confidential – Professionals' Eyes Only Information. No person subject to this Order other than the Designating Party shall disclose any material designated as "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" to any person, other than to:

(A) In-House Counsel for any Party engaged in the Contested Matter or the Main Case who is participating in the Contested Matter or the Main Case in which the Highly Confidential – Professionals' Eyes Only Information is disclosed or produced.

(B) Outside Counsel for any party engaged in the Contested Matter or the Main Case and the employees and personnel who work with such attorneys to whom it is necessary that the material be shown for purposes of the Contested Matter or the Main Case, in which the Highly Confidential – Professionals' Eyes Only Information is disclosed or produced.

(C) Financial advisors, accounting advisors, investment bankers and consultants (and their respective staff) that are retained by a Party in connection with the Contested Matter or the Main Case, after such advisor, banker, or consultant has signed a statement in the form annexed hereto as Exhibit A.

(D) Experts, including their staff, consulted by any Party to assist with the prosecution or defense of the Contested Matter or the Main Case after such Expert has signed a statement in the form annexed hereto as Exhibit A.

(E) A Party's Professional Vendors and outside service providers and consultants, which includes any e-discovery consultants and trial consultants, provided such persons have signed a statement in the form annexed hereto as Exhibit A. For purposes of this subsection, it is sufficient that a single "project manager" or "team leader" sign the form annexed hereto as Exhibit A on behalf of the entity providing document and ESI processing, hosting, review, or production or trial consultants (and the like) services.

(F) A person shown on the face of the document to have authored or received it or in the accompanying metadata to have authored or received it.

(G) Deponents and trial witnesses of the Producing Party, after such deponent has signed a statement in the form annexed hereto as Exhibit A (except that deponents or trial witnesses that are representatives of or affiliated with a Designating Party shall not be required to sign the form annexed as Exhibit A in order to be shown material produced by such Designating Party).

(H) The Court, officers of the Court, Court personnel (including court reporters, persons operating video recording equipment at depositions, and any special master or referee appointed by the Court), and the trier of fact.

(I) Other persons only by written consent of the Designating Party or upon order of the Court and on such conditions as may be agreed or ordered, including the completion of the form annexed hereto as Exhibit A.

6. CHALLENGING DESIGNATIONS

6.1 Dispute Resolution. If any Party reasonably and in good faith believes that any material designated "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" should not be considered Confidential Information or Highly Confidential – Professionals' Eyes Only Information or has otherwise been misclassified under this Order, is not properly subject to the confidentiality designation assigned to it, or should not be subject to this Order, that Party must notify the Designating Party in writing and provide a description of the Confidential Information or Highly Confidential – Professionals' Eyes Only Information and a concise statement of the basis for the challenge as to each individual document or other item so-identified, which the challenging Party believes should be released from some or all of the constraints of this Order, and serve copies of such notice to all other Parties. Counsel shall confer in good faith in an effort to resolve any dispute concerning such designation. If the objection cannot be resolved by agreement within two (2) business days from the date of service of the

written objection, any Party may move the Court for a determination as to whether the designation is appropriate. The burden of establishing confidentiality and the designated level of confidentiality shall be on the Designating Party. The protection of the Confidential Information or Highly Confidential – Professionals' Eyes Only Information afforded by the Order shall continue as originally designated unless and until the Court issues an order on the motion.

6.2 No Waiver. Nothing in this Order shall be deemed a waiver of:

(A) any Party's or non-party's right to object to any discovery requests on any ground;

(B) any Party's right to seek an order compelling discovery with respect to any discovery request;

(C) any Party's right to object to the admission of any evidence at any stage in the Contested Matter or the Main Case; or

(D) any Party's or non-party's right to use and review its own documents and its own Confidential Information; or

(E) any Party's or non-party's substantive claims or right to argue that any part of the Contested Matter or any other case or proceeding is not subject to the jurisdiction of the Bankruptcy Court or is not properly adjudicated by the Bankruptcy Court.

7. DURATION

7.1 Any Confidential Information, Highly Confidential – Professionals' Eyes Only Information, or any information contained in or derived from Confidential Information or Highly Confidential – Professionals' Eyes Only Information shall be subject to the provisions of this Order until the Parties agree otherwise or upon order of this Court.

7.2 This Order shall continue in effect with respect to any Confidential Information or Highly Confidential – Professionals' Eyes Only Information until expressly released by the

Designating Party and, if applicable, such effectiveness shall survive the final determination of the Contested Matter. A Producing Party may demand that, after sixty (60) days of the final determination of the Contested Matter or the Main Case, including any appeal (whichever is later), in which Confidential Information and Highly Confidential – Professionals' Eyes Only Information was disclosed or produced, all Confidential Information and Highly Confidential – Professionals' Eyes Only Information produced by another Party in connection with the finally determined proceeding shall be either (a) returned to the Producing Party; or (b) destroyed or deleted, with a written certification of such destruction or deletion provided to the Producing Party. For purposes of this Order, the final determination of the Contested Matter shall be deemed to be the later of (i) full settlement of all claims; (ii) final judgment therein after the completion and exhaustion of all appeals, rehearings, remands, trials and reviews, if any, of the Contested Matter (excluding any time period under which the Court has supervision or oversight over any relief issued through a consent decree or any non-preliminary injunction issued by the Court); or (iii) the expiration of all time limits for the filing of or application for all appeals, rehearings, remands, trials, or reviews of the Contested Matter, including the time limits for the filing of any motions or applications for extension of time pursuant to applicable law. For purposes of this Order, the final determination of the Main Case shall occur: (i) when the order confirming the Debtors' plan or plans of reorganization becomes a final order after (a) the completion and exhaustion of all appeals, rehearings, remands, trials and reviews, if any, of the Court's order confirming the Debtors' plan or plans of reorganization, or (b) the expiration of all time limits for the filing of or application for all appeals, rehearings, remands, trials, or reviews of the Court's order confirming the Debtors' plan or plans of reorganization, including the time limits for the filing of any motions or applications for extension of time pursuant to applicable law; or (ii) when the order dismissing the

Main Case becomes a final order after (a) the completion and exhaustion of all appeals, rehearings, remands, trials and reviews, if any, of the Court's order dismissing the Main Case, or (b) the expiration of all time limits for the filing of or application for all appeals, rehearings, remands, trials, or reviews of the Court's order dismissing the Main Case, including the time limits for the filing of any motions or applications for extension of time pursuant to applicable law.

7.3 Section 7.2 shall not apply to documents that were not produced by a Party but were created in the course of the Contested Matter or the Main Case and contain excerpts or references to Confidential Information or Highly Confidential – Professionals' Eyes Only Information, including legal briefs, letters, deposition transcripts, or pleadings prepared by counsel or Expert reports (*i.e.*, attorney files and communications). Counsel for the Parties may keep copies of all such files, so long as these materials are kept confidential.

8. CONFIDENTIAL INFORMATION OR HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY INFORMATION IN OTHER LITIGATION

8.1 If a Receiving Party is served with a subpoena or an order issued in other litigation that would compel disclosure of any information or items designated in accordance with this Order as Confidential Information or Highly Confidential – Professionals' Eyes Only Information, the Receiving Party must so notify the Designating Party in writing immediately and in no event more than five (5) business days after receiving the subpoena or order. Such notification must include a copy of the subpoena or court order. The Receiving Party must also immediately inform in writing the party who caused the subpoena or order to issue in the other litigation that some or all of the material covered by the subpoena or order is the subject of this Order. In addition, the Receiving Party must deliver a copy of this Order promptly to the party in the other action that caused the subpoena or order to issue.

8.2 The purpose of imposing these duties is to alert the interested parties to the existence of this Order and to afford the Designating Party an opportunity to try to protect its confidentiality interests in the court from which the subpoena or order issued. The Designating Party shall bear the burdens and the expense of seeking protection in that court of its Confidential Information or Highly Confidential – Professionals' Eyes Only Information—and nothing in these provisions should be construed as authorizing or encouraging a Receiving Party to disobey a lawful directive from another court.

9. UNAUTHORIZED DISCLOSURE OF PROTECTED OR PRIVILEGED MATERIAL

9.1 If a Receiving Party learns, by inadvertence or otherwise, that it has disclosed Confidential Information or Highly Confidential – Professionals' Eyes Only Information to any person or in any circumstance not authorized under this Order, the Receiving Party must promptly notify in writing the Designating Party of the unauthorized disclosure. Within ten (10) business days of that notification, the Designating Party may request that the Receiving Party (a) use its best efforts to retrieve all copies of the Confidential Information, (b) inform the person or persons to whom unauthorized disclosures were made of all the terms of this Order, and (c) request such person or persons execute the form annexed hereto as Exhibit A.

9.2 If a Producing Party believes that any Discovery Material subject to any privilege, protection, or other immunity ("***Privileged Material***") has been inadvertently produced, the Producing Party shall promptly notify all parties in writing and state the basis for the claim of privilege, work product protection, or other immunity from production. After receiving notice of the inadvertent production, the Receiving Party must promptly return or destroy the inadvertently produced Privileged Material and any copies it has (provided, however, that if the Receiving Party intends to raise the privilege issue with the court, it may retain and use one sequestered copy of

the information solely for this purpose, which must be returned or destroyed in the event the Court upholds the claim of privilege). The Receiving Party may provide the inadvertently-disclosed document to the Court in a sealed filing for the sole purpose of challenging any assertion of privilege, protection, or other immunity, but may not assert as a ground for such motion the fact or circumstances of the inadvertent disclosure (except to show that such circumstances establish that the disclosure was intentional and not inadvertent). If the Receiving Party either returns the material or is ordered to do so, it shall take reasonable steps to retrieve the material from any other person to whom the material was disclosed.

9.3 The provisions of this Section 9 apply to all information or materials produced in the Contested Matter or in connection with the Main Case whether designated Confidential, Highly Confidential – Professionals' Eyes Only, or not. Further, pursuant to Rule 502(d) of the Federal Rules of Evidence, it is hereby ordered that the inadvertent disclosure of privileged information in connection with the Contested Matter or the Main Case shall not constitute a waiver in this or any other federal or state proceeding if the producing party or non-party timely invokes the clawback procedures set forth in this Section.

10. USE OF CONFIDENTIAL INFORMATION OR HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY INFORMATION AT TRIAL

10.1 The use of any Confidential Information or Highly Confidential – Professionals' Eyes Only Information for the purpose of any hearing or trial that is open to the public is not addressed at this time, but will be the subject of future agreement or order as the need may arise, and Highly Confidential – Professionals' Eyes Only Information will not be used at any hearing or trial that is open to the public absent further agreement or order by the Court.

11. APPLICATION OF THE PROTECTIVE ORDER TO THIRD-PARTY SUBPOENAS

11.1 A Party that issues a non-party subpoena (the "***Issuing Party***") shall include a copy of this Protective Order with the subpoena and state that the subpoenaed party (the "***Subpoenaed Party***") may produce documents in accordance with the terms of this Protective Order. For any subpoena served prior to entry of this Order, the Issuing Party must provide a copy of this Protective Order to the Subpoenaed Party within 5 days of entry of this Order. Nothing in this Protective Order is intended to or may be interpreted to narrow, expand, or otherwise affect the rights of the Parties or third parties to object to a subpoena.

11.2 Upon receiving notice and a copy of any subpoena to be served from the Issuing Party, as required by Federal Rules of Civil Procedure 45(a)(4), the Subpoenaed Party may, within five (5) business days of such notice, inform the Issuing Party that the documents produced in response to that subpoena may reasonably be expected to contain Confidential Information or Highly Confidential – Professionals' Eyes Only Information under this Protective Order, which shall include a general description of the documents expected to contain information that contains Confidential Information or Highly Confidential – Professionals' Eyes Only Information. In that event or in the event that the Issuing Party informs the Parties that documents received from a Subpoenaed Party may reasonably be expected to contain Confidential Information or Highly Confidential – Professionals' Eyes Only Information at the time it provides the other Parties with copies under Section 11.3, all Parties being so informed shall treat all documents produced in response to the subpoena as containing Highly Confidential – Professionals' Eyes Only Information from the time they receive such documents and until 30 calendar days after the Issuing Party provides copies under Section 11.3. The Subpoenaed Party and the Issuing Party shall have a period of seven (7) calendar days from the time the Issuing Party produces such documents under

Section 11.3 during which to designate any part of the third-party production as containing Confidential Information or Highly Confidential – Professionals' Eyes Only Information under this Protective Order. For purposes of this paragraph, if the twenty-first calendar day falls on a weekend or holiday, the applicable deadline shall be the next business day. Any such designation may be challenged as provided in Section 6. Upon request, any Party making designations under this Section 11.2 will provide the other Parties with stamped copies of the documents so designated, consistent with Section 4.2(A). Nothing in this section is intended to or does alter or waive the Parties' rights in Section 9. Notwithstanding the foregoing, if the Issuing Party or any other Party wishes to use a document produced by a Subpoenaed Party in a deposition during the period of twenty-one (21) calendar days described above, the Party that wishes to use the document and the Subpoenaed Party shall confer in good faith about whether the document should be treated as containing Highly Confidential – Professionals' Eyes Only Information for the purposes of the deposition, and if so, upon what conditions it may be used; and if the party that wishes to use the document in the deposition and the Subpoenaed Party cannot agree upon the appropriate treatment of the document, the party that wishes to use the document may move the Court for a determination as to what designation is appropriate and whether the document can be used in the deposition.

11.3 Whether or not a Subpoenaed Party informs the Issuing Party as provided in Section 11.2 above, any Issuing Party in the Contested Matter or the Main Case will promptly provide, within five (5) business days, the other Parties to the respective Contested Matter or Main Case, if applicable with a copy of all materials produced by the Subpoenaed Party in response to the subpoena (including a copy of the Subpoenaed Party's written responses or objections, if any). If the Issuing Party is unable to provide the other Parties with a copy of all materials produced by the

third party within five (5) business days, the Issuing Party shall immediately notify the other Parties in writing.

12. MISCELLANEOUS

12.1 Right of Further Relief. Nothing herein shall limit in any way the ability of any Party to file a motion with the Court after meeting and conferring to challenge the opposing Party's efforts to limit the use of discovery or to oppose a Party's designation of Confidential Information or Highly Confidential – Professionals' Eyes Only Information under this Order.

12.2 Right to Seek Modification. Nothing in this Order abridges the right of any person to seek its modification by the Court.

12.3 Right to Assert Other Objections. By stipulating to the entry of this Order, no Party waives any right it otherwise would have to object to disclosing or producing any information or item on any ground not addressed in this Order. Similarly, no Party waives any right to object on any ground to use in evidence of any of the material covered by this Order.

12.4 No Probative Value. This Order shall not abrogate or diminish any contractual, statutory, or other legal obligation or right of any Party or person with respect to any Confidential Information or Highly Confidential – Professionals' Eyes Only Information. The fact that information is marked with a "CONFIDENTIAL" or "HIGHLY CONFIDENTIAL – PROFESSIONALS' EYES ONLY" designation under the Order shall not be deemed to be determinative of what a trier of fact may determine to be confidential or proprietary. The fact that any information with a confidentiality designation is disclosed, used, or produced in any Court proceeding governed by the Order shall not be offered in any action or proceeding before any court, agency, or tribunal as evidence of or concerning whether or not such information is admissible or confidential.

12.5 Use of Party's Own Materials. Nothing in this Order shall restrict a Party's ability to use and disclose its own designated material as it chooses. Such disclosure shall not waive the protections of this Order and shall not entitle other Parties or non-parties to disclose such material in violation of this Order.

12.6 Prior Orders. This Order shall not affect any prior order of the Court.

12.7 Public Documents. None of the restrictions set forth in this Order shall apply to any document or other information that is in the public domain or became public knowledge by means not in violation of the provisions of this Order. Nothing in this Order shall prevent a Party from using any information that the Party properly possessed prior to receipt of any Confidential Information, Highly Confidential – Professionals' Eyes Only Information, or items from the other Parties that are or were discovered independently by the Receiving Party. The terms for the treatment of Confidential Information, Highly Confidential – Professionals' Eyes Only Information, and items pursuant to the Order shall be effective only upon the entry of this Order.

12.8 Other Obligations. Nothing in this Order shall affect the obligation of any Party to comply with any other confidentiality agreement with, or undertaking to, any other person or Party, including, but not limited to, any confidentiality obligations arising from other pre-existing or subsequent agreements, including other confidentiality or non-disclosure agreements with the Debtors.

12.9 Reservation of Rights. Nothing in this Order shall restrict a Party's ability or rights, all of which are expressly reserved, to present any claims or defenses in the Contested Matter or the Main Case including but not limited to motions to transfer or motions to dismiss on grounds of improper venue.

It is so **ORDERED**.

Signed: September 18, 2024

Alfredo R Pérez
United States Bankruptcy Judge

Approved as to Form:

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Patricia B. Tomasco
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Joanna D. Caytas (SBN 24127230)
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COUNSEL TO WHINSTONE US, INC.

EXHIBIT 12

Will Thompson

From: Patty Tomasco <pattytomasco@quinnemanuel.com>
Sent: Sunday, September 22, 2024 5:45 PM
To: Will Thompson
Cc: Barbara Howell
Subject: Re: Rhodium retention application

Yes. Just delete.
Patty Tomasco
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

700 Louisiana Street, Suite 3900 | Houston, TX 77002
T +1 713 221 7227 | F +1 713 221 7100 | M +1 512 695 2684

51 Madison Avenue, 22nd Floor | New York, NY 10010
T +1 212 849 7000 | F +1 212 849 7100

On Sep 22, 2024, at 6:19 PM, Will Thompson <will@lkcfirm.com> wrote:

[EXTERNAL EMAIL from will@lkcfirm.com]

Yes. Chuck's question was [redacted]

Get Outlook for iOS

From: Barbara Howell <barbarahowell@quinnemanuel.com>
Sent: Sunday, September 22, 2024 5:17:43 PM
To: Will Thompson <will@lkcfirm.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>
Subject: Rhodium retention application

Sorry, are you going to redact this document also? Thanks,

Barbara Howell
Paralegal,
Quinn Emanuel Urquhart & Sullivan, LLP

700 Louisiana Street, 39th Floor
Houston, TX 77002
713-221-7022 Direct
713.221.7000 Main Office Number
713-221-7100 FAX
barbarahowell@quinnemanuel.com
www.quinnemanuel.com

EXHIBIT 13

Dearman, Michael B.

From: Patty Tomasco <pattytomasco@quinnemanuel.com>
Sent: Sunday, September 22, 2024 5:45 PM
To: Will Thompson
Cc: Barbara Howell
Subject: Re: Rhodium retention application

Yes. Just delete.
Patty Tomasco
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

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51 Madison Avenue, 22nd Floor | New York, NY 10010
T +1 212 849 7000 | F +1 212 849 7100

On Sep 22, 2024, at 6:19 PM, Will Thompson <will@lkcfirm.com> wrote:

[EXTERNAL EMAIL from will@lkcfirm.com]

Yes. Chuck's question was whether we could just delete those details. If not, then he'd like to redact all mentions of them, assuming that's allowed.

Get Outlook for iOS

From: Barbara Howell <barbarahowell@quinnemanuel.com>
Sent: Sunday, September 22, 2024 5:17:43 PM
To: Will Thompson <will@lkcfirm.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>
Subject: Rhodium retention application

Sorry, are you going to redact this document also? Thanks,

Barbara Howell
Paralegal,
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EXHIBIT 14

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

APPLICATION FOR AN UPDATED ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT HTTPS://ECF.TXSB.USCOURTS.GOV/ WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE UNITED STATES BAKRUPTCY JUDGE:

Rhodium Encore LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, "Debtors" or "Rhodium") respectfully submit this

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation counsel (the "Application") pursuant to sections 327(e), 328(a), 330, and 1107 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of Texas (the "Local Rules"), and paragraph 47 of the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "Complex Case Procedures"). In support of this Application, Debtors submit the Amended Declaration of Jonathan F. Cohn ("Amended Declaration").

JURISDICTION AND VENUE

1. This court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue of Debtors' chapter 11 cases is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief requested in this Application is sought pursuant to 11 U.S.C. §§ 105, 327(e), 328(a), 330, 503, 507, and 1107(a).

BACKGROUND

3. On August 24, 2024, Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. The factual background regarding Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of Debtors' chapter 11 cases, is set forth in the Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief (ECF No. 35).

4. On August 24, 2024, the Court entered an order jointly administering the bankruptcy cases under case number 24-90448 (ARP). *See* Order (I) Directing Joint Administration of Chapter 11 Cases; and (II) Granting Related Relief (ECF No. 8).

5. On August 24, 2024, Debtors filed a Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7). On August 29, 2024, Debtors filed a Supplemental Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 32).

6. On September 22, 2024, Debtors filed an Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (the "Initial Application") (ECF No. 173).

7. Debtors hereby incorporate by reference Paragraphs 6 through 48 of their Initial Application, ECF No. 173.

8. No parties objected to the Initial Application, and on October 14, 2024, the Court entered an order authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP (ECF No. 263).

9. As set forth in the Amended Declaration, Debtors' Initial Application disclosed that Debtors' agreement with Lehotsky Keller Cohn LLP included discounted hourly rates in exchange for a partial contingency fee based upon the outcome of the litigation. The details of this arrangement are specified in Debtors' Engagement Letter with Lehotsky Keller Cohn LLP, dated May 16, 2023, attached to the Amended Declaration as Exhibit A.

10. No parties objected to the Debtor's Initial Application, and on October 14, 2024, the Court entered an order authorizing Debtors to retain and employ LKC. ECF No. 263.

11. Since then, LKC has provided the agreed-upon discounts. From the filing of bankruptcy petition through January 31, 2025, the discounts have exceeded $700,000. Including the period before the filing of the bankruptcy petition, LKC has provided over $1,000,000 in discounts in exchange for the contingency fee.

12. On March 4, 2025, at Debtors' request, LKC executed a revised engagement letter, attached to the Amended Declaration as Exhibit B.

13. Debtors have requested that the Court enter the attached Proposed Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel, under the terms of the updated Engagement Letter attached to the Amended Declaration as Exhibit B.

RELIEF REQUESTED

Debtors respectfully request that this Court enter an updated order allowing the retention and employment of Lehotsky Keller Cohn LLP as special litigation as upon the terms described in this Application and in the accompanying Exhibit B and for such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this 6th day of March, 2025.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Patricia B. Tomasco
Patricia B. Tomasco (SBN 01797600)
Cameron Kelly (SBN 24120936)
Alain Jaquet (*pro hac vice)*
700 Louisiana Street, Suite 3900
Houston, Texas 77002
Telephone: 713-221-7000
Facsimile: 713-221-7100
Email: pattytomasco@quinnemanuel.com
cameronkelly@quinnemanuel.com
alainjaquet@quinnemanuel.com

- and -

Eric Winston (*pro hac vice*) Razmig Izakelian (*pro hac vice)* 865 S. Figueroa Street, 10th Floor Los Angeles, California 90017 Telephone: 213-443-3000
Facsimile: 213-443-3100
Email:
ericwinston@quinnemanuel.com
razmigizakelian@quinnemanuel.com

Counsel to the Debtors and Debtors-In-Possession

CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 6th day of March, 2025, a copy of the foregoing Application was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

AMENDED DECLARATION OF JONATHAN F. COHN IN SUPPORT OF THE APPLICATION FOR AN ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

Pursuant to 28 U.S.C. § 1746, I, Jonathan F. Cohn, hereby declare as follows:

1. My name is Jonathan F. Cohn. I am over the age of 18 years. I am competent to make this amended declaration and I have personal knowledge of the facts stated herein. Each and every statement contained herein is true and correct.

2. I am a partner in the law firm of Lehotsky Keller Cohn LLP (the "LKC"). LKC maintains its primary office at 408 W. 11th Street, 5th Floor, Austin, Texas 78701. LKC's main telephone number is (512) 693-8350, and its main facsimile number is (512) 693-4755. I submit this declaration (the "Second Amended Declaration") as an amendment to my declaration dated September 22, 2024 (the "Declaration") (ECF No. 173) that was filed in support of the Application

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

for an Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (ECF No. 173).

3. On September 22, 2024, Debtors filed their Application for an Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel (the "Application") (ECF No. 173). That Application disclosed that LKC was providing discounted rates and would receive a potential contingency payment. *See id.* ¶ 26 ("There is also a contingent fee depending on the outcome of the litigation that has not changed."); *id.* ¶ 40 ("Lehotsky Keller Cohn LLP has agreed to serve as special litigation counsel and to receive compensation from Debtors for its work on the above-described matter based on a combination of hourly billing and a contingent fee."); *id.* ¶ 41 ("Lehotsky Keller Cohn LLP agrees to receive fees on the basis of time billed at hourly rates, plus a contingent fee depending on the outcome of the litigation."); *id.* ("Lehotsky Keller Cohn LLP agreed to discount its standard hourly rates in exchange for a contingent fee."); *see also id.* ¶ 44; ECF 173, Cohn Decl. ¶ 6; *id.* ¶ 25; ECF 173, Topping Decl. ¶ 9; *id.* ¶ 10.

4. No parties objected to the Application,.

5. On October 14, 2024, the Court entered an order authorizing Debtors to retain and employ LKC. ECF No. 263.

6. Since then, LKC has provided the agreed-upon discounts. From the filing of bankruptcy petition through January 31, 2025, the discounts have exceeded $700,000. Including the period before the filing of the bankruptcy petition, LKC has provided over $1,000,000 in discounts in exchange for the contingency fee.

7. In an abundance of caution, and to avoid any confusion, LKC attaches its engagement letter with Debtors, dated May 16, 2023, providing the details of the discounts and contingency arrangement (Exhibit A).

8. On March 4, 2025, at Debtors' request, LKC executed a revised engagement letter, a copy of which is attached (Exhibit B).

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

Dated: March 6, 2025

/s/ Jonathan F. Cohn
Jonathan F. Cohn
Partner, Lehotsky Keller Cohn LLP

CERTIFICATE OF SERVICE

I, Patricia B. Tomasco, hereby certify that on the 6th day of March, 2025, a copy of the foregoing Amended Declaration was served via the Clerk of the Court through the ECF filing system to the parties registered to receive notice through ECF.

/s/ Patricia B. Tomasco
Patricia B. Tomasco

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

May 16, 2023

Cameron Blackmon
4146 W US Highway 79
Rockdale, TX 76567

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC* ("this Matter").

Our attorney-client relationship will commence when you have agreed to the material terms of our engagement.

Fees: The fee for this Matter will be comprised of: (1) a $25,000 monthly fixed fee for all work by Jonathan Cohn; (2) discounted hourly rates for all other timekeepers; and (3) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Scott Keller and Steve Lehotsky: $1,300
- Other partners, including Will Thompson: $1,200
- Counsels: $900
- Associates: $750

We will provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all

additional time, there will be a 30% discount. Bills for the hourly fees, the $25,000 monthly fixed fee, and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee has three components:

(a) $600,000 if (i) the contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May, 16, 2023) is upheld or (ii) you are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, to be paid 30 days after each monthly utilization by Rhodium; and

(c) 10% of any additional amounts not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, to be paid 30 days after settlement of the Matter or a non-appealable final judgment, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates.

Retainer: You shall post a retainer of $200,000. Insofar as the retainer is used to pay monthly invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky

Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

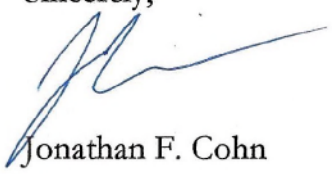
Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,



Jonathan F. Cohn

Agreed to and accepted:

Rhodium 30MW LLC

Rhodium JV LLC

Air HPC LLC

Jordan HPC LLC

By: 
Cameron Blackmon

Title: Authorized Signatory

Date: 5/16/2023

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

March 4, 2025

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.

- Jonathan Cohn, Scott Keller and Steve Lehotsky: $1,400
- Other partners, including Will Thompson: $1,300
- Counsels: $1000
- Associates: $850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee is calculated as follows:

(a) $600,000 if (i) the Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the

Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You have posted a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that

information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: _____
Cameron Blackmon

Title:

Date: _____

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

ORDER GRANTING THE APPLICATION FOR ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

(Relates to ECF No. _____)

This matter comes before the Court upon the application, dated __ (the "Application"),[2] of Rhodium Encore LLC and its debtor affiliates, as debtors and debtors in possession (collectively, "Debtors"), for entry of an order, pursuant to sections 327(e), 328(a), 330, and 1107 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014-1 and 2016-1, and paragraph 47 of the Procedures for Complex Case Procedures, authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel in connection with two separate matters.

The Court has considered the Application and the Cohn Declaration submitted therewith. This Court has jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant

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[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

[2] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Application.

to 28 U.S.C. §§ 1408 and 1409. The Court may consider and rule on the Application as it is a core proceeding pursuant to 28 U.S.C. § 157(b).

The Court is satisfied, based on the representations made in the Application and Cohn Declaration that Lehotsky Keller Cohn LLP "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which Lehotsky Keller Cohn LLP is to be employed," as required by 11 U.S.C. § 327(e). The Court is satisfied that due and proper notice of the Application was provided, that such notice was adequate and appropriate under the circumstances, and no other or further notice need be provided. All objections, if any, to the Application have been withdrawn, resolved, or overruled. The Court has determined that the legal and factual bases set forth in the Application establish just cause to grant the relief requested therein. The relief requested in the Application is necessary for Debtors' reorganization and is in the best interest of Debtors and their respective estates and creditors. Accordingly,

IT IS HEREBY ORDERED THAT:

1. Debtors are authorized pursuant to sections 327(e), 328(a), 329, and 504 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014 and 2016, and paragraph 47 of the Complex Case Procedures, to modify the retention of Lehotsky Keller Cohn LLP as special litigation counsel in these chapter 11 cases, effective as of the Petition Date, pursuant to the engagement letter attached as **Exhibit A**.

2. Lehotsky Keller Cohn LLP shall be compensated in accordance with **Exhibit A**, and will file interim and final fee applications for allowance of its compensation and expenses, and any hourly fees and expenses shall be subject to sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable procedures and orders of the Court. With respect to its hourly fees, for

billing purposes, Lehotsky Keller Cohn LLP will keep its time in one-tenth (1/10) hour increments in accordance with the U.S. Trustee Guidelines. Lehotsky Keller Cohn LLP also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the U.S. Trustee Guidelines, both in connection with the Application and any interim and final fee applications to be filed by Lehotsky Keller Cohn LLP in these chapter 11 cases. All billing records filed in support of Lehotsky Keller Cohn LLP's fee applications will use an open and searchable LEDES or other electronic data format and will use the U.S. Trustee's standard project categories.

3. Lehotsky Keller Cohn LLP shall be reimbursed for reasonable and necessary expenses as provided by the U.S. Trustee Guidelines.

4. With respect to non-hourly fee compensation set forth in **Exhibit A**, such compensation is hereby approved, provided that the amount of such compensation shall be subject to Bankruptcy Court approval as set forth in **Exhibit A**.

5. Lehotsky Keller Cohn LLP shall use its best efforts to avoid any duplication of services provided by any of Debtors' other retained professionals in these chapter 11 cases.

6. Lehotsky Keller Cohn LLP shall provide seven days' notice to Debtors, the U.S. Trustee, and the attorneys for any statutory committee appointed in these chapter 11 cases of any increase in Lehotsky Keller Cohn LLP's hourly rates as set forth in the Cohn Declaration. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

7. To the extent the Application is inconsistent with this Order, the terms of this Order shall govern.

8. Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

9. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2025

_____
ALFREDO R. PEREZ
UNITED STATES BANKRUPTCY JUDGE

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

March 4, 2025

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.

- Jonathan Cohn, Scott Keller and Steve Lehotsky: $1,400
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We will continue to provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee is calculated as follows:

(a) $600,000 if (i) the Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the

Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

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Retainer: You have posted a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

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Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that

information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: _____
Cameron Blackmon

Title:

Date: _____

EXHIBIT 15

[Part 1 of 3]

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

REPLY IN SUPPORT OF DEBTORS' APPLICATION FOR AN UPDATED ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL
(Relates to Docket Nos. 173, 263, 835, 891 & 927)

Lehotsky Keller Cohn LLP ("***LKC***"), by and through its undersigned counsel, files this reply in support of the Debtors' *Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 835] (the "***Updated Application***") and in support thereof respectfully states as follows:

PRELIMINARY STATEMENT

1. Over the past two years, LKC has achieved extraordinary successes for the Debtors. Working with co-counsel Stris & Maher LLP ("***Stris***"), LKC obtained three injunctions and a temporary restraining order saving the Debtors' business. At trial in this Court, LKC once again prevailed. The Court rejected Whinstone's claims of breach and granted Debtors' motion to assume the contracts that were the life's blood of the Debtors' business.

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Rhodium Enterprises, Inc. (6290), Rhodium Technologies LLC (5868), Rhodium Ready Ventures LLC (8618), Rhodium Industries LLC (4771), Rhodium Encore Sub LLC (1064), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), and Rhodium Renewables Sub LLC (9511). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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2. With Stris, LKC also spent the last two years developing an affirmative case against Whinstone for damages. Those efforts were likewise fruitful and beneficial to the estate. After this Court's decision on the motion to assume, Debtors filed a complaint against Whinstone for over $300 million, paving the way for a $185 million settlement. Without the work of LKC and Stris, the Debtors would likely be worth nothing, and the creditors would receive nothing. Instead, the creditors will be paid in full, and equity holders will receive at least $90 million.

3. During this entire time, LKC provided its services at heavily discounted hourly rates in exchange for a potential success fee. That was the deal from the get-go when the Debtors first retained LKC in May 2023, and it remained the deal when Debtors entered bankruptcy. LKC's rates in this bankruptcy are a fraction of what some other firms are charging, and LKC agreed to those terms in reliance on the potential success fee.

4. None of that is in dispute. Indeed, when Debtors filed its original application to retain LKC in September 2024 [Docket No. 173] (the "***Original Application***"), Debtors disclosed the discounted rates and the existence of a contingency fee, and no one objected—in fact, the Original Application mentioned the contingency fee no less than eleven times.

5. LKC's first interim fee application similarly disclosed the existence of the contingency fee, and each interim fee statement noted and calculated LKC's discounted fees, which were discounted precisely because the Debtors and LKC agreed to the contingency fee arrangement. No one objected to the interim fee application of any of the interim fee statements.

6. But, lying in wait, counsel for the Ad Hoc Group of SAFE Investors (the "***Ad Hoc Group***") played a game of gotcha. On the eve of the parties' mediation in February 2025, the Ad Hoc Group's counsel, Mr. Mitch Hurley informed Debtors for the first time that—in his view—the Original Application and the order entering it were deficient. [Docket No. 263] (the "***Original***

Order"). According to Mr. Hurley, the Original Application should have disclosed not just the existence of the contingency fee but also the engagement letter itself, and the order should have mentioned the contingency fee as well instead of saying that LKC would bill at its "normal hourly rates and disbursement policies, as contemplated *by the Application*," which in turn describes precisely those rates and polices as including a contingency component.

7. The Ad Hoc Group never had any doubt that Debtors agreed to pay LKC a contingency fee. Again, the Original Application disclosed the existence of the fee eleven times. The Ad Hoc Group also knows why the Application does not disclose the details of the contingency fee. LKC told counsel for the Ad Hoc Group exactly what happened: LKC had included the details in a draft application, but Debtors bankruptcy counsel instructed LKC to delete them at the request of Debtors' general counsel. Not being bankruptcy attorneys, LKC followed the advice of Debtors' bankruptcy counsel, which also reviewed, signed, and filed the Original Application with the proposed order.

8. The Updated Application is intended to address the Ad Hoc Group's belatedly expressed "concern." It would be inequitable at this late stage to deprive LKC of the success fee—which, in any event, is subject to the review and approval of this Court—after LKC relied on its engagement letter with Debtors, provided steep discounts, and achieved favorable results. This Court has the discretion to approve the Updated Application, and LKC respectfully requests that the Court grant approval.

FACTUAL BACKGROUND

9. On May 16, 2023, Rhodium engaged LKC to handle potential litigation against Whinstone. LKC agreed to provide heavily discounted rates in exchange for a potential success

fee.[2] As described in the original engagement letter between the Debtors and LKC, dated May 16, 2023 and attached hereto as **Exhibit 2** (the "***May 2023 Engagement Letter***"), LKC would receive (a) $600,000 if Rhodium's position on key contractual terms were upheld; (b) a percentage of energy credits (5% up to $5 million and 1% thereafter); and (c) 10% of damages and all other amounts recovered, including attorneys' fees.

10. At the time of the engagement, the potential success fees in (b) and (c) were highly speculative. They required showing both that Rhodium's interpretation of the contracts at issue was correct and Rhodium never breached the contracts, *as well as* establishing an affirmative case for damages. In May 2023, Rhodium did not intend to file an affirmative case for damages in the near term, and no complaint was filed until February 2025—after LKC spent two years saving Rhodium's business and developing the affirmative case against Whinstone.[3]

11. For much of that time, Rhodium and Whinstone were embroiled in extremely contentious litigation in state court and in arbitration. LKC and Stris successfully obtained a temporary restraining order and three different injunctions, including two emergency injunctions after Whinstone shut down Rhodium's power. Without the injunctions, Rhodium would have been forced out of business.

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[2] The Declaration of Charles Topping is attached hereto as **Exhibit 1** (the "***Decl. of Charles Topping***"). The Decl. of Charles Topping contemplates that the Debtors will file a response to the Objection. LKC understands that the Debtors' response will be forthcoming once the Court resolves the Debtors' *Application for an Updated Order Authorizing the Retention and Employment of Stris & Maher LLP as Special Litigation Counsel* [Docket No. 957]. The Decl. of Charles Topping takes no position on any matters not addressed therein. "LKC's discounted fees benefitted Rhodium by preserving cash flow. And indeed, over the course of the litigation, Whinstone's aggressive tactics … impinged on Rhodium's cash flow. The potential success fee aligned Rhodium's and LKC's incentives if Rhodium later pursued affirmative claims against Whinstone." Decl. of Charles Topping, ¶ 5.

[3] "The potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages. The success fee is described in Rhodium's May 16, 2023 engagement letter with LKC. At the time, I understood that Rhodium's management team was unsure whether such a claim would be necessary because Rhodium's management team hoped instead that a good relationship with Whinstone could be restored." *Id.*, ¶ 4.

12. On August 24 and 29, 2024 (the "***Petition Date***"), the Debtors filed petitions for relief under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***") in the United States Bankruptcy Court for the Southern District of Texas.[4] Rhodium executed a revised engagement letter on August 28, 2024, attached hereto as **Exhibit 3** (the "***August 2024 Engagement Letter***"), and a further revised engagement letter on September 18, 2024 attached hereto as **Exhibit 4** (the "***September 2024 Engagement Letter***") neither of which changed any of the terms of the contingency fee arrangement.[5]

13. Jonathan Cohn, a partner at LKC, also prepared a draft LKC retention application and sent it to the Debtors' general counsel, Chuck Topping. Decl. of Charles Topping, ¶ 7. *The draft retention application included all the details of LKC's contingency fee. See id.*

14. Because "the Rhodium-Whinstone dispute was in active litigation," however, Rhodium believed "[i]t was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC." *Id. Debtors' bankruptcy counsel (Patty Tomasco of Quinn Emanuel Urquhart & Sullivan, LLP) specifically instructed LKC to "[j]ust delete" those details.* Exhibit 5 at 1.[6]

[4] Rhodium 30MW LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, and Jordan HPC LLC filed voluntary petitions for relief on August 24, 2024. Rhodium Technologies LLC, Rhodium Shared Services LLC, Rhodium Renewables Sub LLC, Rhodium Renewables LLC, Rhodium Ready Ventures LLC, Rhodium Industries LLC, Rhodium Enterprises, Inc., Rhodium Encore Sub LLC, Rhodium 30MW Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Jordan HPC Sub LLC, and Air HPC LLC filed voluntary petitions for relief on August 29, 2024.

[5] In addition to other minor changes, the August 2024 Engagement Letter included an annual rate increase that LKC had applied to other clients and referenced additional entities that became parties to the litigation; the September 2024 Engagement Letter listed all the Debtor entities as clients and (at the request of Debtors' bankruptcy counsel) replaced the fixed fee for Mr. Cohn's time with an hourly rate).

[6] "It was my understanding at the time that the initial retention application was filed that its description of the partial contingency fee based upon the outcome of the litigation was sufficient to inform creditors and other interested parties about the existence of the success fee. This continued to be my understanding at least until February 2025." Dec. of Charles Topping, ¶ 8.

15. At the time, LKC did not have its own bankruptcy counsel and relied on the advice and directives of Debtors' bankruptcy counsel, which reviewed and signed the Original Application.

16. On Sept. 22, 2024, the Debtors filed the Original Application, which disclosed the "discounted hourly rates in exchange for a partial contingency fee" without disclosing "the specific details of the success fee." Decl. of Charles Topping, ¶ 7. The application and supporting declarations explicitly mention the contingency fee *eleven times*:

- "There is also a contingent fee depending on the outcome of the litigation that has not changed." Original Application, ¶ 26.
- "Lehotsky Keller Cohn LLP has agreed to serve as special litigation counsel and to receive compensation from Debtors for its work on the above-described matter based on a combination of hourly billing and a contingent fee." Original Application, ¶ 40.
- "Lehotsky Keller Cohn LLP agrees to receive fees on the basis of time billed at hourly rates, plus a contingent fee depending on the outcome of the litigation." Original Application, ¶ 41.
- "Lehotsky Keller Cohn LLP agreed to discount its standard hourly rates in exchange for a contingent fee." *Id.*, ¶ 41.
- "Lehotsky Keller Cohn LLP has agreed to discount its rates in exchange for a contingent fee." *Id.*, ¶ 44.
- "Lehotsky Keller Cohn LLP agrees to receive fees on the basis of time billed at discounted hourly rates, plus a contingent fee depending on the outcome of the litigation." Original Cohn Decl., ¶ 6.
- "Lehotsky Keller Cohn LLP was agreed to discount its rates in exchange for a contingent fee." *Id.*, ¶ 6.
- "the Firm agreed to reduce its hourly rates in exchange for a contingent fee" *Id.*, ¶ 25.
- "those hourly rates were discounted in exchange for a contingent fee" *Id.*, ¶ 25.
- "Previously, Debtors have paid Lehotsky Keller Cohn LLP for their work on the Whinstone Dispute on a mostly hourly basis, with one attorney's time being charged based on a monthly flat fee, plus a contingent fee depending on the outcome of litigation." Original Topping Decl., ¶ 9.
- "Debtors have agreed with Lehotsky Keller Cohn LLP to a discounted hourly billing arrangement plus a contingent-fee arrangement." *Id.*, ¶ 10.

17. No party objected to the Original Application or the contingency fee. And no one asked any questions about it. LKC had no reason to believe that the Original Application was deficient in any way.

18. On October 15, 2024, the Court entered the Debtors' proposed order, authorizing the Debtors to retain and employ LKC [Docket No. 263]. The order includes generic language, stating, "Debtors shall retain and employ Lehotsky Keller Cohn LLP under a general retainer in accordance with Lehotsky Keller Cohn LLP's normal hourly rates and disbursement policies, as contemplated by the Application." Original Order, ¶ 2. As noted, "the Application" disclosed the existence of the contingency fee and the discounted rates.

19. On January 23, 2025, Rhodium Enterprises, Inc. listed LKC's "Legal Representation Agreement" on their Amended Schedules as an executory contract. [Docket No. 687 at 69].

20. Debtors' counsel has filed LKC's monthly fee statements since LKC's retention was approved [Docket Nos. 382, 425, 538, 730, 790, and 847]. Each monthly fee statement disclosed that LKC's fees were being discounted. No party objected to LKC's monthly fee statements or asked any questions about them.

21. The week of November 12, 2024, the Court conducted a four-day trial in which the Debtors were represented by LKC and Stris. The Debtors prevailed across the board on the issues at trial. In a written opinion dated December 16, 2024, the Court held that the Debtors could assume all the contracts at issue. [Docket No. 579]. The trial followed extremely expedited and contentious discovery, which occupied the time of several attorneys at LKC.[7]

[7] Counsel for the Ad Hoc Group, Mitch Hurley, made a brief statement on the record acknowledging the importance of winning the trial. "I ask to be heard today, Your Honor, and very briefly, just to express our strong support for the debtors' assumption motion. We believe the debtors' assumption motion is essential to recovery for stakeholders of all causes and cases, certainly the members of the ad hoc group. … [W]e're convinced, including for the reasons

22. Months later, on or around February 17, 2025, on the eve of mediation, counsel for the Ad Hoc Group communicated to Debtors' co-CRO Michael Robinson that in the Ad Hoc Group's view, LKC did not properly disclose the details of its contingency arrangement.[8] This is the first time the issue was raised, to LKC's and Mr. Topping's knowledge. *See* Decl. of Charles Topping, ¶ 9. The Ad Hoc Group never objected to LKC's Original Application, never pointed to any deficiency in LKC's Original Application, never inquired of LKC about the details of LKC's contingency fee, and never said a word about the issue to LKC.

23. On February 18, 2025, Michael Robinson, the Debtors' co-CRO informed Jonathan Cohn of LKC about the call with counsel for the Ad Hoc Group. Mr. Robinson suggested that LKC prepare an amended declaration describing more fully the terms of the contingency fee arrangement. LKC agreed to prepare the declaration after the mediation the next day.

24. On February 19, 2025, LKC attended the mediation on behalf of the Debtors in Dallas. No deal was reached at the mediation.

25. On February 20, 2025, LKC sent a draft declaration to Mr. Robinson and Debtors' counsel, Ms. Patty Tomasco, providing additional details regarding LKC's contingency fee arrangement, and asked Ms. Tomasco if she would take care of the rest of the filings.

26. The next day, on February 21, 2025, Chuck Topping, Debtors' general counsel, suggested to LKC that the parties clarify the engagement letter to address directly a scenario that Mr. Topping had previously said could potentially arise—specifically, an agreement with Whinstone that *both* resolves the affirmative case for damages *and* sells the Rhodium assets in

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that debtors' counsel identified in closing, that their position in this phase of the trial has been vindicated." Hrg Tr. at 1375.

[8] In preparing this brief, LKC learned from Debtors that around the same time, Quinn Emanuel had email correspondence with counsel for the Ad Hoc Group about LKC's contingency fee. Neither Quinn Emanuel nor counsel for the Ad Hoc Group disclosed these communications to LKC. Indeed, the Ad Hoc Group has refused to respond to any discovery requests.

Rockdale, without identifying what portion of the total proceeds is attributable to the affirmative case and what portion is attributable to the Rockdale assets. *See* Decl. of Charles Topping, ¶¶ 11, 15. Mr. Topping had previously stated that the Debtors would honor the contingency fee in that potential circumstance because it is what the parties intended and because not paying the fee would be fundamentally unfair. *Id.* at ¶¶ 11, 14, and 16. Nonetheless, on February 21, 2025, he advised that the Debtors and LKC explicitly address this scenario in the updated retention papers.

27. Accordingly, the Debtors and LKC revised the terms of the engagement letter and on March 4, 2025, executed the updated engagement letter attached hereto as **Exhibit 6** (the "***Updated Engagement Letter***"). On March 6, 2025, the Debtors filed the Updated Application. In the Cohn Declaration attached to the Updated Application, Mr. Cohn notes that LKC provided the agreed-upon fee discounts to the Debtors, which have exceeded $700,000 since the Petition Date and have exceeded $1,000,000 in total including LKC's pre-bankruptcy work. [Docket No. 835, ¶ 11]. The March 4, 2025 Updated Engagement Letter is attached as an exhibit to the Updated Application.

28. On March 27, 2025, the Ad Hoc Group filed the *Objection of the Ad Hoc Group of SAFE Parties to Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel* [Docket No. 891] (the "***Objection***").

29. On April 8, 2025, DLT Data Center 1 LLP filed an untimely joinder (the "***Joinder***") to the Ad Hoc Group's Objection. [Docket No. 927].

30. On April 29, 2025, the appeal in *Whinstone US Inc. v. Rhodium Encore LLC, et al.*, Case No. 4:25-CV-00868 was dismissed. [Docket No. 1040].

ARGUMENT

31. The Court should reject the Ad Hoc Group's game of gotcha. No one disputes that the Debtors and LKC agreed to a success fee in exchange for discounted rates and that the Debtors disclosed the existence of that contingency fee *eleven times* in the Original Application and accompanying declarations. Nor does anyone dispute that for two years LKC provided the agreed-upon discounted rates and achieved extraordinary successes for the Debtors that enabled them to stay in business, reach a deal with Whinstone, and pay off all of its creditors with over $100 million to spare. Decl. of Charles Topping, ¶ 13 ("LKC helped save Rhodium from going out of business multiple times and paved the way for a settlement with Whinstone. The value of LKC's services includes the affirmative claims against Whinstone that LKC helped develop and pursue in both the arbitration and the bankruptcy proceeding.").

32. But in a ham-fisted attempt to obtain negotiating leverage, the Ad Hoc Group seeks to deprive LKC of its success fee based on a technicality that the Ad Hoc Group did not raise until the eve of mediation and that contradicts the judgment of Debtors' bankruptcy counsel. *Id.*, ¶ 9. The Court should reject the Ad Hoc Group's gamesmanship. The Ad Hoc Group may wish it had more leverage, but that is no basis for its attorneys to spitefully attack other attorneys' retention or compensation.

33. Even assuming that the Original Application and Original Order did not use the proper language in noting the contingency fee—and LKC does not concede that issue—no one disputes the terms of the actual agreement between the Debtors and LKC or the parties' intent and expectations.

34. That should resolve the issue. As the Fifth Circuit has observed: "Courts must protect those agreements and expectations . . . ." *Donaldson Lufkin & Jenrette Sec. Corp. v. Nat'l*

Gypsum Co. (In re Nat'l Gypsum Co.), 123 F.3d 861, 863 (5th Cir. 1997). Indeed, "[i]f the most competent professionals are to be available for complicated capital restructuring and the development of successful corporate reorganization, they must know what they will receive for their expertise and commitment." *Id.* at 862–63. Agreements reached in good faith cannot be discarded just because a disgruntled party sitting on the sidelines decides at the eleventh hour to raise an objection for tactical advantage.

35. And the objection here is not even to *LKC's* work. Rather, the Ad Hoc Group is challenging the judgment of *Debtors' bankruptcy counsel*, which directed LKC to delete the details of the contingency agreement and which reviewed, signed, and filed the proposed order. *See* Exhibit 5 at 1*; see also* Decl. of Charles Topping, ¶¶ 7–8 ("It was my understanding at the time that the initial retention application was filed that its description of the partial contingency fee based upon the outcome of the litigation was sufficient to inform creditors and other interested parties about the existence of the success fee."). That order provided for "*normal* hourly rates and disbursement policies, *as contemplated by the Application*." Original Order, ¶ 2 (emphasis added). And what was "normal" for the Debtors and LKC during this engagement is what they had done for the past two years and what was repeatedly disclosed in "the Application"—a discount in exchange for a success fee.

36. It is unclear what, if anything, the Ad Hoc Group is suggesting LKC should have done, aside from second guessing the judgment of Debtors' bankruptcy counsel and perhaps spending additional resources to retain its own bankruptcy counsel sooner.[9] LKC does not

[9] Collier notes LKC's reliance on Quinn Emanuel is a basis for granting the Updated Application.

> Hardship to the applicant caused by another party's inaction is an additional basis upon which courts have granted retroactive employment applications provided that prior approval would have been appropriate and the delay in seeking approval was due to circumstances beyond the control of the professional. … Another common consideration in such cases is the applicant's justifiable reliance on another party to prepare the employment application.

regularly practice before bankruptcy courts and had no reason to expect that spiteful litigants would attempt to thwart LKC's long-established agreement with the Debtors.

37. Indeed, the Ad Hoc Group's own arguments support LKC's reliance on Quinn Emanuel. As the Ad Hoc Group explains, "professional retention applications of the kind at issue in the LKC Dispute are core responsibilities assigned to general bankruptcy counsel." [Docket No. 1055 at 5]. "Quinn's own retention application provided specifically that its services would include 'prepar[ing], on behalf of the Debtors . . . all necessary motions, applications . . . and other papers in connection with the administration of the Debtors' estates.'" *Id.* LKC reasonably relied on Quinn Emanuel performing its "core responsibilities." It is unclear why the Ad Hoc Group is now blaming LKC for relying on the judgment of Debtors' bankruptcy counsel.

38. In any event, the Debtors filed the Updated Application in response to the Ad Hoc Group's belatedly expressed concern and to clarify what the Debtors and LKC long understood. LKC respectfully requests that the Court exercise its discretion to approve the Updated Application. The Ad Hoc Group's arguments are meritless, as is the untimely Joinder. Moreover, even if those arguments had merit, LKC would still be paid in full—if need be, as a general unsecured creditor based on LKC's prepetition agreement with Debtors. Finally, the Ad Hoc Group does not have standing to raise its arguments, both because it is entitled to nothing and because, if it were entitled to anything, it would be paid in full even with LKC's contingency fee.

A. The Court Has Discretion to Approve the Updated Application.

39. It is well within the Court's sound discretion to approve the Updated Application. *See, e.g.*, *Matter of Triangle Chemicals, Inc.*, 697 F.2d 1280, 1289 (5th Cir. 1983) (holding that a bankruptcy court, as a court of equity, has discretion to enter orders authorizing *nunc pro tunc*

3 Collier on Bankruptcy ¶ 327.03 (16th 2025).

employment of attorneys for the debtor); *In re Ramirez*, 633 B.R. 297, 308 (Bankr. W.D. Tex. 2021) (approving employment application of co-counsel and compensation over objections when ability to retain co-counsel was disclosed in special litigation counsel's employment application); *In re Wichita River Oil Corp.*, 214 B.R. 308, 310 (E.D. La. 1997); *Matter of Inter Urban Broad. of St. Louis, Inc.*, 174 B.R. 441, 447 (E.D. La. 1994), *aff'd sub nom. In re Inter Urban Broad. of St. Louis, Inc.*, 51 F.3d 1045 (5th Cir. 1995) (granting broker's *nunc pro tunc* application after successful sale where broker had acted in good faith and in dependence on debtor's counsel); *Luster v. Thomas*, No. 15-0402, 2016 WL 4521663, at *2 (W.D. La. Aug. 25, 2016) (due to a clerical error, the employment application had not been filed a year after beginning work, and court determined extraordinary circumstances justified granting *nunc pro tunc* relief given the work already performed in the case). Indeed, "[t]he court, through the exercise of its equitable powers" may even "approve compensation to an attorney who had not received court approval prior to rendering services." *In re Borer*, 73 B.R. 29, 30 (Bankr. N.D. Ohio 1987) (citing *Matter of Vlachos*, 61 B.R. 473 (Bankr. S.D. Ohio 1986)).

40. For example, in *Triangle Chemicals*, an attorney for the debtor performed postpetition services but was not retained under any provision of the Bankruptcy Code. When the attorney belatedly filed an application, the bankruptcy court denied it. But the Fifth Circuit reversed and remanded, holding that "while the rules contemplate court approval prior to attorney's employment, they do not . . . prohibit the court in its discretion from granting its approval, *nunc pro tunc*, at a date subsequent to the employment and after the services are rendered, providing that the required showing is made . . . warranting the approval." *Triangle Chemicals*, 697 F.2d at 1284. Likewise, a bankruptcy court has the equitable power in its sound discretion and under exceptional circumstances to "award compensation for all or part of the services performed by

such attorney that have subsequently benefited the debtor's estate and, consequently, its creditors." *Id*. at 1289.

41. Similarly, in *In re Freehold Music Ctr., Inc.*, 49 B.R. 293, 296 (Bankr. D.N.J. 1985), the court acknowledged its broad discretion. The facts in *Freehold* are similar to those here: the professional seeking compensation relied on the debtor's counsel to prepare a retention application, but debtor's counsel failed to file. Following *Triangle Chemicals*, the court granted relief *nunc pro tunc*. As the court explained: "The rule which must be applied therefore is one in which the Court balances the equities and exercises its discretion. It must weigh the good faith of the professional in proceeding without an order and take into account the response to information that the order has not been entered." *In re Freehold Music Ctr., Inc.*, 49 B.R. at 296. Among the factors the court should consider are the Debtors' "need for the services rendered and whether or not the debtors could have functioned without such services." *Id.*

42. Likewise, in *Wichita River*, one of the attorneys was supposed to file retention applications for three attorneys and his law firm, but he mistakenly filed applications only for himself and one other attorney. The mistake was discovered approximately six months later and the third attorney and law firm, who were omitted from the initial application, applied for *nunc pro tunc* retention. Although the bankruptcy court denied the application because it did not believe it had discretion, the district court reversed, holding that the bankruptcy court *did* have discretion to grant such *nunc pro tunc* relief. *Wichita River*, 214 B.R. at 309.

43. The facts here are even more compelling for *nunc pro tunc* relief. The Debtors in fact filed a retention application for LKC, and the Court approved it after no one objected or raised any question about it. Since then, LKC has provided the agreed-upon discounted rates and achieved extraordinary successes for the Debtors. The only issue is that the Ad Hoc Group is now

belatedly second guessing the judgment of Debtors' bankruptcy counsel—even though the Ad Hoc Group knows full well that the Debtors and LKC agreed to a contingency fee in exchange for discounted fees. Decl. of Charles Topping, ¶ 9. The technical defect, if any, in the Original Application pales in comparison to the failure to file an application at all in *Wichita River*. Further, as noted, LKC was relying on Debtors' bankruptcy counsel, who advised LKC to delete the detail of the contingency fee and who reviewed, signed, and filed the application including the proposed order. The Court is thus well within its discretion to approve the Updated Application which reflects the parties' agreement and long-held expectations.

B. The Ad Hoc Group's Contrary Arguments Are Meritless.

1. LKC is not seeking an unreasonable fee but simply the success fee to which the Debtors agreed two years ago.

44. Without any factual support, the Ad Hoc Group claims that LKC is seeking a fee that is "manifestly unreasonable." Objection ¶ 23 (emphasis removed). The Ad Hoc Group knows that this characterization is baseless. LKC is simply seeking to uphold the terms of the agreement that it has had with the Debtors for two years. *See* Decl. of Charles Topping, ¶¶ 14–16 ("Rhodium has a reciprocal obligation to LKC and is committed to having LKC fully compensated for the work it has done and the success fee it has earned.").

45. The Original Application discloses the existence of the contingency fee eleven times and explains that the fee was consideration for the discounted rates that LKC has provided since the inception of the engagement. *See* Original Application, ¶¶ 40-41, 44**;** *see also* Original Cohn Decl., ¶ 25 ("Did the Firm agree to any variations from, or alternatives to, the Firm's standard billing arrangement for this engagement? . . . Yes. The Firm's standard billing arrangement is hourly. For the Whinstone Dispute, the Firm agreed to reduce its hourly rates in exchange for a contingent fee."). LKC's first interim fee application likewise mentions the contingency fee and

fee discounts. [Docket No. 765, ¶ 19 & n. 3]. Consistent with these terms, LKC's monthly fee statements show and reflect the discounted rates.[10]

46. Further, LKC followed the advice and guidance of Debtors' bankruptcy counsel, which instructed LKC to remove the details of the contingency fee. *See* Original Application, ¶¶ 26, 40, 41, 44; Original Cohn Decl., ¶¶ 6, 25; Original Topping Decl., ¶¶ 9, 10; and Decl. of Charles Topping, ¶¶ 7–8. Regardless of whether the Debtors' bankruptcy counsel's advice was sound, in no conceivable universe is LKC seeking a "windfall." Objection, ¶ 1.

47. To the contrary, it is the Ad Hoc Group that is seeking an unfair result. For two years, LKC has followed the terms of its agreement with Debtors by providing the discounted rates that were negotiated in exchange for the contingency fee. Decl. of Charles Topping, ¶¶ 4–5, 13–16. As the Ad Hoc Group knows, LKC's monthly fee statements have included express descriptions of the discounts:

> LKC has agreed to discount its fees in the Whinstone Dispute according to the following formula on a monthly basis: 20% discount for the first $250,000 of time at standard rates, 25% discount for the next $250,000 of time at standard rates, and a 30% discount for all additional time. Each monthly invoice accordingly reflects this discount.

[Docket No. 425, n. 2]. The Ad Hoc Group's view, apparently, is that LKC should receive heavily discounted rates but not the success fee that was negotiated in exchange for those discounted rates—all based on a technical issue that was not LKC's doing in the first place. Worse, the Ad Hoc Group believes it is proper to raise this issue at the eleventh hour *after* LKC prevailed at trial,

[10] *See* Lehotsky Keller Cohn LLP's First Monthly Fee Statement for the Period August 28, 2024 through September 30, 2024 [Docket No. 382]; Lehotsky Keller Cohn LLP's Second Monthly Fee Statement for the Period October 1, 2024 through October 31, 2024 [Docket No. 425]; Lehotsky Keller Cohn LLP's Third Monthly Fee Statement for the Period November 1, 2024 through November 30, 2024 [Docket No. 538]; Lehotsky Keller Cohn LLP's Fourth Monthly Fee Statement for the Period December 1, 2024 through December 31, 2024 [Docket No. 730]; Lehotsky Keller Cohn LLP's First Interim Application for Payment of Compensation and Reimbursement of Expenses for the Period August 28, 2024 through November 30, 2024 [Docket No. 765]; Lehotsky Keller Cohn LLP's Fifth Monthly Fee Statement for the Period January 1, 2025 through January 31, 2025 [Docket No. 790]; Lehotsky Keller Cohn LLP's Sixth Monthly Fee Statement for the Period February 1, 2025 through February 28, 2025 [Docket No. 847].

saved the Debtors' business, and developed the affirmative case against Whinstone, paving the way for a $185 million settlement.

48. The remainder of the Ad Hoc Group's hastily reasoned arguments are equally infirm. First, the Ad Hoc Group complains that the Updated Application covers all the Debtors rather than the four in the May 2023 Letter, which is the very first engagement letter LKC signed with Rhodium. Objection, ¶ 19–20. This issue is a red herring. The May 2023 Letter mentioned four entities because, at that time, Whinstone had named only four entities in the litigation. The Debtors' intent and understanding was that LKC would represent Rhodium, without exception, in the Whinstone litigation, Decl. of Charles Topping, ¶ 1, 3, 15, and as the litigation expanded to include additional entities, so did LKC's representation. The engagement letter was revised twice, *see, e.g.*, August 2024 Letter, 1 (naming additional entities); September 2024 Letter, 1, before Debtors filed the Original Application.

49. By the time of the Original Application, LKC represented *all* the Debtors. Likewise, the Original Order explicitly authorized the retention of LKC by *all* the Debtors, *see* Original Order, ¶ 1.[11] No one objected to that.

50. LKC then represented all the Debtors at trial in this Court. No one objected to that either—including counsel for the Ad Hoc Group, which watched the trial. Nor did anyone object when LKC represented all the Debtors in their affirmative case against Whinstone. [*See* Docket No. 770]. LKC's representation of all the Debtors should not be in dispute.

[11] "Rhodium had no intent to structure a deal with Whinstone that would attempt to circumvent LKC's success fee. Not paying the fee would be inconsistent with my understanding of Rhodium and LKC's intent." Decl. of Charles Topping, ¶ 14.

51. Second, the Ad Hoc Group spuriously suggests that the Debtors and LKC are attempting to strike a "backroom" deal insulated from court review.[12] *See* Objection, ¶¶ 20–21; Decl. of Charles Topping, ¶ 15. The Ad Hoc Group completely misses the fact that the Updated Engagement Letter explicitly subjects the success fee to Court approval as required under Bankruptcy Rule 2016. Paragraphs (b) and (c) of the Updated Engagement Letter provide that:

> (b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and
>
> (c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

Updated Engagement Letter at 2 (emphasis added). Paragraph (d), which the Debtors themselves suggested adding, merely addresses the scenario in which there is an agreement with Whinstone that *both* resolves the affirmative case for damages *and* sells the Rhodium assets in Rockdale, without identifying what portion of the total proceeds is attributable to the affirmative case and what portion is attributable to the Rockdale assets. Decl. of Charles Topping, ¶ 11. Although the original engagement letter did not explicitly address this scenario (because the parties did not attempt to identify every then-hypothetical scenario that could theoretically arise), there was never any doubt about the parties' expectations or intent. *Id.* ("Paying the contingency fee under those circumstances was thus consistent with Rhodium and LKC's intent at the outset."). Well before the mediation and the settlement discussion with Whinstone, the Debtors' General Counsel, Mr.

[12] This innuendo is ironic considering that the Ad Hoc Group is attempting to strike its own deal—in a confidential mediation—for a cut of Debtors' assets despite its own standing issues, *see infra* at ¶ 67.

Topping, made it clear to LKC that the Debtors would honor the contingency fee in that scenario, because that is what the parties intended and because not paying the fee would be fundamentally unfair (i.e., LKC has no control over whether the agreement between the Debtors and Whinstone identifies the allocation or not).[13] Regardless, any disagreement regarding the apportionment between energy credits and damages would be addressed before this Court, and the amounts in paragraph (b) and (c) are subject in their entirety to Court approval. LKC's contingency fee is not insulated from Court review, and no fee can be awarded "arbitrarily" or without "guardrails," Objection, ¶¶ 20–21.

52. Third, the other changes in the Updated Engagement Letter are minor and hardly worthy of an objection. For instance, the letter clarifies the trigger for the $600,000 success fee related to the interpretation of contracts at issue. Not only is the change fully consistent with the Debtors' and LKC's intent from the beginning, but it is immaterial because the success fee is triggered even without the change. Under the Original Application, LKC receives the fee because Whinstone has dismissed its appeal of the Court's order on the motion to assume, and that order is now "non-appealable" and "final."

53. Fourth, the Ad Hoc Group inexplicably and vexatiously maligns LKC by suggesting that its retention was not "necessary," Objection, ¶ 16, notwithstanding the results LKC helped achieve. The Ad Hoc Group also attempts to blame LKC for the Ad Hoc Group's own manipulative timing games by contending that LKC "*abruptly* entered into a new engagement letter" after the February 19, 2025 mediation session. Objection, ¶ 10 (emphasis added). Of course,

[13] "Rhodium and LKC also made other minor clarifying changes to the letter, including, for instance, specifying more precisely the trigger for the fee related to prevailing on Rhodium's interpretation of the contracts, which this Court addressed in resolving Debtors' Motion to Assume. The clarifying changes were consistent with the parties' intent from the beginning of the engagement, and in Rhodium's view, it was in the best interest of the estates to provide clarification." Decl. of Charles Topping, ¶¶ 14–15.

the only reason why LKC "abruptly" acted at that time was that the Ad Hoc Group did not disclose its "concerns" until the eve of the mediation session.[14] LKC's efforts to promptly address an issue it learned about for the first time is not a basis for impugning LKC. LKC made every effort to address any potential issues with the Original Application, and it is patently inequitable for approval of the Updated Application to be denied where the Ad Hoc Group was aware of LKC's contingency fee and failed to raise an objection prior to approval of the Original Application. *See In re McKenzie*, 449 B.R. 306, 320 (Bankr. E.D. Tenn. 2011) (rejecting objections to law firm's employment when objector (i) had notice of the application, (ii) failed to raise objections before, (iii) "[t]he estate would suffer no actual or potential prejudice from allowing the fees," and (iv) "in fact, there would be an unjust windfall to the estate" if law firm were not paid for services rendered.).

2. Engagement letters are not required to be attached to a retention application.

54. The Objection next contends that LKC is not entitled to the contingency fee because the Original Application did not include LKC's engagement letter with the Debtors.

55. But retention applications need not include engagement letters. *See, e.g., In re Party City Holdco Inc.*, Case No. 24-90621 (ARP) (Bankr. S.D. Tex. Jan. 21, 2025) (Docket No. 301); *In re Intrum AB*, Case No. 24-90575 (CML) (Bankr. S.D. Tex. Dec. 10, 2024) (Docket No. 163); *In re Vertex Energy, Inc.*, Case No. 24-90507 (CML) (Bankr. S.D. Tex. Oct. 23, 2024) (Docket No. 237); *In re Rhodium Encore, Inc.*, Case No. 24-90448 (ARP) (Bankr. S.D. Tex. Sept. 22, 2024) (Docket No. 168); *In re Mountain Express Oil Company*, Case No. 23-90147 (DRJ) (Bankr. S.D.

[14] The Ad Hoc Group also falsely contends that the February 19 session "did indeed get the deal 'most of the way there.'" Objection, ¶ 10. In light of the confidentiality rules regarding the mediation, LKC will not disclose the details of when a deal became likely, but suffice it to say, it was not on February 19 or at any time before LKC and the Debtors executed the new engagement letter. LKC reminds the Ad Hoc Group about its duty of candor to the Court.

Tex. Sept. 1, 2023) (Docket No. 1445). Nothing in the Bankruptcy Rules or the Bankruptcy Local Rules requires the attachment of an engagement letter to a retention application.[15] In addition, engagement letters may be confidential, subject to privilege, and contain additional information that a client may not want to disclose. The Debtors originally had concerns about disclosing the details of its contingent-fee arrangement to its litigation adversary, Whinstone, but to address the concerns of the Ad Hoc Group, the Debtors disclosed them in the Updated Application.

3. To the extent Bankruptcy Rule 9024 applies, the Debtors are within applicable time periods for relief.

56. With no analysis, the Ad Hoc Group cite Bankruptcy Rules 9024 and 9023. Neither helps the Ad Hoc Group because, as discussed, the Court has discretion to grant *nunc pro tunc* relief and even to "approve compensation to an attorney who had not received court approval prior to rendering services." *In re Borer*, 73 B.R. at 30. Additionally, the Debtors have not invoked either Bankruptcy Rule in their Updated Application, and the Ad Hoc Group has not explained how either applies to the Updated Application.

57. To the extent Bankruptcy Rule 9024, which incorporates Federal Rule 60, applies to the instant matter, the Debtors' request for approval of the Updated Application is timely. Counsel for the Ad Hoc Group did not raise its concerns about LKC's contingency fee and application until on or around February 17, 2025. As far as LKC is aware, this was the first time any party raised a question or issue regarding LKC's contingency fee, the Original Application, or the Original Order. The Updated Application was filed 17 days later on March 6, 2025. To the extent that Federal Rule 60 and Bankruptcy Rule 9024 apply to the Original Application and the Updated Application, the Debtors and LKC have sought relief from the Original Order "within a

[15] The Bankruptcy Local Rules only require that "[a]n application for employment by an attorney for the debtor … must have attached the statement required by FED. R. BANKR. P. 2016(b) and § 329 of the Bankruptcy Code." Local Rule 2014-1(a).

reasonable time." Fed. R. Civ. P. 60(c)(1). Additionally, Federal Rule 60(b)(1) requires a request for relief within a year after entry of the order where the relief sought is due to "mistake, inadvertence, surprise, or excusable neglect." Fed. R. Civ. P. 60(b)(1). The Original Order was entered on October 15, 2024, so the Debtors' request, to the extent it is governed by Federal Rule 60, is before the applicable deadline, contrary to the Ad Hoc Group's protestations.

58. Finally, the Ad Hoc Group contends that Bankruptcy Rule 9023 (which incorporates Federal Rule of Civil Procedure 59) forecloses the Court's ability to approve the Updated Application, but Bankruptcy Rule 9023 is inapplicable to the Updated Application. Bankruptcy Rule 9023 explicitly addresses only "a motion for a new trial or to alter or amend a judgment," neither of which is at issue here. There has been no trial or judgment, so the rule does not apply.

59. In short, none of the Ad Hoc Group's arguments has merit. The Court should approve the Updated Application.

C. Even if the Ad Hoc Group's challenge to LKC's retention application had merit and Debtors did not honor the contingency fee, LKC would still have a general unsecured claim against the Debtors' estates and be paid in full.

60. But, even if the Ad Hoc Group's challenge had merit, LKC would still have a right to its contingency fee based on its prepetition agreement with the Debtors. LKC understands that Debtors intend to fully honor that agreement. If they did not, LKC would have a general unsecured claim against the Debtors' estates for the contingency fee.

61. A claim for a contingency fee arising from a prepetition legal agreement is generally allowable under section 502(a) of the Bankruptcy Code, like any other claim.[16] *See*

[16] Analogously, where prepetition agreements with professionals that incorporate a success fee are breached, terminated, or rejected postpetition, the professional generally has an unsecured claim against the estate for the amount of the success fee if it is triggered. *See In re Tex. Rangers Baseball Partners*, No. 10-43400-DML, 2012 WL 4464550, at *4, *7 (Bankr. N.D. Tex., Sept. 25, 2012) (granting general unsecured claim of firm whose

McProud v. Siller (In re CWS Enters.), 870 F.3d 1106, 1116 (9th Cir. 2017); *Landsing Diversified Properties v. First National Bank and Tr. Co. (In re Western Real Estate Fund, Inc.)*, 922 F.2d 592, 602 (10th Cir. 1990); *In re Am. REIT, Inc.*, Case No. 07-40308, 2008 Bankr. LEXIS 1206, at *8–9 (Bankr. E.D. Tex. Apr. 15, 2008).

62. From the very beginning of LKC's engagement, LKC's engagement letter has provided for a contingency fee calculated based on the following:

> (a) $600,000 if (i) the contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May, 16, 2023) is upheld or (ii) you are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;
>
> (b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, to be paid 30 days after each monthly utilization by Rhodium; and
>
> (c) 10% of any additional amounts not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, to be paid 30 days after settlement of the Matter or a non-appealable final judgment, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates.

May 2023 Engagement Letter at 3. The August 2024 Engagement Letter and the September 2024 Engagement Letter are both in accord.

63. If the Updated Application is not approved, LKC's contingency fee is not paid by the Debtors, or the prior engagement letters are rejected, LKC would have a general unsecured

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engagement agreement with the debtor included a tail fee that was triggered after postpetition termination of the engagement agreement by the debtor); *Better 4 You Breakfast, Inc. v. Intrepid Inv. Bankers LLC (In re Better 4 You Breakfast, Inc.)*, Adv. No.: 2:23-ap-01301-BB, 2025 WL 737071, at *4 (Bankr. C.D. Cal., Mar. 6, 2025) (granting summary judgment on validity of firm's proof of claim where transaction fee triggered after rejection of the prepetition agreement); *In re Nat'l Energy & Gas Transmission, Inc.*, Case No. 03-30459PM, 2006 WL 4595947, at *3 (Bankr. D. Md. Aug. 28, 2006) (granting investment banker's general unsecured claim after rejection of prepetition agreement including a tail fee and after investment banker performed some postpetition services but was not retained).

claim against the Debtors' estates that would be deemed allowed "unless a party in interest . . . objects." 11 U.S.C. § 502(a). No objection would have merit because LKC's fees do not "exceed[] the reasonable value" of the firm's services. 11 U.S.C. § 502(b)(4). On January 23, 2025, Rhodium Enterprises, Inc. listed LKC's "Legal Representation Agreement" on their Amended Schedules as an executory contract. [Docket No. 687 at 69].

64. Further, in the context of prepetition contingency fees, courts seek to respect the contractual arrangements of attorneys and their clients—even in the process of adjudicating bankruptcy claims and objections to those claims. *See Western Real Estate Fund,* 922 F.2d at 595 ("[The attorney] was legally entitled to full contract damages rather than the court's discretionary award of an equitable fee."). Contingent fee agreements "provide reasonable alternatives to the hourly retainer, despite the fact that, as a result of their contingent and therefore risky nature, such agreements typically generate fees . . . substantially in excess of" lodestar calculations when the lawyer succeeds. *Id.* at 597–98.

65. In *In re CWS Enterprises, Inc.*, for example, the Ninth Circuit approved a claim based on a prepetition contingency fee agreement. 870 F.3d at 1121. The bankruptcy court had erroneously reduced the law firm's contingency fee using the lodestar method, but on appeal, the Ninth Circuit affirmed the district court's reversal, finding that the bankruptcy court erred in applying the lodestar method. A "'reasonable' fee must be reasonable for the lawyer as well as the client." *Id.* at 1121. The Ninth Circuit upheld the law firm's contingency fee claim. Similarly, in this circuit, in *In re American REIT, Inc.*, the bankruptcy court addressed a law firm's claim for a prepetition contingency fee. 2008 Bankr. LEXIS 1206, at *8. The debtor objected to the fee on

various grounds, but the bankruptcy court ruled in favor of the law firm and permitted recovery of the contingency fee in its entirety. *Id.* at *17.[17]

66. Unlike many cases involving claims under prepetition contingency fee arrangements, there is no dispute that LKC's services to the Debtors have created substantial value for stakeholders. Indeed, LKC saved Debtors business multiple times. And at trial in this Court, LKC once again prevailed. Winning that case was "essential to recovery for stakeholders" as the Ad Hoc Group's own counsel, Mitch Hurley, told the Court. *See supra* n.7. Without the work of LKC and Stris, the Debtors would likely be worth nothing. Because of their work, including developing an affirmative case against Whinstone for over $300,000,000, the Debtors obtained a $185,000,000 settlement. Thus, if LKC were forced to make a claim as a general unsecured creditor, it would still receive its contingency fee.

D. The Ad Hoc Group has no standing or basis to object to the Updated Application.

67. Because of LKC's successes, the Ad Hoc Group would be paid in full *if* it had a viable claim. But apparently it does not. The Ad Hoc Group has failed to show that a triggering event has occurred under the Simple Agreement for Future Equity (each a "***SAFE***"). In either case, the Ad Hoc Group has no standing or basis to object to the Updated Application.

68. In bankruptcy proceedings, standing is limited to parties in interest. *Magnolia Venture Capital Corp. v. Prudential Securities, Inc.*, 151 F.3d 439, 445 n.9 (5th Cir. 1998). A party in interest is a person "whose pecuniary interests are directly affected by the bankruptcy

[17] While bankruptcy courts may apply different methods in determining the reasonableness of a claim for fees under section 502(b)(4) of the Bankruptcy Code, courts in this circuit have applied the standards provided by the Disciplinary Rules of Professional Conduct applicable to lawyers who practice in Texas (i.e., whether the fee is one customarily charged for similar services, the amount involved and results obtained, and whether the fee is fixed or contingent). *See In re Gutierrez*, 309 B.R. 488, 493–94 (Bankr. W.D. Tex. 2004) (citing *DP Solutions, Inc. v. Rollins, Inc.*, 353 F.3d 421, 433-34 (5th Cir. 2003) for the applicability of the Texas Disciplinary Rules of Professional Conduct).

proceedings." *In re Hutchinson*, 5 F.3d 750, 756 (4th Cir. 1993); *see In re Cyrus II P'ship*, 358 B.R. 311, 315 (Bankr. S.D. Tex. 2007) (Isgur, J.) (noting that there must be a direct effect on a party's pecuniary interests to be a party in interest); *see also In re The Watch Ltd.*, 257 F. App'x 748, 749 (5th Cir. 2007) ("Conjectural or hypothetical injuries do not support standing.").[18] "'Bankruptcy standing' is a form of prudential standing that is more narrow and exacting than constitutional standing under Article III." *In re Howard*, 533 B.R. 532, 543 (Bankr. S.D. Miss. 2015). Bankruptcy courts have equitable discretion to control participation in a proceeding. *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 284, n. 5 (2024).

69. The Simple Agreement for Future Equity dated as of June 2, 2021 (as amended November 22, 2021) by and between Rhodium Enterprises, Inc. ("***REI***") and Celsius Core LLC, attached hereto as **Exhibit 7**, contains specified triggering events whereby the Ad Hoc Group's SAFEs would (i) convert to shares in REI or (ii) receive a portion of certain proceeds depending on the triggering event.

70. If an Equity Financing[19] or Listing Event[20] occurs before the termination of the SAFE, the SAFE will convert into "(i) in the case of an Equity Financing, the number of shares of stock issued in the Equity Financing equal to the Purchase Amount divided by the applicable Conversion Price or (ii) in the case of a Listing Event, the number of shares of Common Stock of the Company equal to the Purchase Amount divided by the applicable Conversion Price . . . "

[18] While the Supreme Court's recent decision in *Kaiser Gypsum* noted the breadth of party in interest standing under section 1109(b) of the Bankruptcy Code, the insurance company objecting to the debtor's plan in that case had a direct financial stake in the outcome of the plan because it had "financial responsibility for a bankruptcy claim." *Truck Ins. Exch. v. Kaiser Gypsum Co.*, 602 U.S. 268, 272 (2024).

[19] "Equity Financing" is defined in the SAFE as "a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which [REI] issues or sells Capital Stock at a fixed valuation …". SAFE at 3.

[20] "Listing Event" is defined in the SAFE as "either (i) an Initial Public Offering, (ii) a SPAC Event, or (iii) a Direct Listing." SAFE at 3.

SAFE, § 1(a). If a Liquidity Event[21] occurs before termination of the SAFE, the investor is entitled to a "portion of Proceeds, due and payable to the Investor immediately prior to, or concurrent with, the consummation of such Liquidity Event equal to the greater of (i) the Purchase Amount . . . or (ii) the amount payable on the number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price . . . ." SAFE, § 1(b). If there is a Dissolution Event[22] before the termination of the SAFE, "the Investor will automatically be entitled … to receive a portion of Proceeds equal to the Cash-Out Amount, due and payable to the Investor immediately prior to the consummation of the Dissolution Event." SAFE, § 1(c).

71. No Equity Financing, Listing Event, Liquidity Event, or Dissolution Event has occurred with respect to REI. The settlement between the Debtors and Whinstone contemplates the sale of assets held by *subsidiaries* of REI but not of REI itself. REI has not wound up its business and could continue its business. Thus, at least at present, it appears the Ad Hoc Group is not entitled to any claim against the Debtors. LKC is unaware of evidence showing that the parties to the SAFE intended "Rhodium Enterprises, Inc." to include REI's subsidiaries. And, based on the Ad Hoc Group's entirely meritless argument that LKC represents only four Debtor entities—even though LKC clearly represents all the Debtors—the Court should not overlook the fact that

[21] "Liquidity Event" is defined in the SAFE as "a Change of Control other than a Listing Event." SAFE at 3. A "Change of Control" is "(i) a transaction or series of related transactions in which any "person" or "group" … becomes the 'beneficial owner' . . . , directly or indirectly, of more than 50% of the outstanding voting securities of [REI] having the right to vote for the election of members of [REI] board of directors, (ii) any reorganization, merger or consolidation of [REI], other than a transaction or series of related transactions in which the holders of the voting securities of [REI] outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of [REI] or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of [REI]." SAFE at 2.

[22] "Dissolution Event" is defined in the SAFE as "(i) a voluntary termination of operations, (ii) a general assignment of the benefit of [REI's] creditors or (iii) any other liquidation, dissolution or winding up of [REI] (excluding a Liquidity Event), whether voluntary or involuntary." SAFE at 3.

the SAFE identifies one and only one entity: REI. The Ad Hoc Group should not be allowed to run away from its own insistence on corporate formalities.

72. But at least the Ad Hoc Group is consistent, disregarding all contractual language and the parties' intent all the time. Guided by no legal principle, the Ad Hoc Group simply seeks to maximize its own meritless claims and to insulate them from judicial review by pursuing its own "backroom" deal in a confidential mediation. *See supra* at n.14. The Court should hold that the Ad Hoc Group lacks standing.

73. Indeed, even if a Liquidity Event has occurred entitling the Ad Hoc Group to distributions under the SAFEs, the Ad Hoc Group would still lack standing to object to LKC's contingency because it would be paid in full regardless of the fee. The members of the Ad Hoc Group have filed proofs of claims, and no one has yet objected to their claims. They are currently deemed allowed under Bankruptcy Code section 502(a). The Whinstone settlement will result in payment of administrative expenses, general unsecured creditors, and the Ad Hoc Group (which is subordinate to unsecured creditors)—to the extent of their claims—in full before distribution to equity holders. The Ad Hoc Group has admitted this in their own pleading: "[u]nder the absolute priority rule, and the terms of the SAFEs themselves, the SAFE holders have the right to be repaid the Cash Out Amount in full before any recoveries are provided to equity." [*See* Docket No. 1080, ¶ 4]. The Ad Hoc Group accordingly has no pecuniary interest in LKC's retention or the payment of the contingency fee to which LKC is entitled. The Ad Hoc Group cannot take inconsistent positions on this point. *See United States v. Tinh Huy Nguyen*, No. 16-CV-03543-LHK, 2018 WL 3972271, at *10 (N.D. Cal. Aug. 20, 2018) ("As a general matter, the law disfavors parties taking contrary positions at different points in the litigation."); 18B Charles Alan Wright et al., Federal Practice and Procedure § 4477 ("Absent any good explanation, a party

should not be allowed to gain an advantage by litigation on one theory, and then seek an inconsistent advantage by pursuing an incompatible theory."); *see also In re Coastal Plains, Inc.*, 179 F.3d 197, 206 (5th Cir. 1999) (parties prohibited from "playing fast and loose with the courts" and "deliberately changing positions according to the exigencies of the moment" (internal citation omitted)). Because under any scenario with respect to the value of the Ad Hoc Group's claims, the Ad Hoc Group will be paid in full, the Ad Hoc Group has no standing or basis to object to the Updated Application or LKC's claim for the contingency fee.

E. The Joinder Is Untimely and Should Be Stricken.

74. The Updated Application was filed on March 6, 2025. The deadline to object to LKC's Updated Application was March 27, 2025. Instead, the DLT Data Center 1 LLP filed its Joinder on April 8, 2025—12 days after the deadline. Therefore, the Joinder should be stricken as untimely. In any event, the Joinder contains no argument or analysis and merely parrots the objection by the Ad Hoc Group.

CONCLUSION

75. LKC's Updated Application should be approved by the Court. The Court has discretion to approve the application, and the circumstances surrounding the Original Order justify the requested relief. LKC has diligently represented the Debtors, provided discounted rates, and achieved extraordinary successes. The Updated Application reflects the terms of the agreement under which LKC has operated both prepetition and in these chapter 11 cases. LKC's fees and expenses, including the success fee, will be subject to review and approval by the Court.

Dated: May 15, 2025
Houston, Texas

Respectfully submitted,

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Counsel to Lehotsky Keller Cohn LLP

CERTIFICATE OF SERVICE

I, the undersigned, hereby certify that on May 15, 2025, I caused a true and correct copy of the foregoing document to be served on all parties entitled to notice via the CM/ECF system in the United States Bankruptcy Court for the Southern District of Texas.

/s/ Joshua W. Wolfshohl
Joshua W. Wolfshohl

EXHIBIT 1

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

DECLARATION OF CHARLES TOPPING

I, Charles R. Topping, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am General Counsel and Secretary of Rhodium Enterprises, Inc., which directly or indirectly manages other Rhodium-family entities, including but not limited to Rhodium 30MW LLC, Rhodium JV LLC; Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium Encore LLC, Jordan HPC LLC, and Air HPC LLC (collectively referred to as "Rhodium" herein). Except for any matters stated to be based upon information and belief, I have personal knowledge of the facts set forth below, and if called as a witness, I could and would competently attest to them.

2. I submit this Declaration in support of Debtors' Response to the Objection of the Ad Hoc Group of Safe Parties to Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel.

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

3. On May 16, 2023, Rhodium retained Lehotsky Keller Cohn LLP ("LKC") to represent Rhodium in connection with a lawsuit that Whinstone commenced in Milam County, Texas, on May 2, 2023.

4. Rhodium and LKC negotiated the terms of the engagement at arms' length. Rhodium and LKC agreed that LKC would provide a significant discount on its hourly rates in exchange for a potential success fee. The potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages. The success fee is described in Rhodium's May 16, 2023 engagement letter with LKC. At the time, I understood that Rhodium's management team was unsure whether such a claim would be necessary because Rhodium's management team hoped instead that a good relationship with Whinstone could be restored.

5. LKC's discounted fees benefitted Rhodium by preserving cash flow. And indeed, over the course of the litigation, Whinstone's aggressive tactics, including refusal to arbitrate and self-help shutdowns, impinged on Rhodium's cash flow. The potential success fee aligned Rhodium's and LKC's incentives if Rhodium later pursued affirmative claims against Whinstone. The engagement letter also included a fixed fee for Jonathan Cohn's time that was intended to approximate his expected monthly fees at discounted rates.

6. Over the course of the engagement, LKC helped Rhodium successfully defend itself against Whinstone. LKC and Stris & Maher LLP obtained a temporary restraining order and three different injunctions, including two emergency injunctions after Whinstone shut down Rhodium's power. It is my belief that without the injunctions, Rhodium would likely have been forced out of business.

7. After Rhodium filed for bankruptcy, on September 14, 2024, Jonathan Cohn prepared a draft LKC retention application that set forth the specific terms of the May 2023 engagement letter, including the rate discounts and specific components of the potential success fee. At that time, the Rhodium-Whinstone dispute was in active litigation. It was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC. Ultimately, Rhodium via its bankruptcy counsel filed a retention application for LKC that disclosed that Rhodium's agreement with LKC included discounted hourly rates in exchange for a partial contingency fee based upon the successful outcome of the litigation. The retention application did not, however, disclose the specific details of the success fee.

8. It was my understanding at the time that the initial retention application was filed that its description of the partial contingency fee based upon the outcome of the litigation was sufficient to inform creditors and other interested parties about the existence of the success fee. This continued to be my understanding at least until February 2025.

9. To my knowledge, no issue was raised by a creditor or any other interested party with respect to payment of a contingency fee to LKC until around February 2025. On or around February 17, 2025, which was just two days before the scheduled mediation on February 19, 2025, I learned that counsel for the Ad Hoc Group had recently asserted that the details of the LKC contingency fee had to be disclosed in order for LKC to be paid any contingency fee. At that time I also learned that the Ad Hoc Group further asserted that because LKC's retention application did not disclose additional details, LKC should not be paid any contingency fee.

10. After Rhodium became aware that the Ad Hoc Group had raised this issue, Rhodium decided to address it regardless of whether the Ad Hoc Group's belatedly expressed concern was valid.

11. One option for Rhodium was to seek to amend the LKC retention application to include the specific terms of the May 2023 engagement letter. At that point, however, it appeared to be possible that Rhodium and Whinstone might reach a settlement involving *both* the affirmative case for damages *and* the sale to Whinstone of the Rhodium assets in Rockdale. Rhodium was concerned that the transaction documents might not identify what portion of the total proceeds is attributable to the affirmative case and what portion is attributable to the Rockdale assets. Although the engagement letter did not explicitly address this scenario (because Rhodium and LKC did not attempt to address every conceivable scenario that might hypothetically arise when they entered into the engagement in May 2023), Rhodium believed that LKC was owed a contingency fee under the terms of the agreement. A settlement on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone. Paying the contingency fee under those circumstances was thus consistent with Rhodium and LKC's intent at the outset.

12. Accordingly, Rhodium and LKC decided to amend the May 2023 engagement letter to expressly address this potential settlement scenario. Rhodium then submitted a proposed amendment to LKC's retention that both disclosed the original May 2023 engagement letter and the amended March 4, 2025 engagement letter.

13. Rhodium fully recognizes the value of the services that LKC provided over the past two years and also recognizes that LKC provided those services at a discounted rate in reliance on the potential success fee. LKC helped save Rhodium from going out of business multiple times and paved the way for a settlement with Whinstone. The value of LKC's services includes the affirmative claims against Whinstone that LKC helped develop and pursue in both the arbitration and the bankruptcy proceeding.

14. Rhodium had no intent to structure a deal with Whinstone that would attempt to circumvent LKC's success fee. Not paying the fee would be inconsistent with my understanding of Rhodium and LKC's intent. It is my opinion that it would also be unfair in light of LKC's successes and the discounted rates it provided for nearly two years.

15. Rhodium and LKC negotiated the language of the March 4, 2025 engagement letter in good faith and at arms' length. Rhodium and LKC also made other minor clarifying changes to the letter, including, for instance, specifying more precisely the trigger for the fee related to prevailing on Rhodium's interpretation of the contracts, which this Court addressed in resolving Debtors' Motion to Assume. The clarifying changes were consistent with the parties' intent from the beginning of the engagement, and in Rhodium's view, it was in the best interest of the estates to provide clarification.

16. Finally, although the objection to LKC's fee is being pressed by the Ad Hoc Group, I do not view payment of the fee as a matter between LKC and the Ad Hoc Group. LKC has represented Rhodium for two years through multiple periods of time when the survival of Rhodium's business was on the line. Together with Stris & Maher LLP, LKC obtained exceptional results for Rhodium and doing so often meant meeting imminent, after-hours needs and taking on emergency filings and emergency hearings on short notice. Rhodium has a reciprocal obligation to LKC and is committed to having LKC fully compensated for the work it has done and the success fee it has earned.

Dated: May 14, 2025

/s/Charles R. Topping
Charles R. Topping

EXHIBIT 2

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

May 16, 2023

Cameron Blackmon
4146 W US Highway 79
Rockdale, TX 76567

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC* ("this Matter").

Our attorney-client relationship will commence when you have agreed to the material terms of our engagement.

Fees: The fee for this Matter will be comprised of: (1) a $25,000 monthly fixed fee for all work by Jonathan Cohn; (2) discounted hourly rates for all other timekeepers; and (3) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Scott Keller and Steve Lehotsky: $1,300
- Other partners, including Will Thompson: $1,200
- Counsels: $900
- Associates: $750

We will provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all

additional time, there will be a 30% discount. Bills for the hourly fees, the $25,000 monthly fixed fee, and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee has three components:

(a) $600,000 if (i) the contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May, 16, 2023) is upheld or (ii) you are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, to be paid 30 days after each monthly utilization by Rhodium; and

(c) 10% of any additional amounts not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, to be paid 30 days after settlement of the Matter or a non-appealable final judgment, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates.

Retainer: You shall post a retainer of $200,000. Insofar as the retainer is used to pay monthly invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky

Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

Jonathan F. Cohn

Agreed to and accepted:

Rhodium 30MW LLC

Rhodium JV LLC

Air HPC LLC

Jordan HPC LLC

By: Cameron Blackmon
Cameron Blackmon

Title: Authorized Signatory

Date: 5/16/2023

EXHIBIT 15

[Part 2 of 3]

EXHIBIT 3

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

August 26, 2024

Cameron Blackmon
4146 W US Highway 79
Rockdale, TX76567

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent Rhodium 30MW LLC, Rhodium JV LLC, Air HPC LLC, Jordan HPC LLC, Rhodium Encore LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, and Rhodium Industries LLC ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas, and in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association (collectively, "this Matter").

This engagement letter supersedes our previous engagement letter regarding the lawsuit in Milam County, Texas.

Fees: The fee for this Matter will be comprised of: (1) a $25,000 monthly fixed fee for all work by Jonathan Cohn; (2) discounted hourly rates for other timekeepers; and (3) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Scott Keller and Steve Lehotsky: $1,400
- Other partners, including Will Thompson: $1,300
- Counsels: $1000
- Associates: $850

We will provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees, the $25,000 monthly fixed fee, and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, and court filings fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee has three components:

(a) $600,000 if (i) the contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May 16, 2023) is upheld or (ii) you are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, to be paid 30 days after each monthly utilization by Rhodium; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, to be paid 30 days after settlement of the Matter or a non-appealable final judgment, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You shall post a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is

substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

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Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted:

Rhodium 30MW LLC

Rhodium JV LLC

Air HPC LLC

Jordan HPC LLC

Rhodium Encore LLC

Rhodium 2.0 LLC

Rhodium 10MW LLC

Rhodium Industries LLC

By: Signed by: Cameron Blackmon BD4E91FF0A1B4D7...
Cameron Blackmon

Title: Authorized Signatory

Date: 8/28/2024 | 2:05 PM CDT

EXHIBIT 4

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

September 13, 2024

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

- Jonathan Cohn, Scott Keller and Steve Lehotsky: $1,400

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.

- Other partners, including Will Thompson: $1,300
- Counsels: $1000
- Associates: $850

We will provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees, the $25,000 monthly fixed fee, and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, and court filings fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee has three components:

(a) $600,000 if (i) the contracts at issue in the Matter (including those you seek to enforce) are not terminated and, if addressed by a court, your interpretation of key contractual provisions (as identified by the attached email dated on May 16, 2023) is upheld or (ii) you are acquired by Whinstone or an affiliate, to be paid 30 days after settlement of the Matter, the closing of such acquisition, or a non-appealable final judgment;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, to be paid 30 days after each monthly utilization by Rhodium; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, to be paid 30 days after settlement of the Matter or a non-appealable final judgment, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You shall post a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or

future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

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Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: Signed by: BD4E91FF0A1B4D7...
Cameron Blackmon

Title: In his capacity as Authorized Signatory and/or President

Date: 9/18/2024 | 12:23 PM CDT

EXHIBIT 5

Will Thompson

From: Patty Tomasco <pattytomasco@quinnemanuel.com>
Sent: Sunday, September 22, 2024 5:45 PM
To: Will Thompson
Cc: Barbara Howell
Subject: Re: Rhodium retention application

Yes. Just delete.
Patty Tomasco
Partner
Quinn Emanuel Urquhart & Sullivan, LLP

700 Louisiana Street, Suite 3900 | Houston, TX 77002
T +1 713 221 7227 | F +1 713 221 7100 | M +1 512 695 2684

51 Madison Avenue, 22nd Floor | New York, NY 10010
T +1 212 849 7000 | F +1 212 849 7100

On Sep 22, 2024, at 6:19 PM, Will Thompson <will@lkcfirm.com> wrote:

[EXTERNAL EMAIL from will@lkcfirm.com]

Yes. Chuck's question was [redacted]

Get Outlook for iOS

From: Barbara Howell <barbarahowell@quinnemanuel.com>
Sent: Sunday, September 22, 2024 5:17:43 PM
To: Will Thompson <will@lkcfirm.com>
Cc: Patty Tomasco <pattytomasco@quinnemanuel.com>
Subject: Rhodium retention application

Sorry, are you going to redact this document also? Thanks,

Barbara Howell
Paralegal,
Quinn Emanuel Urquhart & Sullivan, LLP

700 Louisiana Street, 39th Floor
Houston, TX 77002
713-221-7022 Direct
713.221.7000 Main Office Number
713-221-7100 FAX
barbarahowell@quinnemanuel.com
www.quinnemanuel.com

EXHIBIT 6

LEHOTSKY KELLER COHN LLP
Jonathan F. Cohn
Partner
200 Massachusetts Ave. NW
Washington, DC 20001

March 4, 2025

Cameron Blackmon
2617 Bissonnet Street, Ste 234
Houston, TX 77005

Dear Cameron:

Thank you for selecting Lehotsky Keller Cohn LLP to represent the Rhodium entities listed below[1] ("you" or "Client") in *Whinstone US Inc. v. Rhodium 30MW LLC, et al.*, No. CV41873, filed in Milam County, Texas; in *Rhodium JV, LLC, et al. v. Whinstone US, Inc.*, No. 01-0005-7116, filed with the American Arbitration Association, and in *In re Rhodium Encore LLC*, No. 4:24-bk-90448 filed in Southern District of Texas Bankruptcy Court (collectively, "this Matter").

This engagement letter supersedes our previous engagement letters regarding this dispute.

Fees: The fee for this Matter will be comprised of: (1) discounted hourly rates; and (2) a potential success fee as described below.

The standard rates for attorneys at Lehotsky Keller Cohn LLP are as follows:

[1] Rhodium Encore LLC, Jordan HPC LLC, Rhodium JV LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium 30MW LLC, Jordan HPC Sub LLC, Rhodium 2.0 Sub LLC, Rhodium 10MW Sub LLC, Rhodium 30MW Sub LLC, Rhodium Encore Sub LLC, Rhodium Enterprises, Inc., Rhodium Industries LLC, Rhodium Ready Ventures LLC, Rhodium Renewables LLC, Rhodium Renewables Sub LLC, Rhodium Shared Services LLC, and Rhodium Technologies LLC.

- Jonathan Cohn, Scott Keller and Steve Lehotsky: $1,400
- Other partners, including Will Thompson: $1,300
- Counsels: $1000
- Associates: $850

These standard rates were in effect on January 1, 2024, and were increased on January 1, 2025. Nonetheless, as an accommodation to you, we will maintain the same rates for this Matter for 2025.

We will continue to provide discounts from these standard rates each month. Per month: for the first $250,000 of time at standard rates, there will be a 20% discount; for the next $250,000 of time at standard rates, there will be a 25% discount; and for all additional time, there will be a 30% discount. Bills for the hourly fees and reasonable expenses (including but not limited to photocopies, on-line computer assisted legal research, travel, legal advice on retention and compensation matters, and court filing fees) shall be issued monthly and payable within 30 days of issuance.

The potential success fee is calculated as follows:

(a) $600,000 if (i) the Bankruptcy Court's order on Debtor's Motion to Assume is upheld in a non-appealable final judgment (or the appeal is dismissed), to be paid 30 days after such non-appealable final judgment (or dismissal) or (ii) you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, to be paid 30 days after the closing of such acquisition;

(b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits, payable 30 days after each monthly utilization by Rhodium and subject to Bankruptcy Court approval; and

(c) 10% of any additional damages not attributable to energy credits that you recover, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys' fees, payable 30 days after settlement of the Matter or a non-appealable final judgment and subject to Bankruptcy Court approval, provided, that in the case of a settlement, the amount on which the 10% success fee will be payable will be the amount that is net of any monetary concessions given to Whinstone or its affiliates;

(d) In relation to the fees listed in Sections (b) and (c), if you (or all or substantially all of the Rockdale assets) are acquired by Whinstone or an affiliate, in a transaction that resolves or otherwise terminates the Matter, the Client and Lehotsky Keller Cohn LLP will determine in good faith the portion of transaction value to the

Client allocable to the energy credits and damages specified in Sections (b) and (c). If the Client and Lehotsky Keller Cohn LLP are unable to reach a resolution regarding the amount of fees payable under Sections (b) and (c), including with respect to the allocation of transaction value allocable to the energy credits and damages, such dispute shall be resolved by the Bankruptcy Court.

Each Client is jointly and severally responsible to pay all fees and reasonable costs.

Retainer: You have posted a retainer of $200,000. Insofar as the retainer is used to pay invoices, the retainer shall be replenished monthly.

Conflicts: Lehotsky Keller Cohn LLP represents, and in the future will represent, many other clients. During the time we are working for Client, one or more existing or future clients may ask us to represent them in an actual or potential transaction or contested matter, including litigation or other dispute resolution proceedings, adverse to the interests of the Client. By entering into this engagement, you agree that Lehotsky Keller Cohn LLP can accept all such representations, even if the other client's interests are or may become directly adverse to the Client's interests, unless the matter is substantially related to any matter in which we are representing the Client or will require disclosure of your confidential information. The Client waives all actual and potential conflicts of interest that might exist because of any such representation undertaken by Lehotsky Keller Cohn LLP and you will not assert that any engagement of Lehotsky Keller Cohn LLP is a basis to challenge or to disqualify Lehotsky Keller Cohn LLP from undertaking or continuing any such representation.

Right to Consult and Modifications of Agreement: You have the right to consult with other counsel concerning the terms of this engagement letter. By executing this engagement letter, the Client confirms that it understands and accepts all of the terms set forth in this letter and that this letter has been signed by the Client voluntarily and with the benefit of the information necessary to make a fully informed decision to agree to these terms. You intend for your consent to be effective and fully enforceable and to be relied upon by Lehotsky Keller Cohn LLP in accepting this representation. These terms may not be modified unilaterally, and any amendment or modification of these terms will be effective only upon execution of a writing signed by an authorized person for the Client and by a partner at Lehotsky Keller Cohn LLP authorized to approve such changes.

Notice of Changes: It is important that all information provided to us is complete, accurate and up to date so that we can represent your interests fully. Accordingly, please ensure that we are notified of any changes or variations to that

information which may arise after the date it is provided to us, as well as any new circumstances which might be relevant to the work we are undertaking for you.

Governing Law and Venue: This Agreement shall be construed and enforced in accordance with the laws of the State of Texas, without regard to conflict of law principles.

Please sign and return to me a copy of this letter.

Sincerely,

/s/ Jonathan F. Cohn

Jonathan F. Cohn

Agreed to and accepted on behalf of Rhodium:

By: _____
Cameron Blackmon

Title:

Date: _____

EXHIBIT 7

AMENDMENT TO LETTER AGREEMENT

November 22, 2021

This Amendment to the Letter Agreement (the "Amendment"), is entered into as of November 22, 2021, by and between Celsius US Holding LLC, a Delaware limited liability company ("Celsius") and Rhodium Enterprises, Inc., a Delaware corporation, (the "Company").

WHEREAS, pursuant to that certain Simple Agreement for Future Equity, dated June 2, 2021, by and between Celsius and the Company, attached hereto as Exhibit A (the "SAFE"), Celsius Mining LLC ("Celsius Mining" f.k.a Celsius Core LLC) paid Fifty Million Dollars to the Company in exchange for the right to certain shares of the Company's Capital Stock pursuant to the terms set forth in the SAFE;

WHEREAS, pursuant to that certain letter agreement, dated June 2, 2021, by and between Celsius and the Company, attached hereto as Exhibit B (the "Letter Agreement") the Company granted Celsius certain rights set forth in the Letter Agreement;

WHEREAS, Celsius Mining was originally party to the SAFE and Letter Agreement and Celsius Mining assigned its interests in the SAFE and Letter Agreement (other than with respect to Sections 5, 8 and 9 of the Letter Agreement) to Celsius and Celsius accepted such assignment;

WHEREAS, capitalized terms not explicitly defined herein shall have the meanings ascribed to such terms by the SAFE;

WHEREAS, the Company and Celsius desire to amend the Letter Agreement in order to terminate certain provisions of the Letter Agreement upon the consummation of a Listing Event.

NOW, THEREFORE, in consideration of the foregoing and other in exchange for good and valuable consideration the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto, intending to be legally bound, hereby agree as follows:

1. Amendments to the Letter Agreement. The Letter Agreement is hereby amended as follows:

   a. Section 2 of the Letter Agreement is hereby amended by inserting the following sentence at the end of the section:

      "Notwithstanding the foregoing, Celsius shall not exercise its right to contribute additional investments in the Company under the terms of the SAFE in accordance with this Section 2 between November 23, 2021 and December 23, 2021."

   b. Section 12(a) of the Letter Agreement is hereby amended and restated in its entirety as follows:

12. Miscellaneous.

(a) Term.

(i) Except as set forth in subsection (ii) below, this Agreement shall remain in full force and effect until the date on which Celsius no longer holds any capital stock of any member of the Rhodium Group (including rights in or to capital stock pursuant to a Simple Agreement for Future Equity).

(ii) Upon completion of a Listing Event, Sections 1, 2, 3, 4, 6(a), 6(c), 7 and 11 of this Agreement will terminate.

2. For the avoidance of doubt, Celsius and the Company confirm that Section 10 of the Letter Agreement shall not apply to or act to limit any issuance of securities by the Company in public markets.

3. The Letter Agreement has not been amended other than by this Amendment and, as amended by this Amendment, the Letter Agreement is and remains in full force and effect. In the event of a conflict between this Amendment and the Letter Agreement, the terms of this Amendment shall prevail.

4. This Amendment will be governed, construed, administered and regulated in all respects under the laws of the State of New York, without regard to the provisions, policies or principles thereof relating to choice or conflicts of laws.

5. This Amendment may be executed in one or more counterparts (including by means of facsimile or portable document format (pdf)), each of which shall be deemed to be an original, but all of which together shall constitute one agreement.

[*Signature Page Follows*]

IN WITNESS WHEREOF, the parties hereto have caused this Amendment to be duly executed by its authorized officers as of the day and year first written above.

RHODIUM ENTERPRISES, INC.

By: Cameron Blackmon
Name: Cameron Blackmon
Title: Authorized Signatory

CELSIUS US HOLDING LLC

DocuSigned by:
By: Ron Deutsch
E2E23C810E9341D...
Name: Ron Deutsch
Title: General Counsel

ANNEX A

SAFE AGREEMENT

(see attached)

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED IN THIS SAFE AND UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

RHODIUM ENTERPRISES, INC.

SAFE
(Simple Agreement for Future Equity)

THIS CERTIFIES THAT in exchange for the payment by Celsius Core LLC (the "**Investor**") of **FIFTY MILLION DOLLARS ($50,000,000)** (the "**Purchase Amount**") on **Wednesday, June 2, 2021**, Rhodium Enterprises, Inc., a Delaware corporation, (the "**Company**"), issues to the Investor the right to certain shares of the Company's Capital Stock, subject to the terms described below.

The "**Valuation Cap**" is $3,000,000,000.

The "**Discount Rate**" is 85%.

See **Section 2** for certain additional defined terms.

1. ***Events***

(a) **Equity Financing or Listing Event**. If there is an Equity Financing or a Listing Event before the termination of this Safe, on the initial closing of such Equity Financing or, in the case of a Listing Event, immediately prior to the consummation of such Listing Event, this Safe will automatically convert into (i) in the case of an Equity Financing, the number of shares of stock issued in the Equity Financing equal to the Purchase Amount divided by the applicable Conversion Price or (ii) in the case of a Listing Event, the number of shares of Common Stock of the Company equal to the Purchase Amount divided by the applicable Conversion Price (such shares issued upon conversion in the case of clause (i) or clause (ii), the "**Conversion Shares**").

In connection with the automatic conversion of this Safe into Conversion Shares, the Investor will execute and deliver to the Company all of the transaction documents related to the Equity Financing or Listing Event; provided, that such documents (i) are the same documents to be entered into with the purchasers of stock issued in the Equity Financing or other holders of Common Stock in the case of a Listing Event, and (ii) have customary exceptions to any drag-along applicable to the Investor, including (without limitation) limited representations, warranties, liability and indemnification obligations for the Investor.

(b) **Liquidity Event**. If there is a Liquidity Event before the termination of this Safe, this Safe will automatically be entitled (subject to the liquidation priority set forth in Section 1(d) below) to receive a portion of Proceeds, due and payable to the Investor immediately prior to, or concurrent with, the consummation of such Liquidity Event, equal to the greater of (i) the Purchase Amount (the "**Cash-Out Amount**") or (ii) the amount payable on the number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price (the "**Conversion Amount**"). If any of the Company's securityholders are given a choice as to the form and amount of Proceeds to be received in a Liquidity Event, the Investor will be given the same choice, *provided* that the Investor may not choose to receive a form of consideration that the Investor would be ineligible to receive as a result of the Investor's failure to satisfy any requirement or limitation generally applicable to the Company's securityholders, or under any applicable laws.

Notwithstanding the foregoing, in connection with a Change of Control intended to qualify as a tax-free reorganization, the Company may reduce the cash portion of Proceeds payable to the Investor by the amount determined by its board of directors in good faith for such Change of Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, provided that such reduction (A) does not reduce the total Proceeds payable to such Investor and (B) is applied in the same manner and on a pro rata basis to all securityholders who have equal priority to the Investor under Section 1(d).

(c) **Dissolution Event**. If there is a Dissolution Event before the termination of this Safe, the Investor will automatically be entitled (subject to the liquidation priority set forth in Section 1(d) below) to receive a portion of Proceeds equal to the Cash-Out Amount, due and payable to the Investor immediately prior to the consummation of the Dissolution Event.

(d) **Liquidation Priority**. In a Liquidity Event or Dissolution Event, this Safe is intended to operate like standard Common Stock. The Investor's right to receive its Cash-Out Amount is:

(i) Junior to payment of outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes (to the extent such convertible promissory notes are not actually or notionally converted into Capital Stock); and

(ii) On par with payments for other Safes, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other Safes, the applicable Proceeds will be distributed pro rata to the Investor and such other Safes in proportion to the full payments that would otherwise be due.

The Investor's right to receive its Conversion Amount is (A) on par with payments for Common Stock and other Safes who are also receiving Conversion Amounts or Proceeds on a similar as-converted to Common Stock basis, and (B) junior to payments described in clauses (i) and (ii) above (in the latter case, to the extent such payments are Cash-Out Amounts or similar liquidation preferences).

(e) **Termination**. This Safe will automatically terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this Safe) immediately following the earliest to occur of: (i) the issuance of Capital Stock to the Investor pursuant to the automatic conversion of this Safe under Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due the Investor pursuant to Section 1(b) or Section 1(c).

2. ***Definitions***

"**Capital Stock**" means the capital stock of the Company, including, without limitation, the Common Stock.

"**Change of Control**" means (i) a transaction or series of related transactions in which any "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"Common Stock" means the Class A Common Stock of the Company, par value $0.0001 per share.

"**Company Capitalization**" is calculated as of immediately prior to the Equity Financing and (without double-counting, in each case calculated on an as-converted to Common Stock basis):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all Converting Securities;
- Includes all (i) issued and outstanding Options and (ii) Promised Options; and
- Includes the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing shall only be included to the extent that the number of Promised Options exceeds the Unissued Option Pool prior to such increase.

"**Conversion Price**" means the either: (1) the Safe Price or (2) the Discount Price, whichever calculation results in a greater number of Conversion Shares.

"**Converting Securities**" includes this Safe and other convertible securities issued by the Company, including but not limited to: (i) other Safes; (ii) convertible promissory notes and other convertible debt instruments; and (iii) convertible securities that have the right to convert into shares of Capital Stock.

"**Direct Listing**" means the Company's initial listing of its Common Stock (other than shares of Common Stock not eligible for resale under Rule 144 under the Securities Act) on a national securities exchange by means of an effective registration statement on Form S-1 filed by the Company with the SEC that registers shares of existing capital stock of the Company for resale, as approved by the Company's board of directors. For the avoidance of doubt, a Direct Listing shall not be deemed to be an underwritten offering and shall not involve any underwriting services.

"**Discount Price**" means the price per share of the Capital Stock sold in the Equity Financing or upon the closing of the Listing Event, as applicable, multiplied by the Discount Rate.

"**Dissolution Event**" means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

"**Dividend Amount**" means, with respect to any date on which the Company pays a dividend on its outstanding Common Stock, the amount of such dividend that is paid per share of Common Stock multiplied by (x) the Purchase Amount divided by (y) the Liquidity Price (treating the dividend date as a Liquidity Event solely for purposes of calculating such Liquidity Price).

"**Equity Financing**" means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells Capital Stock at a fixed valuation, including but not limited to, a pre-money or post-money valuation, and includes the conversion of any warrants, options or Simple Agreement for Future Equity agreements (other than this Safe and any other Simple Agreement for Future Equity agreements between Investor and the Company), all at the conversion amounts set forth in those instruments; provided, however, that at Celsius's election, "Equity Financing" shall not include any transaction or series of transaction resulting in aggregate capital proceeds of less than $20,000,000 where the aggregate implied value of all outstanding Capital Stock at the closing of such transaction(s) exceeds the Valuation Cap.

"**Initial Public Offering**" means the closing of the Company's first firm commitment underwritten public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

"**Liquidity Capitalization**" is calculated as of immediately prior to the Liquidity Event, and (without double-counting, in each case calculated on an as-converted to Common Stock basis):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all (i) issued and outstanding Options and (ii) to the extent receiving Proceeds, Promised Options;
- Includes all Converting Securities, **other than** any Safes and other convertible securities where the holders of such securities are receiving Cash-Out Amounts or similar liquidation preference payments in lieu of Conversion Amounts or similar "as-converted" payments; and
- Excludes the Unissued Option Pool.

"**Liquidity Event**" means a Change of Control other than a Listing Event.

"**Liquidity Price**" means the price per share equal to the Valuation Cap divided by the Liquidity Capitalization.

"**Listing Event**" means either (i) an Initial Public Offering, (ii) a SPAC Event, or (iii) a Direct Listing.

"**Options**" includes options, restricted stock awards or purchases, RSUs, SARs, warrants or similar securities, vested or unvested.

"**Proceeds**" means cash and other assets (including without limitation stock consideration) that are proceeds from the Liquidity Event or the Dissolution Event, as applicable, and legally available for distribution.

"**Promised Options**" means promised but ungranted Options that are the greater of those (i) promised pursuant to agreements or understandings made prior to the execution of, or in connection with, the term sheet or letter of intent for the Equity Financing or Liquidity Event, as applicable (or the initial closing of the Equity Financing or consummation of the Liquidity Event, if there is no term sheet or letter of intent), (ii) in the case of an Equity Financing, treated as outstanding Options in the calculation of the Capital Stock's price per share, or (iii) in the case of a Liquidity Event, treated as outstanding Options in the calculation of the distribution of the Proceeds.

"**Safe**" means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company's business operations. References to "this Safe" mean this specific instrument.

"**Safe Price**" means the price per share equal to the Valuation Cap divided by the Company Capitalization.

"**SPAC Event**" means the direct or indirect acquisition of the Company by a special purpose acquisition company (a "**SPAC**") that (x) results in the capital stock of the Company being listed on a U.S. securities exchange and (y) constitutes such SPAC's "initial business combination" (as such term is used in such SPAC's constituent documents).

"**Subsequent Convertible Securities**" means convertible securities that the Company may issue after the issuance of this instrument with the principal purpose of raising capital, including but not limited to, other Safes, convertible debt instruments and other convertible securities.

"**Unissued Option Pool**" means all shares of Capital Stock that are reserved, available for future grant and not subject to any outstanding Options or Promised Options (but in the case of a Liquidity Event, only to the extent Proceeds are payable on such Promised Options) under any equity incentive or similar Company plan.

3. ***"MFN" Amendment Provision***. If, prior to termination of this Safe, the Company issues any Subsequent Convertible Securities with a Valuation Cap or Discount Rate (or equivalent economic concepts) that are preferable to the terms of this instrument, the Company will promptly provide the Investor with written notice thereof, together with a copy of all documentation relating to such Subsequent Convertible Securities and, upon written request of the Investor, any additional information related to such Subsequent Convertible Securities as may be reasonably requested by the Investor. At the election of the Investor, the Company shall amend and restate this instrument to provide for the same Valuation Cap or Discount Rate (or equivalent concepts) as are set forth in the instrument(s) evidencing the Subsequent Convertible Securities.

4. ***Company Representations***

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted. As of the date hereof, the Company has no preferred stock authorized or issued and outstanding.

(b) The execution, delivery and performance by the Company of this Safe is within the power of the Company and has been duly authorized by all necessary actions on the part of the Company (subject to section 4(d)). This Safe constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity. To its knowledge, the Company is not in violation of (i) its current certificate of incorporation or bylaws, (ii) any material statute, rule or regulation applicable to the Company or (iii) any material debt or contract to which the Company is a party or by which it is bound, where, in each case, such violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this Safe do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material debt or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien on any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this Safe, other than: (i) the Company's corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of Capital Stock issuable pursuant to Section 1.

(e) To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

5. ***Investor Representations***

(a) The Investor has full legal capacity, power and authority to execute and deliver this Safe and to perform its obligations hereunder. This Safe constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act, and acknowledges and agrees that if not an accredited investor at the time of an Equity Financing, the Company may void this Safe and return the Purchase Amount. The Investor has been advised that this Safe and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this Safe and the securities to be acquired by the Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

5. ***Miscellaneous***

(a) Any provision of this Safe may be amended, waived or modified by written consent of the Company and either (i) the Investor or (ii) the majority-in-interest of all then-outstanding Safes with the same "Valuation Cap" and "Discount Rate" as this Safe (and Safes lacking one or both of such terms will be considered to be the same with respect to such term(s)), *provided that* with respect to clause (ii): (A) the Purchase Amount may not be amended, waived or modified in this manner, (B) the consent of the Investor and each holder of such Safes must be solicited (even if not obtained), and (C) such amendment, waiver or modification treats all such holders in the same manner. "Majority-in-interest" refers to the holders of the applicable group of Safes whose Safes have a total Purchase Amount greater than 50% of the total Purchase Amount of all of such applicable group of Safes.

(b) Any notice required or permitted by this Safe will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this Safe, to vote or be deemed a holder of Capital Stock for any purpose other than tax purposes, nor will anything in this Safe be construed to confer on the Investor, as such, any rights of a Company stockholder or rights to vote for the election of directors or on any matter submitted to Company stockholders, or to give or withhold consent to any corporate action or to receive notice of meetings, until shares have been issued on the terms described in Section 1. However, if the Company pays a dividend on outstanding shares of Common Stock (that is not payable in shares of Common Stock) while this Safe is outstanding, the Company will pay the Dividend Amount to the Investor at the same time.

(d) Neither this Safe nor the rights in this Safe are transferable or assignable, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this Safe and/or its rights may be

assigned without the Company's consent by the Investor (i) to the Investor's estate, heirs, executors, administrators, guardians and/or successors in the event of Investor's death or disability, or (ii) to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this Safe in whole, without the consent of the Investor, in connection with a reincorporation to change the Company's domicile.

(e) In the event any one or more of the provisions of this Safe is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Safe operate or would prospectively operate to invalidate this Safe, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this Safe and the remaining provisions of this Safe will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(f) All rights and obligations hereunder will be governed by the laws of the State of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction.

(g) The parties acknowledge and agree that for United States federal and state income tax purposes this Safe is, and at all times has been, intended to be characterized as stock, and more particularly as common stock for purposes of Sections 304, 305, 306, 354, 368, 1036 and 1202 of the Internal Revenue Code of 1986, as amended. Accordingly, the parties agree to treat this Safe consistent with the foregoing intent for all United States federal and state income tax purposes (including, without limitation, on their respective tax returns or other informational statements).

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have caused this Safe to be duly executed and delivered.

RHODIUM ENTERPRISES, INC.

DocuSigned by:
By: Cameron Blackmon
2A664288FCE44BC...
Cameron Blackmon
Authorized Signatory

Address:

7546 Pebble Drive,
Fort Worth, TX 76118

Email: Cameronblackmon@imperiumholdings.io

INVESTOR:

CELSIUS CORE LLC

DocuSigned by:
By:
E2E23C810E9341D...
Name: Ron Deutsch

Title: General Counsel

Address: 221 River Road, 9th Flr

Hoboken, New Jersey 07030

Email: ron.deutsch@celsius.network

ANNEX B

LETTER AGREEMENT

(see attached)

EXECUTION VERSION

Celsius Core LLC
221 River Road, 9th Flr
Hoboken, New Jersey 07030

June 2, 2021

Rhodium Enterprises, Inc.
7546 Pebble Drive
Fort Worth, Texas
Attention: Nathan Nichols, Chief Executive Officer

Dear Nathan:

Reference is hereby made to (i) that certain Simple Agreement for Future Equity attached hereto as Exhibit A (the "***Safe***") pursuant to which Celsius Core LLC, a Delaware limited liability company ("***Celsius***") will pay Fifty Million Dollars ($50,000,000) to Rhodium Enterprises, Inc., a Delaware corporation ("***Rhodium***") in exchange for the right to certain shares of Rhodium's Capital Stock, all on the terms set forth in the Safe, and (ii) two purchase orders pursuant to which Celsius will order 15,000 Micro BT M31S+ or better cryptocurrency mining rigs from Shenzhen MicroBT Electronics Technology Co., Ltd. ("***MicroBT***"), with 5,000 being ordered at the current spot price pursuant to the purchase order attached hereto as Exhibit B-1, and 10,000 being ordered at pre-order pricing pursuant to the purchase order attached hereto as Exhibit B-2. This agreement (this "***Agreement***") is entered into in connection with the investment by Celsius in Rhodium pursuant to the Safe. Capitalized terms not explicitly defined herein shall have the meanings ascribed to such terms by the Safe.

In exchange for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by each party, the parties hereto, intending to be legally bound, hereby agree as set forth below.

1. Safe Funding. On or prior to June 15, 2021, Celsius shall fund the Purchase Amount (as defined in the Safe). Rhodium's obligations set forth in Sections 3, 4, 8, 9, and 10 of this Agreement shall not become binding upon Rhodium until Celsius has fully funded the Purchase Amount. If Celsius does not fund the Purchase Amount (as defined in the Safe) on or prior to June 15, 2021, then Rhodium shall have the option at Rhodium's election to require Celsius to assign to Rhodium (i) the purchase order attached hereto as Exhibit B-1 for the 5,000 cryptocurrency mining rigs that are being ordered at the current spot price, (ii) the purchase order attached hereto as Exhibit B-2 for the 10,000 cryptocurrency mining rigs that are being ordered at the pre-order price, or (iii) both such purchase orders; provided, that with respect to each purchase order to be assigned pursuant to this Section 1, Rhodium shall pay to Celsius, concurrently with the closing of such assignment, by wire transfer of immediately available funds, an amount equal to any deposit previously paid by Celsius to MicroBT with respect to such purchase order. Rhodium may exercise its election by written notice to Celsius, specifying the purchase order(s) to be assigned. Celsius, upon receipt of such notice and subject in all events to Rhodium's obligation to pay Celsius for any deposits previously made under the purchase order(s) to be assigned, agrees to irrevocably assign to Rhodium the specified purchase order(s) and to execute such other

documents, and undertake such other and further actions reasonably requested by Rhodium to assign Celsius's title and interest in and to such purchase order(s) to Rhodium.

2. Additional Investments. Celsius shall have the right (but not the obligation), from time to time after the date hereof until the closing of an Equity Financing that results in the conversion of the Safe, to contribute up to an additional One Hundred Million Dollars ($100,000,000) to Rhodium in exchange for the right to certain shares of Rhodium's Capital Stock, such contributions to be made pursuant to one or more additional Simple Agreement for Future Equity agreements on the same terms (including, without limitation, the Valuation Cap and Discount Rate) as set forth in the Safe.

3. Mandatory Distributions. Rhodium shall use its reasonable best efforts to make regular (and in any event no less frequently than quarterly) distributions of operating cash flow to its stockholders. Without limiting the foregoing, if, as of April 1, 2022, a Listing Event has not occurred, then, from April 1, 2022 until the consummation of a Listing Event, (a) Rhodium shall make regular (and in any event no less frequently than quarterly) distributions to its stockholders of Available Cash (such distributions to be made either in cash or in cryptocurrency) and (b) for so long as there are any outstanding Simple Agreement for Future Equity agreements between Celsius and Rhodium, concurrently upon Rhodium making any distribution to its stockholders, Rhodium shall also make a payment (in cash or in cryptocurrency) to Celsius equal to the amount Celsius would have received in connection with such distribution if any such outstanding Simple Agreement for Future Equity had converted to Capital Stock of Rhodium in accordance with its terms immediately prior to the record date for the applicable dividend or other distribution. As used in this Agreement, "***Available Cash***" at any time means an amount equal to (x) 75% multiplied by (y) that portion of the cash (including cryptocurrency) then on hand or in accounts of Rhodium or its subsidiaries at a bank or other financial institution, including cryptocurrency held in wallets directly or through any custodian, that is available for distribution at such time, less any cash and cryptocurrency subject to (i) any restrictions on distributions set forth in any debt agreements or other contracts to which Rhodium or its subsidiaries is a party and (ii) the amount of cash and cash reserves reasonably required (as determined by Rhodium's board of directors, acting reasonably and in good faith) for (A) one year of anticipated energy costs (including additional power capacity to be built within such period) and salary expenses (the amount in this clause (A) not to exceed an aggregate amount equal to 110% of Rhodium's actual energy costs and salary expenses for 12 months prior to the date of this Agreement, as adjusted for anticipated additional power capacity), (B) the development of currently contemplated computing datacenters located in or near Rockdale, Texas and Waco, Texas, and (C) hedging activities on binding purchase orders for cryptocurrency mining rigs. Celsius and Rhodium shall confer with one another in good faith regarding Rhodium's obligations set forth in this Section 3 upon request by Rhodium within 30 days after June 1, 2022.

4. Information Rights. Rhodium shall furnish to Celsius the following information:

(a) within 60 days after the end of each fiscal quarter, an unaudited, consolidated balance sheet of Rhodium and its controlled subsidiaries as of the end of such quarter and an unaudited consolidated income statement, statement of stockholders' equity and statement of cash flows of Rhodium and its controlled subsidiaries for such quarter prepared in accordance

with GAAP (with the exception of normal year-end adjustments and the absence of footnotes), consistently applied; and

(b) within 180 days after the end of each fiscal year, an audited, consolidated balance sheet of Rhodium and its controlled subsidiaries as of the end of such fiscal year and a consolidated income statement, statement of stockholders' equity and statement of cash flows of Rhodium and its controlled subsidiaries for such fiscal year prepared in accordance with GAAP, consistently applied, and a signed audit letter from Rhodium's auditors.

5. Current Order for Mining Rigs. With respect to the purchase orders attached as Exhibit B-1 and Exhibit B-2, Celsius assumes all risk of loss associated with the purchase order after the purchase order has been accepted by MicroBT and agrees that Celsius shall have no claims against Rhodium or any of its subsidiaries or controlled affiliates (collectively, the "***Rhodium Group***") for any losses incurred by Celsius in respect of such purchase orders, except to the extent such losses arise from Rhodium's breach of this Agreement.

6. Certain Approval Rights. The prior written consent of Celsius will be required with respect to the following matters: (a) a change in domicile or tax status of Rhodium; (b) any transaction between Rhodium, on the one hand, and any affiliate, stockholder, manager, director, officer or employee of Rhodium or any affiliate of Rhodium, on the other hand, in each case except for (i) transactions by and among Rhodium and/or wholly owned subsidiaries of Rhodium, and (ii) transactions on fair and reasonable terms no less favorable to Rhodium than would be obtainable in a comparable arm's length transaction with a unaffiliated third party; (c) commencement of a voluntary bankruptcy by Rhodium, or Rhodium's consent to the appointment of a receiver, liquidator, assignee, custodian, or trustee for the purposes of winding up the affairs of Rhodium; and (d) any amendment of the organizational documents of Rhodium that is adverse to holders of Rhodium's Class A Common Stock. Celsius shall respond within 48 hours to any written request (including via e-mail) for consent pursuant to this Section 6 and, if Celsius fails to respond within 48 hours, Celsius shall be deemed to have consented to the matter described in such request.

7. Financial Covenant. Rhodium shall not permit the Leverage Ratio to exceed 3.00:1.00 at any time. For purposes of this Section 7, the following definitions apply:

"***EBITDA***" means, with respect to Rhodium and its subsidiaries on a consolidated basis, earnings before interest, taxes, depreciation and amortization, as adjusted to reflect the acquisition or disposition of persons or assets and other extraordinary or one-time events.

"***Indebtedness***" means, as to Rhodium and its subsidiaries as of any date of determination, without duplication, all of the following: (a) indebtedness for borrowed money, (b) outstanding letters of credit and performance bonds or similar instruments (in each case, to the extent drawn), (c) net obligations of such person under any swap agreements, (d) all obligations of such person to pay the deferred purchase price of property or services (other than trade accounts and accrued expenses payable in the ordinary course of business), (e) capital lease obligations, and (f) to the extent not otherwise included above, all guarantees by such person in respect of any of the foregoing obligations incurred by a third party. Notwithstanding the foregoing, "Indebtedness" shall not include the outstanding principal amount of any convertible notes of the Rhodium Group so long as (i) the interest on such

notes is payable exclusively in-kind (i.e., by capitalizing the amount thereof and adding it to the outstanding principal amount of such note(s), and not in cash or cryptocurrency) and (ii) the terms of such note provide for mandatory conversion of all outstanding principal and interest thereunder to Capital Stock on or prior to maturity.

"***Leverage Ratio***" means, as of any date of determination, the ratio of (x) Indebtedness to (y) EBITDA for the trailing 12-month period.

8. Future Orders for Mining Rigs. For a period of three (3) years from the date hereof, in the event that any member of the Rhodium Group proposes to submit a bid to acquire cryptocurrency mining rigs from a third party (a "***Seller***"), Rhodium shall provide Celsius with advance notice (a "***Bid Notice***") of such bid submission. Such Bid Notice shall include all relevant terms and conditions of the proposed bid (including, without limitation, pricing and delivery terms). Upon receipt of a Bid Notice, Celsius shall promptly, but no later than two (2) business days after receiving the Bid Notice, respond to Rhodium and indicate whether Celsius desires to participate in the proposed bid. If Celsius desires to participate in the proposed bid, Celsius shall concurrently provide Rhodium with notice indicating the number of rigs Celsius desires to bid upon, the applicable delivery location, and any other information reasonably requested by Rhodium (the "***Piggyback Bid***"). Rhodium shall use reasonable best efforts to include the Piggyback Bid with Rhodium's bid to the applicable Seller; provided, however, that in the event a Seller enforces bid limitations, Rhodium shall not be obligated to reduce its own bid to accommodate Celsius's Piggyback Bid. Celsius acknowledges and agrees that any Piggyback Bid shall be subject to the same terms and conditions (other than delivery location) applicable to Rhodium's bid, as set forth in the Bid Notice. Celsius further acknowledges that Celsius assumes all risk of loss associated with a Piggyback Bid after a Piggyback Bid has been accepted by a Seller and agrees that Celsius shall have no claims against the Rhodium Group for any losses incurred by Celsius in respect of such Piggyback Bid, except to the extent such losses arise from Rhodium's breach of this Agreement. Rhodium represents and warrants to Celsius that it has not granted similar rights to those set forth in this Section 8 to any other person, and Rhodium further covenants that it shall not offer any other person the opportunity to participate (directly or indirectly) in any such bid without first either (a) first obtaining Celsius's prior written consent or (b) complying with its obligations set forth in this Section 8. Notwithstanding anything to the contrary herein, Rhodium shall use reasonable best efforts to procure for Celsius the opportunity to purchase additional cryptocurrency mining rigs from MicroBT on the same terms and conditions (other than delivery location) applicable to Rhodium's contemporaneous purchase order.

9. Available Inventory. For a period of three (3) years from the date hereof, Rhodium shall notify Celsius promptly upon becoming aware of available inventory of cryptocurrency mining rigs from Sellers, regardless of whether or not any member of the Rhodium Group proposes to submit a bid for such inventory. Without limiting the foregoing, Rhodium shall inquire periodically (and in no event less frequently than quarterly) as to inventory availability with up to five (5) Sellers specified by Celsius; provided, that Rhodium shall not be required to make an inquiry of a specific Seller if Rhodium makes a good faith determination that such inquiry would have a material adverse impact on the relationship between Rhodium and such Seller. If any member of the Rhodium Group intends to submit a bid, the provisions of Section 8 shall apply. If no member of the Rhodium Group intends to submit a bid, then Rhodium shall so notify Celsius and, upon Celsius's request, Rhodium shall use its reasonable best efforts to obtain a quote from

the applicable Seller of relevant terms and conditions (including, without limitation, pricing and delivery terms) and, at Celsius's direction, promptly submit a bid to such Seller. Celsius acknowledges and agrees that any such bid shall be subject to the same terms and conditions (other than delivery location) as would otherwise be applicable to a bid by a member of the Rhodium Group. Celsius further acknowledges that Celsius assumes all risk of loss associated with any such bid after it has been accepted by a Seller and agrees that Celsius shall have no claims against the Rhodium Group for any losses incurred by Celsius in respect of such bid, except to the extent such losses arise from Rhodium's breach of this Agreement.

10. Right of First Offer. For a period of three (3) years from the date hereof, but with the exception of anticipated third-party financing by NYDIG and/or existing investors in an amount not to exceed $75 Million in the aggregate, Rhodium agrees that it will approach Celsius first with respect to any third-party lending or financing transaction that Rhodium or any member of the Rhodium Group anticipates undertaking. Within a reasonable time thereafter, Celsius shall provide Rhodium with the pricing and other material terms and conditions pursuant to which Celsius would be willing to meet such third-party lending or financing needs. If Celsius fails to respond to Rhodium pursuant to the immediately preceding sentence, Celsius shall be deemed to have declined such opportunity. Rhodium hereby agrees that Celsius shall be entitled to service, on an annual basis, 25% (based on annual transaction value) of all such third-party lending and financing transactions of the Rhodium Group for which Celsius offers commercially reasonable terms, subject to Celsius providing reasonable assurances to Rhodium in respect of Celsius's risk management and cybersecurity functions.

11. Charter Amendment. As soon as reasonably practicable, and in any event on or prior to June 11, 2021, Rhodium shall deliver to Celsius (a) copies of resolutions of the board of directors of Rhodium, authorizing and approving this Agreement, the Safe, and the filing of an amendment to Rhodium's certificate of incorporation providing for an increase in the number of authorized shares of Class A Common Stock sufficient to allow Rhodium to issue shares of Class A Common Stock to Celsius upon conversion of the Safe in accordance with its terms (the "***Charter Amendment***"), (b) copies of resolutions of the stockholders of Rhodium, authorizing and approving the Charter Amendment, and (c) evidence of the filing of the Charter Amendment with the Secretary of State of the State of Delaware. In the event Rhodium fails to comply with the provisions of this Section 11, then, at Celsius's election and upon written notice to Rhodium, this Agreement and the Safe shall each terminate automatically and be of no further force or effect.

12. Miscellaneous.

(a) Term. This Agreement shall remain in full force and effect until the date on which Celsius no longer holds any capital stock of any member of the Rhodium Group (including rights in or to capital stock pursuant to a Simple Agreement for Future Equity).

(b) Notices. Any notices pursuant to this Agreement shall be in writing and shall be deemed sufficiently given upon the earlier of actual receipt, or (i) personal delivery to the party to be notified, (ii) when sent, if sent by electronic mail during normal business hours of the recipient, and if not sent during normal business hours, then on the recipient's next business day, or (iii) one business day after deposit with a nationally recognized overnight courier, freight prepaid, specifying next business day delivery, with written verification of receipt. All

communications shall be sent to the respective addresses of the parties set forth above, or to any other address specified by any party by written notice to the other party in accordance with this Section 12(b).

(c) Governing Law. This Agreement shall be governed by and construed in accordance with the applicable laws of the State of New York, without giving effect to any choice of law provision or rule (whether of the State of New York or any other jurisdiction) that would cause the applicable laws of any jurisdiction other than the State of New York to be applied.

(d) Successors and Assigns. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, that neither party may assign its rights or obligations under this Agreement without the prior written approval of the other party; provided, further, that Celsius may assign its rights and obligations under this Agreement, in whole or in part, to one or more of its Affiliates without the consent of Rhodium.

(e) Amendment. This Agreement may be amended only with the consent of Celsius and Rhodium. Any such amendment shall be by a written instrument duly executed and delivered on behalf of each of the parties.

(f) Effect of Waiver or Consent. The failure of any person to insist upon strict performance of a covenant hereunder or of any obligation hereunder, irrespective of the length of time for which such failure continues, shall not be a waiver of such person's right to demand strict compliance in the future. No consent or waiver, express or implied, to or of any breach or default in the performance of any obligation hereunder shall constitute a consent or waiver to or of any other breach or default in the performance of the same or any other obligation hereunder.

(g) Further Assurances. In connection with this Agreement, each party hereto shall execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate to effectuate and perform the provisions of this Agreement.

(h) Counterparts. This Agreement may be executed in multiple counterparts which, taken together, shall constitute one and the same agreement.

[Remainder of Page Intentionally Left Blank]

If the above correctly reflects our understanding and agreement with respect to the foregoing matters, please so confirm by signing and returning to us the enclosed copy of this Agreement.

CELSIUS CORE LLC

By: DocuSigned by: E2E23C810E9341D...

Name: Ron Deutsch

Title: General Counsel

ACCEPTED, ACKNOWLEDGED AND AGREED:

RHODIUM ENTERPRISES, INC.

By: DocuSigned by: Cameron Blackmon 2A664288FCE44BC...

Name: Cameron Blackmon

Title: Authorized Signatory

EXHIBIT 15

[Part 3 of 3]

Exhibit A
Simple Agreement for Future Equity
(Attached.)

THIS INSTRUMENT AND ANY SECURITIES ISSUABLE PURSUANT HERETO HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "**SECURITIES ACT**"), OR UNDER THE SECURITIES LAWS OF CERTAIN STATES. THESE SECURITIES MAY NOT BE OFFERED, SOLD OR OTHERWISE TRANSFERRED, PLEDGED OR HYPOTHECATED EXCEPT AS PERMITTED IN THIS SAFE AND UNDER THE ACT AND APPLICABLE STATE SECURITIES LAWS PURSUANT TO AN EFFECTIVE REGISTRATION STATEMENT OR AN EXEMPTION THEREFROM.

RHODIUM ENTERPRISES, INC.

SAFE
(Simple Agreement for Future Equity)

THIS CERTIFIES THAT in exchange for the payment by Celsius Core LLC (the "**Investor**") of **FIFTY MILLION DOLLARS ($50,000,000)** (the "**Purchase Amount**") on **Wednesday, June 2, 2021**, Rhodium Enterprises, Inc., a Delaware corporation, (the "**Company**"), issues to the Investor the right to certain shares of the Company's Capital Stock, subject to the terms described below.

The "**Valuation Cap**" is $3,000,000,000.

The "**Discount Rate**" is 85%.

See **Section 2** for certain additional defined terms.

1. ***Events***

(a) **Equity Financing or Listing Event**. If there is an Equity Financing or a Listing Event before the termination of this Safe, on the initial closing of such Equity Financing or, in the case of a Listing Event, immediately prior to the consummation of such Listing Event, this Safe will automatically convert into (i) in the case of an Equity Financing, the number of shares of stock issued in the Equity Financing equal to the Purchase Amount divided by the applicable Conversion Price or (ii) in the case of a Listing Event, the number of shares of Common Stock of the Company equal to the Purchase Amount divided by the applicable Conversion Price (such shares issued upon conversion in the case of clause (i) or clause (ii), the "**Conversion Shares**").

In connection with the automatic conversion of this Safe into Conversion Shares, the Investor will execute and deliver to the Company all of the transaction documents related to the Equity Financing or Listing Event; provided, that such documents (i) are the same documents to be entered into with the purchasers of stock issued in the Equity Financing or other holders of Common Stock in the case of a Listing Event, and (ii) have customary exceptions to any drag-along applicable to the Investor, including (without limitation) limited representations, warranties, liability and indemnification obligations for the Investor.

(b) **Liquidity Event**. If there is a Liquidity Event before the termination of this Safe, this Safe will automatically be entitled (subject to the liquidation priority set forth in Section 1(d) below) to receive a portion of Proceeds, due and payable to the Investor immediately prior to, or concurrent with, the consummation of such Liquidity Event, equal to the greater of (i) the Purchase Amount (the "**Cash-Out Amount**") or (ii) the amount payable on the number of shares of Common Stock equal to the Purchase Amount divided by the Liquidity Price (the "**Conversion Amount**"). If any of the Company's securityholders are given a choice as to the form and amount of Proceeds to be received in a Liquidity Event, the Investor will be given the same choice, *provided* that the Investor may not choose to receive a form of consideration that the Investor would be ineligible to receive as a result of the Investor's failure to satisfy any requirement or limitation generally applicable to the Company's securityholders, or under any applicable laws.

Notwithstanding the foregoing, in connection with a Change of Control intended to qualify as a tax-free reorganization, the Company may reduce the cash portion of Proceeds payable to the Investor by the amount determined by its board of directors in good faith for such Change of Control to qualify as a tax-free reorganization for U.S. federal income tax purposes, provided that such reduction (A) does not reduce the total Proceeds payable to such Investor and (B) is applied in the same manner and on a pro rata basis to all securityholders who have equal priority to the Investor under Section 1(d).

(c) **Dissolution Event**. If there is a Dissolution Event before the termination of this Safe, the Investor will automatically be entitled (subject to the liquidation priority set forth in Section 1(d) below) to receive a portion of Proceeds equal to the Cash-Out Amount, due and payable to the Investor immediately prior to the consummation of the Dissolution Event.

(d) **Liquidation Priority**. In a Liquidity Event or Dissolution Event, this Safe is intended to operate like standard Common Stock. The Investor's right to receive its Cash-Out Amount is:

(i) Junior to payment of outstanding indebtedness and creditor claims, including contractual claims for payment and convertible promissory notes (to the extent such convertible promissory notes are not actually or notionally converted into Capital Stock); and

(ii) On par with payments for other Safes, and if the applicable Proceeds are insufficient to permit full payments to the Investor and such other Safes, the applicable Proceeds will be distributed pro rata to the Investor and such other Safes in proportion to the full payments that would otherwise be due.

The Investor's right to receive its Conversion Amount is (A) on par with payments for Common Stock and other Safes who are also receiving Conversion Amounts or Proceeds on a similar as-converted to Common Stock basis, and (B) junior to payments described in clauses (i) and (ii) above (in the latter case, to the extent such payments are Cash-Out Amounts or similar liquidation preferences).

(e) **Termination**. This Safe will automatically terminate (without relieving the Company of any obligations arising from a prior breach of or non-compliance with this Safe) immediately following the earliest to occur of: (i) the issuance of Capital Stock to the Investor pursuant to the automatic conversion of this Safe under Section 1(a); or (ii) the payment, or setting aside for payment, of amounts due the Investor pursuant to Section 1(b) or Section 1(c).

2. ***Definitions***

"**Capital Stock**" means the capital stock of the Company, including, without limitation, the Common Stock.

"**Change of Control**" means (i) a transaction or series of related transactions in which any "person" or "group" (within the meaning of Section 13(d) and 14(d) of the Securities Exchange Act of 1934, as amended), becomes the "beneficial owner" (as defined in Rule 13d-3 under the Securities Exchange Act of 1934, as amended), directly or indirectly, of more than 50% of the outstanding voting securities of the Company having the right to vote for the election of members of the Company's board of directors, (ii) any reorganization, merger or consolidation of the Company, other than a transaction or series of related transactions in which the holders of the voting securities of the Company outstanding immediately prior to such transaction or series of related transactions retain, immediately after such transaction or series of related transactions, at least a majority of the total voting power represented by the outstanding voting securities of the Company or such other surviving or resulting entity or (iii) a sale, lease or other disposition of all or substantially all of the assets of the Company.

"Common Stock" means the Class A Common Stock of the Company, par value $0.0001 per share.

"**Company Capitalization**" is calculated as of immediately prior to the Equity Financing and (without double-counting, in each case calculated on an as-converted to Common Stock basis):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all Converting Securities;
- Includes all (i) issued and outstanding Options and (ii) Promised Options; and
- Includes the Unissued Option Pool, except that any increase to the Unissued Option Pool in connection with the Equity Financing shall only be included to the extent that the number of Promised Options exceeds the Unissued Option Pool prior to such increase.

"**Conversion Price**" means the either: (1) the Safe Price or (2) the Discount Price, whichever calculation results in a greater number of Conversion Shares.

"**Converting Securities**" includes this Safe and other convertible securities issued by the Company, including but not limited to: (i) other Safes; (ii) convertible promissory notes and other convertible debt instruments; and (iii) convertible securities that have the right to convert into shares of Capital Stock.

"**Direct Listing**" means the Company's initial listing of its Common Stock (other than shares of Common Stock not eligible for resale under Rule 144 under the Securities Act) on a national securities exchange by means of an effective registration statement on Form S-1 filed by the Company with the SEC that registers shares of existing capital stock of the Company for resale, as approved by the Company's board of directors. For the avoidance of doubt, a Direct Listing shall not be deemed to be an underwritten offering and shall not involve any underwriting services.

"**Discount Price**" means the price per share of the Capital Stock sold in the Equity Financing or upon the closing of the Listing Event, as applicable, multiplied by the Discount Rate.

"**Dissolution Event**" means (i) a voluntary termination of operations, (ii) a general assignment for the benefit of the Company's creditors or (iii) any other liquidation, dissolution or winding up of the Company (**excluding** a Liquidity Event), whether voluntary or involuntary.

"**Dividend Amount**" means, with respect to any date on which the Company pays a dividend on its outstanding Common Stock, the amount of such dividend that is paid per share of Common Stock multiplied by (x) the Purchase Amount divided by (y) the Liquidity Price (treating the dividend date as a Liquidity Event solely for purposes of calculating such Liquidity Price).

"**Equity Financing**" means a bona fide transaction or series of transactions with the principal purpose of raising capital, pursuant to which the Company issues and sells Capital Stock at a fixed valuation, including but not limited to, a pre-money or post-money valuation, and includes the conversion of any warrants, options or Simple Agreement for Future Equity agreements (other than this Safe and any other Simple Agreement for Future Equity agreements between Investor and the Company), all at the conversion amounts set forth in those instruments; provided, however, that at Celsius's election, "Equity Financing" shall not include any transaction or series of transaction resulting in aggregate capital proceeds of less than $20,000,000 where the aggregate implied value of all outstanding Capital Stock at the closing of such transaction(s) exceeds the Valuation Cap.

"**Initial Public Offering**" means the closing of the Company's first firm commitment underwritten public offering of Common Stock pursuant to a registration statement filed under the Securities Act.

"**Liquidity Capitalization**" is calculated as of immediately prior to the Liquidity Event, and (without double-counting, in each case calculated on an as-converted to Common Stock basis):

- Includes all shares of Capital Stock issued and outstanding;
- Includes all (i) issued and outstanding Options and (ii) to the extent receiving Proceeds, Promised Options;
- Includes all Converting Securities, **other than** any Safes and other convertible securities where the holders of such securities are receiving Cash-Out Amounts or similar liquidation preference payments in lieu of Conversion Amounts or similar "as-converted" payments; and
- Excludes the Unissued Option Pool.

"**Liquidity Event**" means a Change of Control other than a Listing Event.

"**Liquidity Price**" means the price per share equal to the Valuation Cap divided by the Liquidity Capitalization.

"**Listing Event**" means either (i) an Initial Public Offering, (ii) a SPAC Event, or (iii) a Direct Listing.

"**Options**" includes options, restricted stock awards or purchases, RSUs, SARs, warrants or similar securities, vested or unvested.

"**Proceeds**" means cash and other assets (including without limitation stock consideration) that are proceeds from the Liquidity Event or the Dissolution Event, as applicable, and legally available for distribution.

"**Promised Options**" means promised but ungranted Options that are the greater of those (i) promised pursuant to agreements or understandings made prior to the execution of, or in connection with, the term sheet or letter of intent for the Equity Financing or Liquidity Event, as applicable (or the initial closing of the Equity Financing or consummation of the Liquidity Event, if there is no term sheet or letter of intent), (ii) in the case of an Equity Financing, treated as outstanding Options in the calculation of the Capital Stock's price per share, or (iii) in the case of a Liquidity Event, treated as outstanding Options in the calculation of the distribution of the Proceeds.

"**Safe**" means an instrument containing a future right to shares of Capital Stock, similar in form and content to this instrument, purchased by investors for the purpose of funding the Company's business operations. References to "this Safe" mean this specific instrument.

"**Safe Price**" means the price per share equal to the Valuation Cap divided by the Company Capitalization.

"**SPAC Event**" means the direct or indirect acquisition of the Company by a special purpose acquisition company (a "**SPAC**") that (x) results in the capital stock of the Company being listed on a U.S. securities exchange and (y) constitutes such SPAC's "initial business combination" (as such term is used in such SPAC's constituent documents).

"**Subsequent Convertible Securities**" means convertible securities that the Company may issue after the issuance of this instrument with the principal purpose of raising capital, including but not limited to, other Safes, convertible debt instruments and other convertible securities.

"**Unissued Option Pool**" means all shares of Capital Stock that are reserved, available for future grant and not subject to any outstanding Options or Promised Options (but in the case of a Liquidity Event, only to the extent Proceeds are payable on such Promised Options) under any equity incentive or similar Company plan.

3. ***"MFN" Amendment Provision***. If, prior to termination of this Safe, the Company issues any Subsequent Convertible Securities with a Valuation Cap or Discount Rate (or equivalent economic concepts) that are preferable to the terms of this instrument, the Company will promptly provide the Investor with written notice thereof, together with a copy of all documentation relating to such Subsequent Convertible Securities and, upon written request of the Investor, any additional information related to such Subsequent Convertible Securities as may be reasonably requested by the Investor. At the election of the Investor, the Company shall amend and restate this instrument to provide for the same Valuation Cap or Discount Rate (or equivalent concepts) as are set forth in the instrument(s) evidencing the Subsequent Convertible Securities.

4. ***Company Representations***

(a) The Company is a corporation duly organized, validly existing and in good standing under the laws of its state of incorporation, and has the power and authority to own, lease and operate its properties and carry on its business as now conducted. As of the date hereof, the Company has no preferred stock authorized or issued and outstanding.

(b) The execution, delivery and performance by the Company of this Safe is within the power of the Company and has been duly authorized by all necessary actions on the part of the Company (subject to section 4(d)). This Safe constitutes a legal, valid and binding obligation of the Company, enforceable against the Company in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity. To its knowledge, the Company is not in violation of (i) its current certificate of incorporation or bylaws, (ii) any material statute, rule or regulation applicable to the Company or (iii) any material debt or contract to which the Company is a party or by which it is bound, where, in each case, such violation or default, individually, or together with all such violations or defaults, could reasonably be expected to have a material adverse effect on the Company.

(c) The performance and consummation of the transactions contemplated by this Safe do not and will not: (i) violate any material judgment, statute, rule or regulation applicable to the Company; (ii) result in the acceleration of any material debt or contract to which the Company is a party or by which it is bound; or (iii) result in the creation or imposition of any lien on any property, asset or revenue of the Company or the suspension, forfeiture, or nonrenewal of any material permit, license or authorization applicable to the Company, its business or operations.

(d) No consents or approvals are required in connection with the performance of this Safe, other than: (i) the Company's corporate approvals; (ii) any qualifications or filings under applicable securities laws; and (iii) necessary corporate approvals for the authorization of Capital Stock issuable pursuant to Section 1.

(e) To its knowledge, the Company owns or possesses (or can obtain on commercially reasonable terms) sufficient legal rights to all patents, trademarks, service marks, trade names, copyrights, trade secrets, licenses, information, processes and other intellectual property rights necessary for its business as now conducted and as currently proposed to be conducted, without any conflict with, or infringement of the rights of, others.

5. ***Investor Representations***

(a) The Investor has full legal capacity, power and authority to execute and deliver this Safe and to perform its obligations hereunder. This Safe constitutes valid and binding obligation of the Investor, enforceable in accordance with its terms, except as limited by bankruptcy, insolvency or other laws of general application relating to or affecting the enforcement of creditors' rights generally and general principles of equity.

(b) The Investor is an accredited investor as such term is defined in Rule 501 of Regulation D under the Securities Act, and acknowledges and agrees that if not an accredited investor at the time of an Equity Financing, the Company may void this Safe and return the Purchase Amount. The Investor has been advised that this Safe and the underlying securities have not been registered under the Securities Act, or any state securities laws and, therefore, cannot be resold unless they are registered under the Securities Act and applicable state securities laws or unless an exemption from such registration requirements is available. The Investor is purchasing this Safe and the securities to be acquired by the Investor hereunder for its own account for investment, not as a nominee or agent, and not with a view to, or for resale in connection with, the distribution thereof, and the Investor has no present intention of selling, granting any participation in, or otherwise distributing the same. The Investor has such knowledge and experience in financial and business matters that the Investor is capable of evaluating the merits and risks of such investment, is able to incur a complete loss of such investment without impairing the Investor's financial condition and is able to bear the economic risk of such investment for an indefinite period of time.

5. ***Miscellaneous***

(a) Any provision of this Safe may be amended, waived or modified by written consent of the Company and either (i) the Investor or (ii) the majority-in-interest of all then-outstanding Safes with the same "Valuation Cap" and "Discount Rate" as this Safe (and Safes lacking one or both of such terms will be considered to be the same with respect to such term(s)), *provided that* with respect to clause (ii): (A) the Purchase Amount may not be amended, waived or modified in this manner, (B) the consent of the Investor and each holder of such Safes must be solicited (even if not obtained), and (C) such amendment, waiver or modification treats all such holders in the same manner. "Majority-in-interest" refers to the holders of the applicable group of Safes whose Safes have a total Purchase Amount greater than 50% of the total Purchase Amount of all of such applicable group of Safes.

(b) Any notice required or permitted by this Safe will be deemed sufficient when delivered personally or by overnight courier or sent by email to the relevant address listed on the signature page, or 48 hours after being deposited in the U.S. mail as certified or registered mail with postage prepaid, addressed to the party to be notified at such party's address listed on the signature page, as subsequently modified by written notice.

(c) The Investor is not entitled, as a holder of this Safe, to vote or be deemed a holder of Capital Stock for any purpose other than tax purposes, nor will anything in this Safe be construed to confer on the Investor, as such, any rights of a Company stockholder or rights to vote for the election of directors or on any matter submitted to Company stockholders, or to give or withhold consent to any corporate action or to receive notice of meetings, until shares have been issued on the terms described in Section 1. However, if the Company pays a dividend on outstanding shares of Common Stock (that is not payable in shares of Common Stock) while this Safe is outstanding, the Company will pay the Dividend Amount to the Investor at the same time.

(d) Neither this Safe nor the rights in this Safe are transferable or assignable, by operation of law or otherwise, by either party without the prior written consent of the other; *provided, however*, that this Safe and/or its rights may be

assigned without the Company's consent by the Investor (i) to the Investor's estate, heirs, executors, administrators, guardians and/or successors in the event of Investor's death or disability, or (ii) to any other entity who directly or indirectly, controls, is controlled by or is under common control with the Investor, including, without limitation, any general partner, managing member, officer or director of the Investor, or any venture capital fund now or hereafter existing which is controlled by one or more general partners or managing members of, or shares the same management company with, the Investor; and *provided, further*, that the Company may assign this Safe in whole, without the consent of the Investor, in connection with a reincorporation to change the Company's domicile.

(e) In the event any one or more of the provisions of this Safe is for any reason held to be invalid, illegal or unenforceable, in whole or in part or in any respect, or in the event that any one or more of the provisions of this Safe operate or would prospectively operate to invalidate this Safe, then and in any such event, such provision(s) only will be deemed null and void and will not affect any other provision of this Safe and the remaining provisions of this Safe will remain operative and in full force and effect and will not be affected, prejudiced, or disturbed thereby.

(f) All rights and obligations hereunder will be governed by the laws of the State of the State of Delaware, without regard to the conflicts of law provisions of such jurisdiction.

(g) The parties acknowledge and agree that for United States federal and state income tax purposes this Safe is, and at all times has been, intended to be characterized as stock, and more particularly as common stock for purposes of Sections 304, 305, 306, 354, 368, 1036 and 1202 of the Internal Revenue Code of 1986, as amended. Accordingly, the parties agree to treat this Safe consistent with the foregoing intent for all United States federal and state income tax purposes (including, without limitation, on their respective tax returns or other informational statements).

(*Signature page follows*)

IN WITNESS WHEREOF, the undersigned have caused this Safe to be duly executed and delivered.

RHODIUM ENTERPRISES, INC.

DocuSigned by:

By: Cameron Blackmon
2A664288FCE44BC...

Cameron Blackmon
Authorized Signatory

Address:

7546 Pebble Drive,
Fort Worth, TX 76118

Email: Cameronblackmon@imperiumholdings.io

INVESTOR:

CELSIUS CORE LLC

DocuSigned by:

By:
E2E23C810E9341D...

Name: Ron Deutsch

Title: General Counsel

Address: 221 River Road, 9th Flr

Hoboken, New Jersey 07030

Email: ron.deutsch@celsius.network

Exhibit B-1
MicroBT Purchase Order (current spot price)
(Attached.)

Framework Agreement on Supply of Blockchain Servers

between

INCHIGLE TECHNOLOGY HONG KONG LIMITED

and

Celsius Core LLC

June 2021

This Framework Agreement on Supply of Blockchain Servers (this "**Agreement**") is made and entered into on June 8, 2021 (the "**Effective Date**") by and among:

1. Inchigle Technology Hong Kong Limited (company No. of 2867097), a business company incorporated under the laws of Hong Kong and having its registered office at ROOM 605, 6/F, FA YUEN COMMERCIAL BUILDING, 75-77 FA YUEN STREET, MONGKOK KOWLOON, HONG KONG("**the Seller**"); and

2. Celsius Core LLC., a company incorporated under the laws of United States and having its registered address at 221 River Drive, 9th Flr, Hoboken, NJ 07030 ("**the Buyer"**).

Each of the parties to this Agreement is referred to herein individually as a "**Party**" and collectively as the "**Parties**"

RECITALS:

B . The Seller has been engaged in the business of development, production, sales of high performance computing chips and blockchain servers based on the blockchain technology;

C . The Buyer intends to secure long-term, price-competitive and quantitative supply of Blockchain Servers.

D . The Parties desire to enter into this Agreement and make the respective representations, warranties, covenants and agreements set forth herein on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereto hereby agree as follows:

1. Description of the Products

1.1 The Models, Performance Parameters of the target block chain server, including any spare parts for the Products that Buyer elects to purchase and include with the servers (each, a "**Unit**" or "**Server**", and collectively, "**the Products**") are set out below:

Model	**M31S+**	**M30S**	**M30S+**	**M30S++**

Power Efficiency	42W/T +/-5%	38W/T +/-5%	34W/T +/-5%	31W/T +/-5%
Hash Rate per Unit	Average: 80T 74T~84T +/-5%	Average: 88T 82T~92T +/-5%	Average: 100T 94T~106T +/-5%	Average:110T 112T~104T +/-5%
Unit Price	As determined from time to time based on the actual Hash Rate per Unit which shall be determined and notified by the Seller to the Buyer 7 days before the relevant down payment thereof, provided that the price for each Terahash which shall be decided 10 days prior to the date when the server shall be supplied (for spot server purchase)	As determined from time to time based on the actual Hash Rate per Unit which shall be determined and notified by the Seller to the Buyer 7 days before the relevant down payment thereof, provided that the price for each Terahash which shall be decided 10 days prior to the date when the server shall be supplied (for spot server purchase).	As determined from time to time based on the actual Hash Rate per Unit which shall be determined and notified by the Seller to the Buyer 7 days before the relevant down payment thereof, provided that the price for each Terahash which shall be decided 5 10 days prior to the date when the server shall be supplied (for spot server purchase).	As determined from time to time based on the actual Hash Rate per Unit which shall be determined and notified by the Seller to the Buyer 7 days before the relevant down payment thereof, provided that the price for each Terahash which shall be decided 10 days prior to the date when the server shall be supplied (for spot server purchase).
Remarks				

The Seller shall provide on each Purchase Order (as hereinafter defined), power supply units, cooling fans, control cards, ribbon cables, bridge cards and other parts (excluding hashboards) as spare parts for such Units ("Spare Parts") in amounts each equal to 2% of the amount of Units in such Purchase Order (e.g., 100 of each Spare Part for a Purchase Order of 5,000 Units). The Purchase Price (as hereinafter defined) paid for the Units pursuant to each Purchase Order shall be inclusive of costs for Spare Parts. For the purposes of this Agreement, the term "Products" shall be deemed to include: (a) Spare Parts; and (b) all Products (including Spare Parts) that are replaced or replaceable by Seller in accordance with Seller's obligations under this Agreement.

1.2 To ensure the normal and stable operation of the Products, the data center used by the Buyer should be equipped with necessary cooling and dust prevention measures, stable supply of electricity, and basic environmental requirements, including: temperature -5 to + 35 degrees Celsius, humidity <75%, AC voltage 210 to ~ 240V, single outlet current 16A, dust <0.5mg per cubic meter (where the metal and sulfide content does not exceed 1%).

2. Unit Price and Quantities

2.1Subject to the terms and conditions of this Agreement, the Seller promises to sell and the Buyer promises to purchase the Products not less than 5,000 Units in total ("Committed Purchase" or "Contracted Quantity"). The Parties agree that the Units as set forth in the Committed Purchase shall be scheduled for delivery until the end of year 2021 ("Delivery Period"), however, the Seller is permitted to be flexible in the supply quantity in the Month to the Buyer. Each Purchase Order shall be accompanied by a delivery note which shows the order number, the type and quantity of Products (including the code number of the Products, where applicable), freight and customs documents required for delivery to the Delivery Address, special storage instructions (if any). The Buyer is very interested in accelerating the receipt of the Products and the Delivery Period, the Seller shall undertake best efforts to complete the entire shipment of the Contracted Quantity of the Products during the Delivery Period as soon as possible. The Seller agrees that it will use its best efforts to accelerate the Delivery Period and will work cooperatively with the Buyer to amend the arrangements if an accelerated Delivery Period becomes possible and shall, in any event, offer to Buyer no less than 2,500 Units for purchase by the Buyer hereunder for delivery prior to September 1, 2021.

2.2 As of the Effective Date of this Agreement, the target models of the Products available to the Buyer are initially limited to M31S+/M30S / M30S+/ M30S++. Parties agree that new models or pricing for M31S+/M30S/M30S+/M30S++ may be added into the target list based on Committed Purchase level and price as agreed between the Parties from time to time if any other models are ready for purchase during the Delivery Period. The Parties shall separately negotiate and sign a supplementary agreement to define the parameters and other sales terms relating to the new model or pricing for M31S+/M30S/M30S+/M30S++.

2.3 The Parties agree that (i) the "**Unit Price**" for the Servers under the Committed Purchase, i.e. 5,000 Units is based on per Terahash and the same shall be decided from time to time by the Seller before the Servers are ready for shipping. (ii) certain variations of hash rate for each piece of Product are allowed to the extent that they do not go beyond the range as set out in Section 1.1 and (iii) the total hash rates of each monthly batch of Servers shall be guaranteed and finalized before each delivery payment for such Products to be made by the Buyer.

2.4 The Seller agree that the Unit Price of the Products on a per Terahash basis shall at all times be competitively priced and reasonable when comparing with comparable transactions available in the market (contract/purchase order signed for similar time period for similar quantity of similar parameters of Servers). As terms to

the Agreement, the Seller further agrees beyond the competitive price outlined above to offer the Buyer a reasonable volume discount.

2.5 The Products under this Agreement shall be produced in China and delivered to the Delivery Address (as hereinafter defined) designated by the Buyer. The Seller may, if agreed to by the Buyer, transfer part or all of the production of the Products to its overseas factories ("**Subcontract**") and deliver the finished Products to other destinations if agreed by the Buyer in advance, and the final quantities and unit price of the Products, and any additional delivery charges (if any) shall be agreed by the Parties before production from overseas factories. Notwithstanding the foregoing, however, the Seller acknowledges and agrees that Buyer's refusal to agree to Seller's request to Subcontract, and/or deliver the finished Products to other destinations: (a) shall not be deemed a breach of good faith by Buyer or Buyer's obligations, and shall not affect Buyer's rights and remedies under this Agreement; (b) shall not relieve Seller of any of its obligations under this Agreement; (c) Seller shall be fully responsible for all costs and fees to the extent Seller has elected to Subcontract its obligations under this Agreement; and (d) Seller shall be fully responsible for all actions and omissions of persons Seller has engaged to Subcontract, including breach of Seller's obligations under this Agreement, and/or any appliable law.

2.6 If there is any tax credit or export tax rebate available for the Buyer, the Buyer may claim such tax benefits by itself or require the Seller to claim such tax benefits on behalf of the Buyer, in each case the Seller shall cooperate in good faith with the Buyer including providing certain information or documents as required.

3. Deposit and Payment

3.1 The Buyer shall pay a deposit (the "**Deposit**") of USD 5,000,000 (USD Five Million Only) to the Seller. The Deposit is calculated based on USD 1,000.00/unit on 5,000 miners. 100% of the Deposit shall be paid by Buyer to Seller within five (5) business days after the Effective Date.

3.2 The Deposit will be used to confirm and 'lock up' the supply of 5,000 M31S+/M30S/M30S+/M30S++ units for delivery until 31st December 2021.

3.3 The accurate quantities of each model for each batch of Products shall be determined in relevant Purchase Orders (the **"PO"** or "**Purchase Order**"), as agreed to by both Parties. Expressed on a per Server basis, the per Unit amount of the Deposit (i.e., USD 1,000.00) shall be used to as credit reduce the amount of the applicable Full Payment (as defined below) for each Unit under each applicable PO.

3.4 The Parties agree that during the Delivery Period and so long as this Agreement is not sooner terminated, the Seller shall supply to the Buyer the server Units in accordance with this Agreement. In case the Buyer is unable to place purchase order for a specific Purchase Order and/or quantities of Units, the Buyer shall notify the Seller in writing no later than thirty (30) days prior to the date of shipment of the applicable Purchase Order, only with consent from the Seller (which

consent shall not be unreasonably withheld, conditioned, or delayed), the quantity to be supplied for the Purchase Order in question can be changed. In case due to shortage of wafer or other material, the Seller is unable to supply a specific Purchase Order, the Seller shall notify the Buyer in writing no later than thirty (30) days prior to the date shipment of the applicable Purchase Order, only with consent from the Buyer (which consent shall not be unreasonably withheld, conditioned, or delayed), the quantity to be supplied for the Purchase Order in question can be changed. The Parties shall cooperate in good faith to consolidate the reduced or added quantity for the effected/modified Purchase Order on the future un-effected/un-modified Purchase Order(s) to keep or come current on the Committed Purchase as agreed in the Agreement; provided, however, that if the Parties are unable to meet the Committed Purchase by or before the end of the Delivery Period, then the Committed Purchase at the end of the Delivery Period shall be amended to the actual number of Units and/or Purchase Order(s) (as modified) delivered and received. In no event shall the Buyer be deemed in default of its obligations under this Agreement if the Buyer is unable to purchase the full Committed Purchase by end of the Delivery Period.

3.5 The Seller's bank account information is as follows:

Bank Name:	HSBC BANK (CHINA) COMPANY LIMITED SHENZHEN BRANCH
Bank Address:	27/F, CHINA RESOURCES BUILDING, NO.5001, SHENNAN ROAD EAST, LUOHU DISTRICT, SHENZHEN, CHINA, 518010
Swift code:	HSBCCNSHSZN
Beneficiary Account No.:	002557072055
Account Name:	INCHIGLE TECHNOLOGY HONGKONG LTD
USDT ADDRESS:	0x48eaffdb61f392de60e10edeab863d5d5a04f2ba

0x48eaffdb61f392de60e10edeab863d5d5a04f2ba

3.5 Within the Delivery Period, the Buyer shall purchase the Products under this Agreement from the Seller when the quantity, prices, parameters are proposed to the Buyer, and PO shall be signed by both Parties when the supply proposal agreed and accepted by the Buyer. When the Purchase Order is agreed by both parties, the Buyer shall complete the payment of the Purchase Order within 3 business days. In

case the Buyer wants to extend the payment period, it shall be agreed by the Seller so that the servers agreed will be held for the Buyer. The servers shall be released to other client of the Buyer in case the Buyer fails to make the payment within maximum 10 working days without a prior notice from the Seller. The purchase of servers under this Agreement of which the PO will be signed five (5) business days before the delivery, the Buyer shall pay 100% of the total amount of the Products in each respective PO as the full payment (the "**Full Payment**") within 3 business days after the respective PO has been agreed and signed. The amount of the US$1,000.00 of the Deposit on each Server shall be applied to offset and deducted from the full amount to be paid to the Seller for each Unit under the appliable PO. For the purposes of timing, payment by Buyer shall be deemed made by Buyer as of the date and time on which the Buyer has initiated a wire or SWIFT to Seller's account designated above. Buyer shall not be responsible for any delay caused by Seller's bank on the account of receipt of payment by Seller.

3.6 The Parties agree that the Buyer intends to purchase the agreed Committed Purchase during the Delivery Period and pay for each Purchase Order of the Committed Purchase in accordance with the terms of this Agreement. If the Buyer, for any reason, is unable to purchase or timely pay for the Products for the applicable Purchase Order(s) at the applicable times and in quantities to satisfy the Committed Purchase, but provided that the Seller is in full compliance with all its obligations under this Agreement, then the applicable monthly Purchase Order shall be proportionally reduced/modified, and Seller shall deliver to Buyer Units in reduced quantity such that the outstanding balance of the Deposit to such Purchase Order satisfies the Purchase Price for such Purchase Order. In no event shall any portion of the Deposit be forfeited against Buyer and in favor of Seller. For the avoidance of doubt and notwithstanding anything to the contrary herein, Buyer shall not be obligated to enter into any Purchase Order or purchase any units hereunder. In the event that the Buyer does not enter into Purchase Orders covering the quantities of the Committed Purchase, the amount outstanding of any Deposit shall be refunded to the Buyer promptly following January 1, 2022.

4. Delivery and Acceptance

4.1 The Seller shall complete the delivery of the Servers described in each respective PO within 10 days after receiving the full amount (100%) of payment for such PO from the Buyer. If Seller does not deliver the Products on time, the Seller will assume the corresponding liability for breach of contract, and Buyer shall have the right to terminate this Agreement and be immediately entitled to refund of its outstanding Deposit.

4.2 The Seller shall deliver the designated models of the Products under each PO to a place in Hong Kong designated by the Buyer, or other place mutually agreed to by both Parties, at least 5 business days before the scheduled delivery date of the servers under the PO (the "**Delivery Address**"). Incoterms will apply to FCA unless other agreed by the Parties from time to time; provided, however, that the purchase price for the Servers under each PO shall be inclusive (i.e., at Seller's cost) of amounts in respect of any value added tax (VAT) and export and customs charges in Mainland China, a inclusive of the costs of packaging, insurance and carriage of the Products to the Delivery Address.

4.3 Until the Products under each PO are properly submitted by Seller in accordance with the terms of this Agreement and picked up by the carrier, the

ownership, risks of damage or loss of the Products shall remain with the Seller ("**Seller ROL Period**"). Once picked up by the carrier, the ownership, risks of damage or loss of the Products are transferred to the Buyer ("**Buyer ROL Period**").

4.4 The Seller is responsible for properly packaging the Products including the related accessories and taking all necessary measures such as waterproofing, moisture proofing and anti-collision packaging to ensure the safe transportation of the Products. The packaging cost of the Products shall be borne by the Seller, all logistics costs involved in transportation, packaging for transportation and insurance shall be borne by the Buyer.

4.5 The Buyer shall complete the acceptance, or object, within 30 calendar days after the completion of the delivery by the Seller or within 15 working days after the arrival of the Products at the final delivery destination, whichever arrives earlier is referred to hereinafter as the "**Acceptance Period**". In addition to Buyer's right to inspect the Products during the Acceptance Period, the Buyer shall have the right to inspect and test the Products at any time before or on delivery. Seller's authorized representative(s) shall have the right to be present during the performance of such tests/inspections of the Products and see the relevant data from such tests/inspections. Should the Buyer make reasonable efforts to make an test/inspection available to Seller, but Seller does not attend such test/inspection, the Seller shall be deemed to have forfeited its right to object to the results of Buyer's tests/inspections.

4.6 Upon inspection of the Products during the Acceptance Period, if the Buyer determines that there is any defect, damage or problem in or with any of the Products or that any or all of the Products does not conform to the performance specifications set forth herein or otherwise fails to conform to this Agreement, the Buyer shall give written notice of its objection(s) to the Seller during the Acceptance Period. After receiving the written objection from the Buyer, the Seller shall promptly, but no later than 5 working days, investigate and confirm the nature and cause of the problem with the Buyer. If the Buyer fails to provide a written objection to Seller during the Acceptance Period, it shall be deemed to be qualified as accepted. In the event that it is determined that the Products are defective or otherwise do not conform to the terms of this Agreement, and/or if there is a reasonable dispute between the Parties as to whether the Products are defective and/or otherwise do not conform to the terms of this Agreement, then the Seller shall have the right to: (a) promptly repair or replace the Products at Seller's risk, cost, and expense by no later than 45 days after Buyer's written objection notice to Seller; or (b) refund the Buyer the finalized Purchase Price plus the Deposit Credit applicable to Products by no later than 14 days after Buyer's written objection notice to Seller. If Seller is unable to elect and satisfy either option (a) or (b) as set forth in this Section 4.6, then Buyer shall have the right to terminate this Agreement. Upon Buyer's termination of this Agreement pursuant to this Section 4.6, and without waiving any other right or remedy afforded to Buyer under this Agreement or under law, the Buyer shall no longer be required to purchase any Products for the remaining Purchase Orders, and the Buyer shall be

entitled to the full refund of the outstanding balance of the Deposit.

4.7 In the case that there is a difference in the total hash rate between that specified in the respective PO and the hash rate of the servers actually received by Buyer, the Seller shall compensate the Buyer accordingly by no later than 15 days after written notice by Buyer to Seller. Upon receiving all the Units with total hash rate equal or greater than that specified in the respective PO and written communication of such fact to the Seller, it shall be deemed that the Seller has accomplished the contractual obligation regarding total hash for each batch and/or each PO.

4.8 Any delay caused by Seller in the performance of its obligations under this Section 4 shall entitled the Buyer, for each day of delay, an amount equal to .02% of the purchase price for the applicable PO, up to a maximum of 10% of the total purchase price for the applicable PO. Provided this Agreement is not sooner terminated by Buyer, the delay penalty shall be, upon Buyer's election, credited against the finalized purchase price for the applicable, or any subsequent PO, or payable to the Buyer no later than fifteen (15) days after Buyer's written demand.

5. Quality Assurance and After-Sales Service; Warranty.

5.1 The Seller represents and warrants that all Products shall be free from defects in design, material, and workmanship. The Products shall conform to all specifications set forth in this Agreement, and any applicable Purchase Orders of the Products ("**Specifications**"). The Products shall include the instruction manuals necessary for the full set-up, operation, and maintenance of the Products (the "**Documents**"), and the Seller shall ensure that the Documents are in English, and in reasonable and readable format and capable of being followed and understood by a person reasonably trained in using goods similar to the Products.

5.2 The Seller warrants that the Products shall be free from defects in design, materials, and workmanship, and shall perform consistent with Buyer's intended use, the Specifications, and the terms and condition of this Agreement (the "**Warranty**"). The Warranty for the Products shall l be a period of 1 year, commencing 30 days after Buyer's or Buyer's customer's receipt of the Products (the "**Warranty Period**"). During the Warranty Period and at no cost to Buyer, the Seller shall offer online repair training or offline repair training as required in appropriate time, and the Seller shall arrange specific engineers for remote after-sale technical support at Buyer's request.

5.3 After the Buyer discovers that there is a defect or quality problem or failure of the Products covered by the Warranty, the Buyer shall promptly notify the Seller and cooperate with the Seller to conduct fault analysis and treatment. During the working day between 9:00am and 21:00pm of China time, the Seller shall respond within 2 hours of notification by the Buyer and the Seller shall resolve the fault or provide a solution within 36 hours after receiving the notice from the Buyer. In special circumstances, if Seller is unable to resolve the fault or provide a solution within the above-mentioned time limit, the Seller shall explain the situation to the Buyer in writing and provide an estimated time for resolution of the problem. If the

estimated time limit is more than 12 hours or it is confirmed that it is a defect or quality problem of the Product itself, the Seller shall immediately, but by no later than 5 days after Buyer's notice to Seller, the Sellerprovide an replacement Product for the Buyer to use.

5.4 The Seller agrees to open API for ease of management in the facilities. There is one feature with the API that the facilities can monitor the power consumption of each server remotely with 1% accuracy without power meter.

5.5 The Seller agrees to release when possible, and upon approval by Seller for usage; authorized firmware with high performance mode for these miners which will obtain more 3%~10% hash rate in case of 235v ~240v voltage input to PSU & the temperature around input fan is less than 30 degrees centigrade. Use of such firmware by the Buyer shall not void the Warranty.

5.6 If the Products have a batch failure, the failure rate is too high, or the failure reason cannot be confirmed, the Buyer shall allow and cooperate with the technical personnel of the Seller's provider to analyze the cause of the failure. By no later than 5 days after Buyer's notice to Seller, the Seller shall provide replacement Product(s) for such failed Products.

5.7 The following circumstances or Products are not covered by the Warranty, to the extent that damage to or defect of the Products are directly caused by Buyer and its agents undertaking the following:

(a) component detachment, unstable link, circuit board breakage, etc. caused by the reason that the Product is not installed as per the specification or instruction, be freely pulled up and down, or freely pulled / smashed / lifted and smashed.

(b) Products that are not properly installed due to improper operation, including but not limited to products that are damaged by reverse insertion, less insertion or no insertion;

(c) Products that are damaged by the reason of being freely disassembled, modified or repaired, without the written or electronic authorization of the Seller or without the consent of the Seller's after-sales support personnel;

(d) Insufficient hash power or mismatch of the miners caused by use of unofficial designated accessories, including but not limited to power supplies, control panels, fans, cables, etc.;

(e) Insufficient hash power, abnormal hash power, card machine and burning machine etc. caused by the use of unofficial supporting software;

(f) Shortened product life or direct damage of miners caused by the reason of freely modifying the operating parameters of the product (such as overclocking) except through firmware mentioned in herein.;

(g) Products that are damaged by the reason of failure to comply with the specifications or instructions for use of electricity, nets, and by the reason that data center environment fails to meet the miners' operational requirements, including but not limited to wet environments, corrosive environments, ultra-high temperature environments, dust particles exceeding the standard, abnormal voltage and current (such as wave surges, shock, instability etc.).

(h) Products whose serial number has been maliciously modified, defaced, or intentionally removed.

(i) Damage caused by natural disasters, including but not limited to earthquakes, fires, heavy rains, sandstorms etc.

For Products covered under Warranty and subject to replacement by Seller: (a) the Buyer shall be responsible for freight cost for shipping the faulty Products back to the repair center designated by Seller; and, (b) the Seller shall be responsible for the cost of replacement Products, and for the freight cost for shipping the repaired Products back to Buyer. If Seller is default of its Warranty obligations during the effective term of this Agreement, the Buyer shall have the right to terminate this Agreement, and seek remedies afforded to the Buyer under this Agreement. If the Seller fails to honor its Warranty obligations after the effective term of this Agreement, then in addition to any other rights or remedies afforded to Buyer at law, the Buyer shall be entitled to engaged third-party service providers and/or substitute Products, and the Seller shall be liable to Buyer for the cost of such third-party service providers and/or substitute Products.

6. Indemnification.

6.1 Each Party shall, at its sole cost and expense, indemnify, defend and hold harmless the other Party and its members, managers, directors, officers, employees and affiliates from and against all losses, liabilities, costs, damages and expenses, including but not limited to reasonable legal fees and attorneys' expenses ("**Losses**") incurred or suffered arising out of, in connection with or as a result of (i) the Party's material breach of the representations, warranties or covenants in this Agreement, including confidentiality obligations hereunder, (ii) the Party's willful misconduct or gross negligence, and (iii) third party claims of infringement or violation of its rights arising out of any Products provided by such Party.

6.2 The Buyer warrants that it will not use any of the Products to engage in any violation of laws and regulations to damage the legitimate rights and interests of any other party. Otherwise, the Buyer shall bear all legal liabilities arising therefrom. The Seller represents and warrants that its obligations under this Agreement do not, and shall not, violate any applicable laws, rules, and regulations, and Seller shall comply with all applicable laws, rules, and regulations at all times in connection with its performance of its obligations under or contemplated by this Agreement.

6.3 The Buyer agrees to use and maintain the Products in accordance with the environmental standards agreed by both Parties. If the Buyer or its employees or agents fail to use or maintain the Products under this Agreement in accordance with the aforementioned environmental standards, the Buyer shall not seek any compensation from Seller for economic losses or personal injury arising therefrom.

6.4 Without limitation to its Warranty commitments, Seller agrees, for the duration of the warranty period to replace or repair, at their choice, any defective Products, or parts thereof upon receipt of such defective Products or parts thereof returned by the Buyer; and receipt of the broken parts by the Seller approved as a valid warranty claim, in a timely manner; provided, however, that such repair or replacement is achieved by Seller within the time periods set forth in this Agreement

7. REMEDIES.

7.1 **Buyer's Remedies**. If Seller fails to perform any of its obligations under this Agreement within the earlier of 5 days after Buyer's written notice to Seller, or within the time period specifically and expressly set forth in this Agreement for an obligation of Seller, then Buyer shall be entitled to terminate this Agreement, and:

(a) receive a full refund of all amounts paid by Buyer for the Products that have not yet shipped, including the full amount the Deposit and any thereof forfeited in favor of Seller;

(b) relived from accepting or paying for any subsequent Purchase Order;

(c) Recover from Seller costs and expenses incurred by Buyer in obtaining substitutes of the Products from a third-party;

(d) Claim damages against Seller for any other costs, loss, or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to carry our its obligations under this Agreement on a timely manner, less such costs and expenses mitigated by Buyer after the termination of the Agreement; and/or

(e) Any other rights or remedies afforded to Buyer under this Agreement, by statute, or applicable law.

In addition, the Buyer may at any time, without limiting any of its other rights or remedies, set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller.

7.2 **Seller's Remedies**. If Buyer fails to perform any of its non-monetary (i.e., payment for Products) obligations under this Agreement within the earlier of 5 days after Seller's written notice to Buyer or within the time period specifically and expressly set forth in this Agreement for an obligation of Buyer, or if Buyer fails to make a payment within 5 business days after written notice be Seller to Buyer

(provided that Seller is in full compliance with its obligations under this Agreement), then Seller's sole and exclusive remedies shall be to terminate this Agreement upon written notice to Buyer, and thereafter within fifteen (15) days after notice of termination to Buyer, elect to either:

(a) reduce the Committed Purchase and each Purchase Order thereto remaining during the Delivery Period proportionately to the amount of Deposit remaining and held by the Seller, with all monthly Purchase Orders for the remainder of the Delivery Period reduced pro rata to the amount Deposit remaining that will satisfy the Purchase Price for the remaining Purchase Orders in accordance with the terms of this Agreement; or

(b) refund the entire outstanding balance of the Deposit to the Buyer, and thereafter have no further obligations to deliver the Products to the Buyer.

7.3 **Interest on Amounts Due**. If a Party fails to make any payment due to the other Party under this Agreement by the due date for payment, then the defaulting Party shall pay interest on the overdue amount at the rate of 5% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting Party disputes in good faith.

8. Confidentiality

8.1 Confidential Information.

Confidential Information means any information obtained by a Party (the "**Receiving Party**") to this Agreement from the other Party (the "**Disclosing Party**") under this Agreement including, but not limited to, past, present or future products, services, marketing, research, development, business activities, intellectual property, trade secret, know-how, any information relating to business or financial plans, proposals, forecasts, projections, benchmark test results and statistics, pricing, methods, methodologies, processes, personnel data, customers and supplier's information, apparatus, software programs, databases, data models and techniques, information technology, documentation including technical and functional specifications, the terms and existence of this Agreement or related information, and any other information which should reasonably be understood to be confidential. Confidential Information does not include information which (i) is or becomes generally available to the public other than as a result of the Receiving Party's breach of this Agreement, (ii) becomes available to the Receiving Party by a source other than the Disclosing Party who is not bound by any confidentiality obligations, (iii) was known to the Receiving Party or in its possession prior to the date of disclosure by the Disclosing Party, as demonstrated by written evidence of the Receiving Party, (iv) is furnished by the Disclosing Party to the Receiving Party with written permission to disclose, or (v) is independently developed by the Receiving Party without access to the Confidential Information, as demonstrated by written evidence of the Receiving

Party. Notwithstanding the foregoing, each Party has no obligation to disclose its Confidential Information to the other Party unless such disclosure is reasonably required to perform this Agreement.

8.2 Standard of Care

The Receiving Party shall preserve the Confidential Information of the Disclosing Party in confidence using the same precautions and standard of care which the Receiving Party would use to safeguard Confidential Information of its own but no less than reasonable care. Except as otherwise provided herein, the Receiving Party shall not, without first obtaining the Disclosing Party's written consent, disclose to any person, firm or organization any such Confidential Information, for the Term and thereafter. Furthermore, the Receiving Party shall not use the Confidential Party of the Disclosing Party for any purpose other than those permitted herein.

8.3 Limited Disclosure

In case the Buyer is a publicly traded company. Except as required by securities' regulators, no public announcement or press release in connection with the subject matter of the term sheet or this Agreement shall be made or issued by or on behalf of either Party without the prior written approval of the other Party. The Parties mutually agree that each Party may disclose to third parties that it has entered into this Agreement subject to the other Party's prior written approval. The Receiving Party may disclose Confidential Information of the Disclosing Party on a strict need-to-know basis only to its authorized employees, auditors, counsel and other representatives performing services for its benefit (the "**Authorized Recipients**"), solely as required in order for the Receiving Party to perform their respective obligations hereunder, so long as such representatives are bound by the written confidentiality agreements having terms no less strict than those set forth herein. The Receiving Party shall remain liable at all times for any breach by the Authorized Recipients of the confidentiality obligations set forth therein. If Confidential Information is required to be disclosed by law, regulation, court order by either Party, such disclosure shall be permitted to the extent legally required, provided that to the extent legally permissible, the Disclosing Party is given reasonable prior notice to enable it to seek a protective order or confidential treatment prior to such disclosure.

9. Anti-money Laundering Agreement

9.1 Each Party shall strictly abide by the applicable laws, regulations and administrative regulations on anti-money laundering, such as the Law of the People's Republic of China on Money Laundering and shall not participate in money laundering activities or provide convenience for others to launder money.

9.2 Each Party shall fulfill its respective anti-money laundering obligations in accordance with the requirements of applicable anti-money laundering laws and regulations, including, as applicable, establish and improve the internal control system for anti-money laundering, implement customer identification, identity

information and transaction record keeping, identification and reporting of large and suspicious transactions. Each Party shall comply with applicable regulatory requirements such as customer classification management guidelines, to ensure that the cooperative business under this Agreement meets the requirements of China's anti-money laundering laws and regulations.

9.3 Either Party may request the other to provide the following information according to the relevant provisions of anti-money laundering: the identity of the customer and its actual controlling shareholder(s) or actual beneficial owners), the customer's economic status or business status, the source of the client's funds, and the purpose of the customer's purchase. Each Party undertakes not to use or disclose relevant information or materials provided by the other than in connection with the foregoing purposes.

10. Force Majeure

10.01 Force majeure refers to objective conditions that cannot be foreseen, cannot be avoided and cannot be overcome notwithstanding the Parties' full and faithful performance of their respective obligations under this Agreement, including but not limited to natural disasters (such as typhoons, earthquakes, floods, hail, etc.), social anomalies (such as strikes, disturbances, pandemics, epidemics etc.), government actions (such as expropriation, blockade, government ban, etc.), and Seller's outsourced factories (such as wafer foundry factories) (each, a "**Force Majeure Event**"). The rise in raw material prices, employee shortages, import/export costs, changes in market transactions, etc. shall not be deemed a Force Majeure Event shall not be deemed a Force Majeure Event.

10.2 In the event of Force Majeure Event, the Party that is affected by Force Majeure Event shall promptly notify the other Party in writing and provide the other party with sufficient evidence of the occurrence and duration of force majeure within the next 7 working days. Both Parties should immediately consult and seek a reasonable solution to minimize the damage caused by Force Majeure Event.

10.3 If the Agreement cannot be continued due to Force Majeure Event, or the influence of Force Majeure Event exceeds 30 days, either Party has the right to terminate this Agreement and the Parties shall not be liable for breach of contract except for prompt return of all amounts theretofore paid to Seller hereunder for Product not delivered to or accepted by Buyer including the balance of the Deposit.

10.4 Each Party represents and warrants to the other that it knows of no event of Force Majeure Event existing as of the Effective Date that would impede or prevent its performance under this Agreement.

11. Dispute Resolution

11.1 This Agreement shall be governed by and construed under the laws of

Hong Kong.

11.2 If a controversy, claim or dispute arises out of or in connection with this Agreement, or the breach thereof, whether based on contract, tort, statute or other legal or equitable theory, the Parties shall use good faith efforts to settle such dispute through negotiations between senior executives of each Party. In the event the Parties fail to resolve such dispute within thirty (30) days (or such longer period as they mutually agree) of its occurrence, such unresolved controversy, claim or dispute will be finally resolved by binding arbitration administered by the Hong Kong International Arbitration Commission in accordance with the Arbitration Rules of Hong Kong International Arbitration Commission for the time being in force, which rules are deemed to be incorporated by reference in this section. The seat of the arbitration shall be Hong Kong. The Tribunal shall consist of three qualified commercial arbitrators, of which one shall be selected by the Seller, one shall be selected by the Buyer and one shall be selected by the Hong Kong International Arbitration Commission in accordance with the its Arbitration Rules. The language of the arbitration shall be English. The Parties further agree that any arbitral proceedings may be conducted by way of video-conferencing or other remote facilities and specifically waive any procedural requirements (if any) that demand a physical presence of either Party, their witnesses, or the Tribunal.

12. Other Provisions

12.1 This Agreement shall set forth the entire agreement of the Parties in relation to the subject matter, any changes to this Agreement must be made in writing and signed by both Parties or their authorized representatives.

12.2 All rights and obligations under this Agreement could be transferred to the related affiliate designated by each Parties, which must be made in writing and signed by both Parties or their authorized representatives; provided, however, that the Parties shall remain liable for its obligations under this Agreement notwithstanding assignment by such Party to its affiliate. Except as provided herein, in no event shall a Party have the right to assign its rights and obligations under this Agreement unless both Parties agree in writing, signed by both Parties.

12.3 Notices shall be in writing shall be deemed given on the date of receipt, if delivered by any means for which a delivery receipt is given, or, if sent by by electronic means (e-mail), upon receipt of confirmation or answer back. Notices shall be given to each Party at its address and marked to the attention of the person set forth below. Any such address may be changed by any Party hereto by the delivery of written notice thereof to the other Party in accordance with this Section.

Buyer: **Celsius Core LLC**

Notice Party:	Ron Deutsch
Title:	GC and Head of M&A
Address:	221 River Drive, 9th Flr, Hoboken, NJ 07030
Email:	

Seller:	**INCHIGLE TECHNOLOGY HONG KONG LIMITED**
Notice Party:	Can Liu,
Title:	Board Director
Address:	ROOM 605, 6/F, FA YUEN COMMERCIAL BUILDING, 75-77 FA YUEN STREET, MONGKOK KOWLOON, HONG KONG
Email:	895321507@qq.com

12.4 This Agreement shall be executed in quadruplicate. Each Party shall hold two originals with the same legal effect. This Agreement has been negotiated and executed by the Parties in English. In the event any translation of this Agreement is prepared for convenience or any other purpose, the provisions of the English version shall prevail.

[*The remainder of this page has been left intentionally blank*]

IN WITNESS WHEREOF, the Parties hereto have caused their respective duly authorized representatives to execute this Agreement on the date and year first above written.

The Seller: INCHIGLE TECHNOLOGY HONG KONG LIMITED

(seal)

Authorized representative: Can Li, Board Director

(signature)

Date: June 6th , 2021

The Buyer:Celsius Core LLC

(seal)

Authorized representative: Ron Deutsch,GC and Head of M&A

(signature) DocuSigned by:

E2E23C810E9341D...

Date: June 8th , 2021

Exhibit B-2
MicroBT Purchase Order (pre-order pricing)
(Attached.)

Framework Agreement on Supply of Blockchain Servers

between

INCHIGLE TECHNOLOGY HONG KONG LIMITED

and

Celsius Core LLC

June 2021

This Framework Agreement on Supply of Blockchain Servers (this "**Agreement**") is made and entered into on June 8th, 2021 (the "**Effective Date**") by and among:

1. Inchigle Technology Hong Kong Limited (company No. of 2867097), a business company incorporated under the laws of Hong Kong and having its registered office at ROOM 605, 6/F, FA YUEN COMMERCIAL BUILDING, 75-77 FA YUEN STREET, MONGKOK KOWLOON, HONG KONG("**the Seller**"); and
2. Celsius Core LLC., a company incorporated under the laws of United States and having its registered address at 221 River Drive, 9th Flr, Hoboken, NJ 07030 ("**the Buyer"**).

Each of the parties to this Agreement is referred to herein individually as a "**Party**" and collectively as the "**Parties**"

RECITALS:

B . The Seller has been engaged in the business of development, production, sales of high performance computing chips and blockchain servers based on the blockchain technology;

C . The Buyer intends to secure long-term, price-competitive and quantitative supply of blockchain servers.

D . The Parties desire to enter into this Agreement and make the respective representations, warranties, covenants and agreements set forth herein on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the foregoing recitals, the mutual promises hereinafter set forth, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties intending to be legally bound hereto hereby agree as follows:

1. Description of the Products

1.1 The Models, Performance Parameters of the target block chain server (each, a "**Unit**", and collectively, "**the Products**") are set out below:

Model	M30S	M30S+	M30S++
Power	38W/T +/-5%	34W/T +/-5%	31W/T +/-5%

Efficiency			
Hash Rate per Unit	Average: 88T 82T~92T +/-5%	Average: 100T 94T~106T +/-5%	Average:110T 112T~104T +/-5%

The Seller shall provide on each Purchase Order (as hereinafter defined), power supply units, cooling fans, control cards, ribbon cables, bridge cards and other parts (excluding hashboards) as spare parts for such Units ("**Spare Parts**") in amounts each equal to 2% of the amount of Units in such Purchase Order (e.g., 100 of each Spare Part for a Purchase Order of 5,000 Units). The Purchase Price (as hereinafter defined) paid for the Units pursuant to each Purchase Order shall be inclusive of costs for Spare Parts. For the purposes of this Agreement, the term "Products" shall be deemed to include: (a) Spare Parts; and (b) all Products (including Spare Parts) that are replaced or replaceable by Seller in accordance with Seller's obligations under this Agreement.

1.2 To ensure the normal and stable operation of the Products, the data center used by the Buyer should be equipped with necessary cooling and dust prevention measures, stable supply of electricity, and basic environmental requirements, including: temperature -5 to + 35 degrees Celsius, humidity <75%, AC voltage 210 to ~ 240V, single outlet current 16A, dust <0.5mg per cubic meter (where the metal and sulfide content less than 1%).

1.3 In case within the valid period of this Agreement, the Seller intends to release any new product(s), the Seller agrees that at least 180 days prior to the launch of such new product(s) to the public or general availability, the Seller shall notify the Buyer, and the Buyer shall have the right to purchase such new product(s) released by the Seller on the same general price terms (based on quantity), and other terms and conditions as offered by the Seller to its other customers; provided; however, that Buyer's right to elect to buy such new product(s) shall be subject to Seller having sufficient supply capacity to fulfill the demand from the Buyer. Except as set forth herein, the remainder/other detailed parameters and models for such new products shall be agreed by both Parties in the supplementary terms and conditions to this Agreement.

2. Unit Price and Quantities

2.1 The Seller promises to sell, and the Buyer promises to purchase, the Products not less than 10,000 Units in total ("**Committed Purchase**"), subject to the terms and conditions of this Agreement. The Parties agree that the Units as set forth in the Committed Purchase shall be scheduled for delivery from beginning of Year 2022 (January 2022) to the end of Year 2022 (December 2022) ("**Delivery Period**"), and deliverable on a monthly basis during the Delivery Period pursuant

to a purchase order issued in accordance and compliance with this Agreement (hereinafter, "**Purchase Order(s)**"), which Purchase Orders shall be comprised of the following Units ratio: M30S at 20%, M30S+ at 40%, and M30S++ at 40%. Subject to Section 2.2 of this Agreement, the the Seller shall ensure that the Purchase Orders shall substantially comply with the schedule set forth in this Section 2.1 ("**Table 2.1**"); provided, however, the Parties acknowledge that the ratio among the three Unit models may vary from batch to batch due to yield of wafer may vary from time to time. Each Purchase Order shall be accompanied by a delivery note which shows the order number, the type and quantity of Products (including the code number of the Products, where applicable), freight and customs documents required for delivery to the Delivery Address, special storage instructions (if any).

Table 2.1

Model	Jan-22	Feb-22	Mar-22	Apr-22	May-22	Jun-22	Jul-22	Aug-22	Sep-22	Oct-22	Nov-22	Dec-22	Subtotal
M30S++	660	660	660	660	660	700							4000
M30S+	660	660	660	660	660	700							4000
M30S	340	340	340	340	340	300							2000

2.2 The Parties agree that during the Delivery Period and so long as this Agreement is not sooner terminated, the Seller shall supply to the Buyer the server Units as per Table 2.1 In case the Buyer is unable to place purchase order for a specific Purchase Order, the Buyer shall notify the Seller in writing no later than One Hundred Eighty (180) days prior to the date of shipment of the applicable Purchase Order, only with consent from the Seller (which consent shall not be unreasonably withheld, conditioned, or delayed), the quantity to be supplied for the Purchase Order in question can be changed. In case due to shortage of wafer or other material, the Seller is unable to supply a specific Purchase Order, the Seller shall notify the Buyer in writing no later than thirty (30) days prior to the date shipment of the applicable Purchase Order, only with consent from the Buyer (which consent shall not be unreasonably withheld, conditioned, or delayed), the quantity to be supplied for the Purchase Order in question can be changed. The Parties shall cooperate in good faith to consolidate the reduced or added quantity for the effected/modified Purchase Order on the future un-effected/un-modified Purchase Order(s) to keep or come current on the Committed Purchase as agreed in the Agreement; provided, however, that if the Parties are unable to meet the Committed Purchase by or before the end of the Delivery Period, then the Committed Purchase at the end of the Delivery Period shall be amended to the actual number of Units and/or Purchase Order(s) (as modified) delivered and received. In no event shall the Buyer be deemed in

default of its obligations under this Agreement if the Buyer is unable to purchase the full Committed Purchase by end of the Delivery Period.

2.3 As of the Effective Date of this Agreement, the target models of the Products available to the Buyer are initially limited to M30S / M30S+/ M30S++. The minimum price and maximum price of the models are given in the below table ("**Table 2.3**").

Table 2.3

Model	**M30S**	**M30S+**	**M30S++**
Power Efficiency	38W/T +/- 5%	34W/T +/-5%	31W/T +/-5%
Hash Rate	Avg.: 88T Scope: 82T~92T +/-5%	Avg.: 100T Scope: 94T~106T +/-5%	Avg.:110T Scope: 112T~104T +/-5%
Maximum Price/TH *(USD)*	66.7	76.2	84.6
Minimum Price/TH (USD)	19.8	23.4	27

2.4 The Parties agree that new models that the Seller produces (other than M30S/M30S+/M30S++) and their minimum and maximum prices may be added into the target list based on Committed Purchase level and prices as agreed between the Parties from time to time if any new models are ready for purchase during the valid period of the Agreement. The Parties shall separately negotiate and sign a supplementary agreement to define the parameters and its minimum and maximum prices for the new models other than M30S/M30S+/M30S++

2.5 The Parties agree that the final price of the Units from various supply batches for each Purchase Order (the "**Purchase Price**") shall be within the "**Maximum Price**" and "**Minimum Price**" per Unit set forth in Table 2.3, and calculated within such range pursuant to the provisions of this Section 2.5, and Annexure I and Annexure II attached to this Agreement. Definitions of various parameters

which are required to derive the price are given as below.

2.5.1 Bitcoin Daily average price (USD) "A":

Data from https://www.blockchain.com/charts/market-price, which presents average price of Bitcoin in USD everyday;

2.5.2 Total network difficulty "B":

Data from https://www.blockchain.com/charts/difficulty, which presents daily total network difficulty;

2.5.3 Total network difficulty at 25.05T, FPPS 1T*24H Bitcoin Revenue "C":

1T*24h=0.00000546 BTC (Data from BTC.com);

2.5.4 30 days average mining revenue in USD "R":

R=(A1*25.05*C/B1+A2*25.05*C/B2+.....+A30*25.05*C/B30)/30

A1, B1, A2, B3, ..., A30, B30 shall, at 15th every month, be taken date back for 30 days. For example, when supply time is January 2022, A1 shall be average price on 16th November 2021 and A30 shall be average price on 15th December 2021.

2.5.5 Final implementation price for server "P":

P=(R-Power Efficiency of Sever/1000*Power Cost kWh*24)*Static Payback Days T*Futures-vs-Spot Pricing Discount Raito (0.8).In case **P** is more than the Maximum price, the Final Implementation Price shall be capped at the Maximum price; in case P is less than the minimum price, then the Final Implementation Price shall be set at the minimum price. In case **P** is in between the Minimum price and the Maximum price, it shall be same as it is calculated with the formula as designated in 2.4.5.

2.6 The Products under this Agreement shall be produced in China and delivered to the Delivery Address (as hereinafter defined) designated by the Buyer. The Seller may, if agreed to by the Buyer, transfer part or all of the production of the Products to its overseas factories ("**Subcontract**") and deliver the finished Products to other destinations if agreed by the Buyer in advance, and the final quantities and unit price of the Products, and any additional delivery charges (if any) shall be agreed by the Parties before production from overseas factories. Notwithstanding the foregoing, however, the Seller acknowledges and agrees that Buyer's refusal to agree to Seller's request to Subcontract, and/or deliver the finished Products to other destinations: (a) shall not be deemed a breach of good faith by Buyer or Buyer's obligations, and shall not affect Buyer's rights

and remedies under this Agreement; (b) shall not relieve Seller of any of its obligations under this Agreement; (c) Seller shall be fully responsible for all costs and fees to the extent Seller has elected to Subcontract its obligations under this Agreement; and (d) Seller shall be fully responsible for all actions and omissions of persons Seller has engaged to Subcontract, including breach of Seller's obligations under this Agreement, and/or any appliable law.

2.7 Except for fluctuations in USD versus CNY exchange rate as expressly provided in this Section 2.7, the Seller agrees and covenants that the Purchase Price for the Products shall be fixed in accordance with this Agreement, and shall not exceed the Maximum Price per Unit during the Delivery Period and as applicable to each Purchase Order.

Notwithstanding the foregoing paragraph, if the USD versus CNY exchange rate fluctuates by up to and not to exceed 2%, with the USD versus CNY exchange rate in effect as of the Effective Date as the baseline, then upon prior written notice to Buyer, the Seller may modify the Purchase Price for the applicable Purchase Order proportionate to such fluctuation of USD versus CNY exchange, subject to the 2% limit set forth herein. If appliable, the Seller shall decrease the Purchase Price proportionate to downward fluctuations in USD versus CNY exchange rate, but not less than the Purchase Price. In case the the USD versus CNY exchange rate fluctuates by more than 2%, then unless the Parties agree in writing to modify this Agreement, the increase and risk in the USD versus CNY exchange rate in excess of 2% shall be borne by the Seller.

2.8 If there is any tax credit or export tax rebate available for the Buyer, the Buyer may claim such tax benefits by itself or require the Seller to claim such tax benefits on behalf of the Buyer, in each case the Seller shall cooperate in good faith with the Buyer including providing certain information or documents as required.

3. Deposit and Payment

3.1 The Buyer shall pay an initial deposit (the "**Initial Deposit**") of USD 12,018,000.00 (USD Twelve Million and Eighteen Thousand Only) to the Seller. The Initial Deposit is calculated based on 15% Maximum Price per Unit on 10,000 servers and for the total Committed Purchase, as set forth in "**Table 3.1**" below. 100% of the Initial Deposit shall be paid by Buyer to Seller within 5 (Five) business days after the Effective Date.

Table 3.1

Model	Hash Rate	Per TH Price	Maximum Price	Quantity	Subtotal	Deposit
M30S++	112	84.6	9,475.20	4000	37,900,800.00	5,685,120.00

M30S+	100	76.2	7,620.00	4000	30,480,000.00	4,572,000.00
M30S	88	66.7	5,869.60	2000	11,739,200.00	1,760,880.00
Total					80,120,000.00	12,018,000.00

3.2 The Initial Deposit will be used to confirm and 'lock up' the supply of Committed Purchase, the Maximum Price and the Minimum Price of M30S/M30S+/M30S++ for delivery until 31st December 2022.

3.3 The Buyer shall pay Seller advance payment as a deposit for each Purchase Order 6 months prior to the date on which Seller must delivery such Purchase Order, with said advance payment as deposit equal to 35% of the Maximum Price for the units in the applicable Purchase Order, as set forth in "**Table 3.3**" below:

Table 3.3

	M30S++ Qty	M30S+ Qty	M30S Qty	M30S++ Unit price	M30S+ Unit price	M30S Unit price	Maximum Price	Advance Payment 35%
May-21								
June 2021								
July 2021								5,311,398.40
August 2021								5,311,398.40
Sept 2021								5,311,398.40
Oct 2021								5,311,398.40
Nov 2021								5,311,398.40
Dec 2021								5,491,008.00
Jan 2022	660	660	340	9,475.20	7,620.00	5,869.60	13,278,496.00	-
Feb 2022	660	660	340	9,475.20	7,620.00	5,869.60	13,278,496.00	-
March 2022	660	660	340	9,475.20	7,620.00	5,869.60	13,278,496.00	-
April 2022	660	660	340	9,475.20	7,620.00	5,869.60	13,278,496.00	-
May 2022	660	660	340	9,475.20	7,620.00	5,869.60	13,278,496.00	-
June 2022	700	700	300	9,475.20	7,620.00	5,869.60	13,727,520.00	-
July 2022				9,475.20	7,620.00	5,869.60	-	
August 2022				9,475.20	7,620.00	5,869.60	-	
Sept 2022				9,475.20	7,620.00	5,869.60	-	
Oct 2022				9,475.20	7,620.00	5,869.60	-	
Nov 2022				9,475.20	7,620.00	5,869.60	-	
Dec 2022				9,475.20	7,620.00	5,869.60	-	

The Initial Deposit and the advance payments/deposits of 35% set forth in Table 3.3 are collectively referred to in this Agreement as the "Deposit". The Deposit shall be applicable to the finalized and "trued-up" Purchase Price as set forth in Section 3.4, in the amounts set forth in Table 3.3 as it relates to the advance payments, and in the amount of 15% from the Initial Deposit (the "Deposit Credit").

3.4 The actual Purchase Price payable by Buyer for the Units to be supplied on each Purchase Order shall be determined per Sections 2.3 and 2.5 of this Agreement, at least 15 calendar days prior the date on which Seller must deliver the Purchase Order. The Buyer shall pay to Seller the Purchase Price for the Purchase Order, as finalized and "trued-up" pursuant to this Section 3.4, less the Deposit Credit. In case the Deposit Credit is more than the amount apportioned to the applicable Purchase Order (i.e., less than 35% of the advance payment, and the 15% of the Initial Deposit), then upon Buyer's election, the remaining portion of the Deposit Credit shall be returned to the Buyer, or applicable to the finalized Purchase Price for subsequent Purchase Orders.

3.5 The Seller shall ship the servers to the Buyer according to the sequence that the payments for delivery are received from various clients.

3.6 The Parties agree that the Buyer intends to purchase the agreed Committed Purchase during the Delivery Period and pay for each Purchase Order of the Committed Purchase in accordance with the terms of this Agreement. If the Buyer, for any reason, is unable to purchase or timely pay for the Products for the applicable Purchase Order(s) at the applicable times and in quantities to satisfy the Committed Purchase, but provided that the Seller is in full compliance with all its obligations under this Agreement, then the applicable monthly Purchase Order shall be proportionally reduced/modified, and Seller shall deliver to Buyer Units in reduced quantity such that the outstanding balance of the Deposit to such Purchase Order satisfies the Purchase Price for such Purchase Order. In no event shall any portion of the Deposit be forfeited against Buyer and in favor of Seller. For the avoidance of doubt and notwithstanding anything to the contrary herein, Buyer shall not be obligated to enter into any Purchase Order or purchase any units here under. In the event that the Buyer does not enter into Purchase Orders covering the quantities of the Committed Purchase, the amount outstanding of any Deposit shall be refunded to the Buyer promptly following January 1, 2022.

3.7 The Seller's bank account information is as follows:

Bank Name:	HSBC BANK (CHINA) COMPANY LIMITED SHENZHEN BRANCH
Bank Address:	27/F, CHINA RESOURCES BUILDING, NO.5001,

	SHENNAN ROAD EAST, LUOHU DISTRICT, SHENZHEN, CHINA, 518010
Swift code:	HSBCCNSHSZN
Beneficiary Account No.:	002557072055
Account Name:	INCHIGLE TECHNOLOGY HONGKONG LTD
USDT ADDRESS:	0x48eaffdb61f392de60e10edeab863d5d5a04f2ba

0x48eaffdb61f392de60e10edeab863d5d5a04f2ba

For the purposes of timing, payment for Purchase Price shall be deemed made by Buyer as of the date and time on which the Buyer has initiated a wire or SWIFT to Seller's account designated above. Buyer shall not be responsible for any delay caused by Seller's bank on the account of receipt of payment by Seller.

4. Delivery and Acceptance

4.1 The Seller shall complete the delivery of the Purchase Order described in each respective Purchase Order within: (a) 30 days after Buyer has paid the full amount (100%) of the finalized Purchase Price for such Purchase Order to the Seller, less the Deposit Credit; or (b) if Buyer has informed Seller that Buyer will be unable to purchase the entire Purchase Order of the Committed Purchase for the applicable month, then within 30 days of the Buyer's such notice to Seller. The Seller shall ship the servers to the Buyer according to the sequence that the payments for delivery are received from various clients.

4.2 The Seller shall deliver the designated models of the Products under each Purchase Order to a place in Hong Kong designated by the Buyer, or other place mutually agreed to by both Parties, at least 5 business days before the scheduled delivery date of the Products under the applicable Purchase Order (the "**Delivery Address**"). Incoterms will apply to FCA unless otherwise agreed by the Parties from time to time; provided, however, that the Purchase Price for each Purchase Order shall be inclusive (i.e., at Seller's cost) of amounts in respect of any value added tax (VAT) and export and customs charges in Mainland China, and inclusive of the costs of packaging, insurance and carriage of the Products to the Delivery Address.

4.3 Until the Products in a Purchase Order are properly submitted by Seller in accordance with the terms of this Agreement and picked up by the carrier, the ownership, risks of damage or loss of the Products shall remain with the Seller ("**Seller ROL Period**"). Once picked up by the carrier, the ownership, risks of damage or loss of the Products are transferred to the Buyer ("**Buyer ROL Period**").

4.4 The Seller is responsible for properly packaging the Products including the related accessories and taking all necessary measures such as waterproofing, moisture proofing and anti-collision packaging to ensure the safe transportation of the Products. The packaging cost of the Products shall be borne by the Seller, all logistics costs involved in transportation, packaging for transportation and insurance shall be borne by the Buyer.

4.5 The Buyer shall complete the acceptance, or object, within 30 calendar days after the completion of the delivery by the Seller or within 15 working days after the arrival of the Products at the final delivery destination, whichever arrives earlier is referred to hereinafter as the "**Acceptance Period"**. In addition to Buyer's right to inspect the Products during the Acceptance Period, the Buyer shall have the right to inspect and test the Products at any time before or on delivery. Seller's authorized representative(s) shall have the right to be present during the performance of such tests/inspections of the Products and see the relevant data from such tests/inspections. Should the Buyer make reasonable efforts to make a test/inspection available to Seller, but Seller does not attend such test/inspection, the Seller shall be deemed to have forfeited its right to object to the results of Buyer's tests/inspections.

4.6 Upon inspection of the Products during the Acceptance Period, if the Buyer determines that there is any defect, damage, or problem in or with any of the Products or that any or all of the Products does not conform to the performance specifications set forth herein or otherwise fails to conform to this Agreement, the Buyer shall give written notice of its objection(s) to the Seller during the Acceptance Period. After receiving the written objection from the Buyer, the Seller shall promptly, but no later than 5 days, investigate and confirm the nature and cause of the problem with the Buyer. If the Buyer fails to provide a written objection to Seller during the Acceptance Period, it shall be deemed to be qualified as accepted. In the event that it is determined that the Products are defective or otherwise do not conform to the terms of this Agreement, and/or if there is a reasonable dispute between the Parties as to whether the Products are defective and/or otherwise do not conform to the terms of this Agreement, then the Seller shall have the right to: (a) promptly repair or replace the Products at Seller's risk, cost, and expense by no later than 45 days after Buyer's written objection notice to Seller; or (b) refund the Buyer the finalized Purchase Price

plus the Deposit Credit applicable to Products by no later than 14 days after Buyer's written objection notice to Seller. If Seller is unable to elect and satisfy either option (a) or (b) as set forth in this Section 4.6, then Buyer shall have the right to terminate this Agreement. Upon Buyer's termination of this Agreement pursuant to this Section 4.6, and without waiving any other right or remedy afforded to Buyer under this Agreement or under law, the Buyer shall no longer be required to purchase any Products for the remaining Purchase Orders, and the Buyer shall be entitled to the full refund of the outstanding balance of the Deposit.

4.7 In the case that there is a difference in the total hash rate between the Units specified in the Purchase Order and the hash rate of the Units actually received by Buyer, the Seller shall compensate the Buyer accordingly by no later than 15 days after written notice by Buyer to Seller. Upon receiving all the Units with total hash rate equal or greater than that specified in the respective Purchase Order and written communication of such fact to the Seller, it shall be deemed that the Seller has accomplished the contractual obligation regarding total hash for each batch and/or each Purchase Order.

4.8 Any delay caused by Seller in the performance of its obligations under this Section 4 shall entitled the Buyer, for each day of delay, an amount equal to .02% of the Purchase Price for the applicable Purchase Order, up to a maximum of 10% of the total Purchase Price for the applicable Purchase Order. Provided this Agreement is not sooner terminated by Buyer, the delay penalty shall be, upon Buyer's election, credited against the finalized Purchase Price for the applicable, or any subsequent Purchase Order, or payable to the Buyer no later than fifteen (15) days after Buyer's written demand.

5. Quality Assurance and After-Sales Service; Warranty.

5.1 The Seller represents and warrants that all Products shall be free from defects in design, material, and workmanship. The Products shall conform to all specifications set forth in this Agreement, and any applicable Purchase Order of the Products ("**Specifications**"). The Products shall include the instruction manuals necessary for the full set-up, operation, and maintenance of the Products (the "**Documents**"), and the Seller shall ensure that the Documents are in English, and in reasonable and readable format and capable of being followed and understood by a person reasonably trained in using goods similar to the Products.

5.2 The Seller warrants that the Products shall be free from defects in design, materials, and workmanship, and shall perform consistent with Buyer's intended use, the Specifications, and the terms and condition of this Agreement (the "**Warranty**"). The Warranty for the Products shall I be a period of 1 year, commencing 30 days after Buyer's or Buyer's customer's receipt of the Products (the "**Warranty Period**"). During the

Warranty Period and at no cost to Buyer, the Seller shall offer online repair training or offline repair training as required in appropriate time, and the Seller shall arrange specific engineers for remote after-sale technical support at Buyer's request.

5.3 After the Buyer discovers that there is a defect or quality problem or failure of the Products covered by the Warranty, the Buyer shall promptly notify the Seller and cooperate with the Seller to conduct fault analysis and treatment. During the working day between 9:00am and 21:00pm of China time, the Seller shall respond within 2 hours of notification by the Buyer and the Seller shall resolve the fault or provide a solution within 36 hours after receiving the notice from the Buyer. In special circumstances, if Seller is unable to resolve the fault or provide a solution within the above-mentioned time limit, the Seller shall explain the situation to the Buyer in writing and provide an estimated time for resolution of the problem. If the estimated time limit is more than 12 hours or it is confirmed that it is a defect or quality problem of the Product itself, the Seller shall immediately, but by no later than 5 days after Buyer's notice to Seller, the Seller shall provide a replacement Product for the Buyer to use.

5.4 The Seller agrees to open API for ease of management in the facilities. There is one feature with the API that the facilities can monitor the power consumption of each server remotely with 1% accuracy without power meter.

5.5 The Seller agrees to release when possible, and upon approval by Seller for usage; authorized firmware with high performance mode for these servers which will obtain more 3%~10% hash rate in case of 235v ~240v voltage input to PSU & the temperature around input fan is less than 30 degrees centigrade. Use of such firmware by the Buyer shall not void the Warranty.

5.6 If the Products have a batch failure, the failure rate is too high, or the failure reason cannot be confirmed, the Buyer shall allow and cooperate with the technical personnel of the Seller's provider to analyze the cause of the failure. By no later than 5 days after Buyer's notice to Seller, the Seller shall provide replacement Product(s) for such failed Products.

5.7 The following circumstances or Products are not covered by the Warranty, to the extent that damage to or defect of the Products are directly caused by Buyer and its agents undertaking the following:

(a) component detachment, unstable link, circuit board breakage, etc. caused by the reason that the Product is not installed as per the specification or instruction, be freely pulled up and down, or freely pulled / smashed / lifted and smashed.

(b) Products that are not properly installed due to improper operation, including but not limited to products that are damaged by reverse insertion, less insertion or no insertion;

(c) Products that are damaged by the reason of being freely disassembled, modified or repaired, without the written or electronic authorization of the Seller or without the consent of the Seller's after-sales support personnel;

(d) Insufficient hash power or mismatch of the servers caused by use of unofficial designated accessories, including but not limited to power supplies, control panels, fans, cables, etc.;

(e) Insufficient hash power, abnormal hash power, card machine and burning machine etc. caused by the use of unofficial supporting software;

(f) Shortened product life or direct damage of servers caused by the reason of freely modifying the operating parameters of the product (such as overclocking) except through firmware mentioned in herein;

(g) Products that are damaged by the reason of failure to comply with the specifications or instructions for use of electricity, nets, and by the reason that data center environment fails to meet the servers' operational requirements, including but not limited to wet environments, corrosive environments, ultra-high temperature environments, dust particles exceeding the standard, abnormal voltage and current (such as wave surges, shock, instability etc.).

(h) Products whose serial number has been maliciously modified, defaced, or intentionally removed.

(i) Damage caused by natural disasters, including but not limited to earthquakes, fires, heavy rains, sandstorms etc.

For Products covered under Warranty and subject to replacement by Seller: (a) the Buyer shall be responsible for freight cost for shipping the faulty Products back to the repair center designated by Seller; and (b) the Seller shall be responsible for the cost of replacement Products, and for the freight cost for shipping the repaired Products back to Buyer. If Seller is default of its Warranty obligations during the effective term of this Agreement, the Buyer shall have the right to terminate this Agreement, and seek remedies afforded to the Buyer under this Agreement. If the Seller fails to honor its Warranty obligations after the effective term of this Agreement, then in addition to any other rights or remedies afforded to Buyer at law, the Buyer shall be entitled to engage third-party service providers and/or purchase substitute Products, and the Seller

shall be liable to Buyer for the cost of such third-party service providers and/or substitute Products.

6. Indemnification.

6.1 Each Party shall, at its sole cost and expense, indemnify, defend and hold harmless the other Party and its members, managers, directors, officers, employees and affiliates from and against all losses, liabilities, costs, damages and expenses, including but not limited to reasonable legal fees and attorneys' expenses ("**Losses**") incurred or suffered arising out of, in connection with or as a result of (i) the Party's material breach of the representations, warranties or covenants in this Agreement, including confidentiality obligations hereunder, (ii) the Party's willful misconduct or gross negligence, and (iii) third party claims of infringement or violation of its rights arising out of any Products provided by such Party.

6.2 The Buyer warrants that it will not use any of the Products to engage in any violation of laws and regulations to damage the legitimate rights and interests of any other party. Otherwise, the Buyer shall bear all legal liabilities arising therefrom. The Seller represents and warrants that its obligations under this Agreement do not, and shall not, violate any applicable laws, rules, and regulations, and Seller shall comply with all applicable laws, rules, and regulations at all times in connection with its performance of its obligations under or contemplated by this Agreement.

6.3 The Buyer agrees to use and maintain the Products in accordance with the environmental standards agreed by both Parties. If the Buyer or its employees or agents fail to use or maintain the Products under this Agreement in accordance with the aforementioned environmental standards, the Buyer shall not seek any compensation from Seller for economic losses or personal injury arising therefrom.

6.4 Without limitation to its Warranty commitments, Seller agrees, for the duration of the warranty period to replace or repair, at their choice, any defective Products, or parts thereof upon receipt of such defective Products or parts thereof returned by the Buyer; and receipt of the broken parts by the Seller approved as a valid warranty claim, in a timely manner; provided, however, that such repair or replacement is achieved by Seller within the time periods set forth in this Agreement

7. REMEDIES.

7.1 **Buyer's Remedies**. If Seller fails to perform any of its obligations under this Agreement within the earlier of 5 days after Buyer's written notice to Seller, or within the time period specifically and expressly set forth in this Agreement for an obligation of Seller, then Buyer shall be entitled to terminate this Agreement, and:

(a) receive a full refund of all amounts paid by Buyer for the Products that have not yet shipped, including the full amount the Deposit and any thereof forfeited in favor of Seller;

(b) relived from accepting or paying for any subsequent Purchase Order;

(c) Recover from Seller costs and expenses incurred by Buyer in obtaining substitutes of the Products from a third-party with agreement from the Seller for commercial terms and conditions;

(d) Claim damages against Seller for any other costs, loss, or expenses incurred by the Buyer which are in any way attributable to the Supplier's failure to carry out its obligations under this Agreement on a timely manner, less such costs and expenses mitigated by Buyer after the termination of the Agreement,; and/or

(e) Any other rights or remedies afforded to Buyer under this Agreement, by statute, or applicable law.

In addition, the Buyer may at any time, without limiting any of its other rights or remedies, set off any liability of the Seller to the Buyer against any liability of the Buyer to the Seller.

7.2 **Seller's Remedies**. If Buyer fails to perform any of its non-monetary (i.e., payment for Products) obligations under this Agreement within the earlier of 5 days after Seller's written notice to Buyer or within the time period specifically and expressly set forth in this Agreement for an obligation of Buyer, or if Buyer fails to make a payment within 5 business days after written notice be Seller to Buyer (provided that Seller is in full compliance with its obligations under this Agreement), then Seller's sole and exclusive remedies shall be to terminate this Agreement upon written notice to Buyer, and thereafter within fifteen (15) days after notice of termination to Buyer, elect to either:

(a) reduce the Committed Purchase and each Purchase Order thereto remaining during the Delivery Period proportionately to the amount of Deposit remaining and held by the Seller, with all monthly Purchase Orders for the remainder of the Delivery Period reduced pro rata to the amount Deposit remaining that will satisfy the Purchase Price for the remaining Purchase Orders in accordance with the terms of this Agreement; or

(b) refund the entire outstanding balance of the Deposit to the Buyer, and thereafter have no further obligations to deliver the Products to the Buyer after this agreement expired.

7.3 **Interest on Amounts Due**. If a Party fails to make any payment due to the other Party under this Agreement by the due date for payment, then the defaulting Party shall pay interest on the overdue amount at the rate of 5% per annum. Such interest shall accrue on a daily basis from the due date until actual payment of the overdue amount, whether before or after judgment. The defaulting Party shall pay the interest together with the overdue amount. This clause shall not apply to payments the defaulting Party disputes in good faith.

8. Confidentiality

8.1 Confidential Information.

Confidential Information means any information obtained by a Party (the "**Receiving Party**") to this Agreement from the other Party (the "**Disclosing Party**") under this Agreement including, but not limited to, past, present or future products, services, marketing, research, development, business activities, intellectual property, trade secret, know-how, any information relating to business or financial plans, proposals, forecasts, projections, benchmark test results and statistics, pricing, methods, methodologies, processes, personnel data, customers and supplier's information, apparatus, software programs, databases, data models and techniques, information technology, documentation including technical and functional specifications, the terms and existence of this Agreement or related information, and any other information which should reasonably be understood to be confidential. Confidential Information does not include information which (i) is or becomes generally available to the public other than as a result of the Receiving Party's breach of this Agreement, (ii) becomes available to the Receiving Party by a source other than the Disclosing Party who is not bound by any confidentiality obligations, (iii) was known to the Receiving Party or in its possession prior to the date of disclosure by the Disclosing Party, as demonstrated by written evidence of the Receiving Party, (iv) is furnished by the Disclosing Party to the Receiving Party with written permission to disclose, or (v) is independently developed by the Receiving Party without access to the Confidential Information, as demonstrated by written evidence of the Receiving Party. Notwithstanding the foregoing, each Party has no obligation to disclose its Confidential Information to the other Party unless such disclosure is reasonably required to perform this Agreement.

8.2 Standard of Care

The Receiving Party shall preserve the Confidential Information of the Disclosing Party in confidence using the same precautions and standard of care which the Receiving Party would use to safeguard Confidential Information of its own but no less than reasonable care. Except as otherwise provided herein, the Receiving Party shall not, without first obtaining the Disclosing Party's written consent, disclose to any person, firm or organization any such Confidential Information, for the Term and thereafter. Furthermore, the Receiving Party shall not use the Confidential Party of

the Disclosing Party for any purpose other than those permitted herein.

8.3 Limited Disclosure

In case the Buyer is a publicly traded company. Except as required by securities' regulators, no public announcement or press release in connection with the subject matter of the term sheet or this Agreement shall be made or issued by or on behalf of either Party without the prior written approval of the other Party. The Parties mutually agree that each Party may disclose to third parties that it has entered into this Agreement subject to the other Party's prior written approval. The Receiving Party may disclose Confidential Information of the Disclosing Party on a strict need-to-know basis only to its authorized employees, auditors, counsel and other representatives performing services for its benefit (the "**Authorized Recipients**"), solely as required in order for the Receiving Party to perform their respective obligations hereunder, so long as such representatives are bound by the written confidentiality agreements having terms no less strict than those set forth herein. The Receiving Party shall remain liable at all times for any breach by the Authorized Recipients of the confidentiality obligations set forth therein. If Confidential Information is required to be disclosed by law, regulation, court order by either Party, such disclosure shall be permitted to the extent legally required, provided that to the extent legally permissible, the Disclosing Party is given reasonable prior notice to enable it to seek a protective order or confidential treatment prior to such disclosure.

9. Anti-money Laundering Agreement

9.1 Each Party shall strictly abide by the applicable laws, regulations and administrative regulations on anti-money laundering, such as the Law of the People's Republic of China on Money Laundering and shall not participate in money laundering activities or provide convenience for others to launder money.

9.2 Each Party shall fulfill its respective anti-money laundering obligations in accordance with the requirements of applicable anti-money laundering laws and regulations, including, as applicable, establish and improve the internal control system for anti-money laundering, implement customer identification, identity information and transaction record keeping, identification and reporting of large and suspicious transactions. Each Party shall comply with applicable regulatory requirements such as customer classification management guidelines, to ensure that the cooperative business under this Agreement meets the requirements of China's anti-money laundering laws and regulations.

9.3 Either Party may request the other to provide the following information according

to the relevant provisions of anti-money laundering: the identity of the customer and its actual controlling shareholder(s) or actual beneficial owners), the customer's economic status or business status, the source of the client's funds, and the purpose of the customer's purchase. Each Party undertakes not to use or disclose relevant information or materials provided by the other than in connection with the foregoing purposes.

10. Force Majeure

10.01 Force majeure refers to objective conditions that cannot be foreseen, cannot be avoided and cannot be overcome notwithstanding the Parties' full and faithful performance of their respective obligations under this Agreement, including but not limited to natural disasters (such as typhoons, earthquakes, floods, hail, etc.), social anomalies (such as strikes, disturbances, pandemics, epidemics etc.), government actions (such as expropriation, blockade, government ban, etc.), and Seller's outsourced factories (such as wafer foundry factories) (each, a "**Force Majeure Event**"). The rise in raw material prices, employee shortages, import/export costs, changes in market transactions, etc. shall not be deemed a Force Majeure Event.

10.2 In the event of Force Majeure Event, the Party that is affected by Force Majeure Event shall promptly notify the other Party in writing and provide the other party with sufficient evidence of the occurrence and duration of force majeure within the next 7 working days. Both Parties should immediately consult and seek a reasonable solution to minimize the damage caused by Force Majeure Event.

10.3 If the Agreement cannot be continued due to Force Majeure Event, or the influence of Force Majeure Event exceeds 30 days, either Party has the right to terminate this Agreement and the Parties shall not be liable for breach of contract except for prompt return of all amounts theretofore paid to Seller hereunder for Product not delivered to or accepted by Buyer including the balance of the Deposit.

10.4 Each Party represents and warrants to the other that it knows of no event of Force Majeure Event existing as of the Effective Date that would impede or prevent its performance under this Agreement.

11. Dispute Resolution

11.1 This Agreement shall be governed by and construed under the laws of Hong

Kong.

11.2 If a controversy, claim or dispute arises out of or in connection with this Agreement, or the breach thereof, whether based on contract, tort, statute or other legal or equitable theory, the Parties shall use good faith efforts to settle such dispute through negotiations between senior executives of each Party. In the event the Parties fail to resolve such dispute within thirty (30) days (or such longer period as they mutually agree) of its occurrence, such unresolved controversy, claim or dispute will be finally resolved by binding arbitration administered by the Hong Kong International Arbitration Commission in accordance with the Arbitration Rules of Hong Kong International Arbitration Commission for the time being in force, which rules are deemed to be incorporated by reference in this section. The seat of the arbitration shall be Hong Kong. The Tribunal shall consist of three qualified commercial arbitrators, of which one shall be selected by the Seller, one shall be selected by the Buyer and one shall be selected by the Hong Kong International Arbitration Commission in accordance with the its Arbitration Rules. The language of the arbitration shall be English. The Parties further agree that any arbitral proceedings may be conducted by way of video-conferencing or other remote facilities and specifically waive any procedural requirements (if any) that demand a physical presence of either Party, their witnesses, or the Tribunal.

12. Other Provisions

12.1 This Agreement shall set forth the entire agreement of the Parties in relation to the subject matter, any changes to this Agreement must be made in writing and signed by both Parties or their authorized representatives.

12.2 All rights and obligations under this Agreement could be transferred to the related affiliate designated by each Parties, which must be made in writing and signed by both Parties or their authorized representatives; provided, however, that the Parties shall remain liable for its obligations under this Agreement notwithstanding assignment by such Party to its affiliate. Except as provided herein, in no event shall a Party have the right to assign its rights and obligations under this Agreement unless both Parties agree in writing, signed by both Parties.

12.3 Notices shall be in writing shall be deemed given on the date of receipt, if delivered by any means for which a delivery receipt is given, or, if sent by by electronic means (e-mail), upon receipt of confirmation or answer back. Notices shall be given to each Party at its address and marked to the attention of the person set forth below. Any such address may be changed by any Party hereto by the delivery of written notice thereof to the other Party in accordance with this

Section.

Buyer:	**Celsius Core LLC**
Notice Party:	Ron Deutsch
Title:	GC and Head of M&A
Address:	221 River Drive, 9th Flr, Hoboken, NJ 07030
Email:	
Seller:	**INCHIGLE TECHNOLOGY HONG KONG LIMITED**
Notice Party:	Can Liu,
Title:	Board Director
Address:	ROOM 605, 6/F, FA YUEN COMMERCIAL BUILDING, 75-77 FA YUEN STREET, MONGKOK KOWLOON, HONG KONG
Email:	895321507@qq.com

12.4 This Agreement shall be executed in quadruplicate. Each Party shall hold two originals with the same legal effect. This Agreement has been negotiated and executed by the Parties in English. In the event any translation of this Agreement is prepared for convenience or any other purpose, the provisions of the English version shall prevail.

[*The remainder of this page has been left intentionally blank*]

IN WITNESS WHEREOF, the Parties hereto have caused their respective duly authorized representatives to execute this Agreement on the date and year first above written.

The Seller: INCHIGLE TECHNOLOGY HONG KONG LIMITED

(seal)

Authorized representative: Can Liu, Board Director

(signature)

Date: June 8th , 2021

The Buyer:Celsius Core LLC

(seal)

Authorized representative: Ron Deutsch,GC and Head of M&A

(signature) DocuSigned by:

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Date: June 8th , 2021

Annexure I: Example of Calculating 30-days Average Mining Revenue

Date	Network difficulty	Price in USD	1T*24H Qty	1T*24 Hours Mining Revenue in USD
Benchmark Network Difficulty	25.05		Benchmark 1T*24hr Revenue	0.00000546
2021/4/7	23.137	58020	0.0000059114	0.342981781
2021/4/8	23.137	55947	0.0000059114	0.330727364
2021/4/9	23.137	58049	0.0000059114	0.343153212
2021/4/10	23.137	58103	0.0000059114	0.34347243
2021/4/11	23.137	59774	0.0000059114	0.353350447
2021/4/12	23.137	59965	0.0000059114	0.354479533
2021/4/13	23.137	59835	0.0000059114	0.353711045
2021/4/14	23.137	63554	0.0000059114	0.375695693
2021/4/15	23.218	62969	0.0000058908	0.370938885
2021/4/16	23.582	63253	0.0000057999	0.366860426
2021/4/17	23.582	61456	0.0000057999	0.356438024
2021/4/18	23.582	60087	0.0000057999	0.348497975
2021/4/19	23.582	56251	0.0000057999	0.326249598
2021/4/20	23.582	55703	0.0000057999	0.323071259
2021/4/21	23.582	56508	0.0000057999	0.32774017
2021/4/22	23.582	53809	0.0000057999	0.312086267
2021/4/23	23.582	51732	0.0000057999	0.300039896
2021/4/24	23.582	51153	0.0000057999	0.29668176
2021/4/25	23.582	50111	0.0000057999	0.290638275
2021/4/26	23.582	49076	0.0000057999	0.284635389
2021/4/27	23.582	54057	0.0000057999	0.31352464
2021/4/28	23.582	55071	0.0000057999	0.319405728

2021/4/29	23.582	54884	0.0000057999	0.318321149
2021/4/30	23.582	53584	0.0000057999	0.310781292
2021/5/1	23.004	57797	0.0000059456	0.343638892
2021/5/2	20.609	57858	0.0000066366	0.383978467
2021/5/3	20.609	56610	0.0000066366	0.375696032
2021/5/4	20.609	57213	0.0000066366	0.379697882
2021/5/5	20.609	53242	0.0000066366	0.353344076
2021/5/6	20.609	57473	0.0000066366	0.381423389
		30 Days Average Revenue		0.339375548

Annexure II: Examples for Calculating Final Settlement Prices

1. Surpassing maximum price scenario (using 30-days Average Revenue 0.34 as exemplified in Annexure I) ,

Model	Power Efficiency	Minimum Price Per TH	Cap Price Per TH	Average Revenue Per TH	Power Cost	Net Revenue	ROI	Spot Supply Price	Pre-order Price	Final Price	Final Unit Price
	A	B	C	D	E	F	G	H	I	J	K
M30S++	31	27	84.6	0.34	0.04092	0.29908	366	109.46	87.57	84.6	9,475.20
M30S+	34	23.4	76.2	0.34	0.04488	0.29512	334	98.57	78.86	76.2	7,620.00
M30S	38	19.8	66.7	0.34	0.05016	0.28984	298	86.37	69.1	66.7	5,869.60

E=0.055*A/1000*24 (0.055 is 0.055 USD cents per KWH power cost);

F=D-E is net revenue in USD deducting power cost;

H=G*F is spot supply price per TH for different power efficiency servers;

I=H*0.8 (0.8 is the coefficient to convert sport supply price to pre-order price per TH)

J is the final implement price based on the formular set in clause No.2.5. As the price is higher than maximum price agreed, maximum price shall be taken as the final implement price.

2. Reaching minimum price scenario (using 30-days Average Revenue 0.12 as exemplified in Annexure I) ,

Model	Power Efficiency	Minimum Price Per TH	Cap Price Per TH	Average Revenue Per TH	Power Cost	Net Revenue	ROI	Spot Supply Price	Pre-order Price	Final Price	Final Unit Price
	A	B	C	D	E	F	G	H	I	J	K
M30S++	31	27	84.6	0.12	0.04092	0.07908	366	28.94	23.15	27	3,024.00
M30S+	34	23.4	76.2	0.12	0.04488	0.07512	334	25.09	20.07	23.4	2,340.00
M30S	38	19.8	66.7	0.12	0.05016	0.06984	298	20.81	16.65	19.8	1,742.40

E=0.055*A/1000*24 (0.055 is 0.055 USD cents per KWH power cost);

F=D-E is net revenue in USD deducting power cost;

H=G*F is spot supply price per TH for different power efficiency servers;

I=H*0.8 (0.8 is the coefficient to convert sport supply price to pre-order price per TH)

J is the final implement price based on the formular set in clause No.2.5. As the price is less than minimum price agreed, Minimum price shall be taken as the final implement price.

3. Scenario in-between maximum and minimum prices (using 30-days Average Revenue 0.2 as exemplified in Annexure I) ,

Model	Power Efficiency	Minimum Price Per TH	Cap Price Per TH	Average Revenue Per TH	Power Cost	Net Revenue	ROI	Spot Supply Price	Pre-order Price	Final Price	Final Unit Price
	A	B	C	D	E	F	G	H	I	J	K
M30S++	31	27	84.6	0.2	0.04092	0.15908	366	58.22	46.58	46.58	5,216.96
M30S+	34	23.4	76.2	0.2	0.04488	0.15512	334	51.81	41.45	41.45	4,145.00
M30S	38	19.8	66.7	0.2	0.05016	0.14984	298	44.65	35.72	35.72	3,143.36

E=0.055*A/1000*24 (0.055 is 0.055 USD cents per KWH power cost);

F=D-E is net revenue in USD deducting power cost;

H=G*F is spot supply price per TH for different power efficiency servers;

I=H*0.8 (0.8 is the coefficient to convert sport supply price to pre-order price per TH)

J is the final implement price based on the formular set in clause No.2.5. As the price in between the minimum and maximum price agreed, calculated price as per clause No.2.5 shall be taken as the final implement price.

EXHIBIT 16

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re: RHODIUM ENCORE LLC, *et al.*,[1] Debtors.	Chapter 11 Case No. 24-90448 (ARP) (Jointly Administered)

DEBTORS' REPLY IN SUPPORT OF APPLICATION FOR AN UPDATED ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL
(Relates to Docket Nos. 173, 263, 835 & 891)

INTRODUCTION

Two years ago, facing litigation that threatened the existence of their business, Debtors made an agreement with Lehotsky Keller Cohn LLP (LKC): LKC would join Stris & Maher LLP (Stris) in representing Debtors in their dispute with Whinstone and would provide a discount from their standard rates, in exchange for a contingency tied to the outcome of the case. LKC performed its part of the agreement: Together with Stris, it achieved exceptional results for Debtors. The $185 million settlement with Whinstone reflects those results. ECF No. 880-1, at 2.

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Air HPC LLC (0387), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

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Debtors' position on this issue is simple: the agreement with LKC, including the contingency, should be honored.

BACKGROUND

LKC's Representation of Debtors in the Whinstone Dispute

This Court is familiar with the history of the Rhodium-Whinstone dispute. ECF No. 579, at 12-17. As relevant here, in early May 2023, Whinstone U.S., Inc. sued four Rhodium entities in Texas state court, seeking to terminate all of Rhodium's power contracts, kick Rhodium out of the Rockdale site, and obtain substantial damages. The relief Whinstone sought would have destroyed Rhodium's business.

On May 16, 2023, Rhodium engaged LKC to represent Rhodium, along with Stris, in the Whinstone litigation. Topping Decl. ¶ 3; ECF No. 835, Ex. A. Following an arms' length negotiation, Rhodium and LKC agreed that LKC would provide a significant discount on its hourly rates in exchange for a potential success fee. Topping Decl. ¶ 4. The potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages. *Id.* Specifically, as described in the May 16, 2023 Engagement Letter, LKC would receive (a) $600,000 if Rhodium's position on key contractual terms were upheld; (b) a percentage of any energy credits (5% up to $5 million and 1% thereafter); and (c) 10% of damages and all other amounts recovered. ECF No. 835, Ex. A.

LKC agreed to this deal even though there was no guarantee at that time that Rhodium would pursue damages claims against Whinstone. Rhodium's management team still hoped that a good relationship with Whinstone could be restored. Topping Decl. ¶ 4.

Rhodium benefitted from LKC's discounted fees. Whinstone's aggressive tactics, including opposing arbitration and engaging in self-help shutdowns, impinged Rhodium's cash

flow. *Id.* ¶ 5. LKC's discounted fees thus helped preserve Rhodium's cash flow at a critical time. *See id.*

Even more importantly, LKC's services helped preserve Rhodium itself. LKC represented Rhodium for two years through multiple periods of time when the survival of Rhodium's business was on the line. Topping Decl. ¶ 16. Together with Stris, LKC obtained exceptional results for Rhodium. *Id.* LKC and Stris obtained a temporary restraining order and three different injunctions, including two emergency injunctions after Whinstone shut down Rhodium's power. *Id.* ¶ 6. Fighting off Whinstone's tactics often required meeting imminent, after-hours needs and taking on emergency filings and emergency hearings on short notice. *Id.* ¶ 16. As Debtors' general counsel has explained, without those injunctions, Rhodium would likely have been forced out of business. *Id.*

After the bankruptcy petitions were filed, LKC continued to deliver exceptional results for Debtors. As this Court is well aware, the Whinstone dispute was hard fought. Following a 4-day evidentiary hearing, this Court in its Phase 1 ruling rejected Whinstone's contract-interpretation theories and held, as Rhodium had consistently argued, that all of Rhodium's valuable power contracts remained in force. ECF No. 579, at 15-37. LKC was directly involved in the pretrial and trial proceedings, with two LKC attorneys (along with two Stris attorneys) forming the trial team. LKC further represented Debtors' interests by preparing an affirmative complaint against Whinstone to recover energy credits and other damages. *See Rhodium JV LLC et al. v. Whinstone U.S. Inc. et al.*, No. 25-03047, Compl., ECF No. 1 (S.D. Tex. Bankr. filed Feb. 11, 2025).

Debtors ultimately settled all aspects of the dispute with Whinstone for $185 million. *See, e.g.,* ECF No. 880, 880-1, 921.

The Retention Applications

After Debtors filed the Chapter 11 petitions, LKC partner Jonathan Cohn drafted a retention application for LKC that set forth the specific terms of the May 2023 engagement letter, including the rate discounts and specific components of the potential success fee. Topping Decl. ¶ 7. At that time, the Rhodium-Whinstone dispute was in active litigation, and no settlement appeared likely. *Id.* It was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC. *Id.* Ultimately, Rhodium (through its bankruptcy counsel) filed a retention application for LKC that disclosed that Rhodium's agreement with LKC included discounted hourly rates in exchange for a partial contingency fee based upon the successful outcome of the litigation. *Id.* The retention application mentioned the contingency no less than 11 times and clearly explained that "[t]here is also a contingent fee depending on the outcome of litigation that has not changed." ECF No. 173 at 9 ¶ 26; *see id.* at 13-14 ¶¶ 40, 41, 44; *id.* at 20, 24 Cohn Decl. ¶¶ 6, 25; *id.* at 35 Topping Decl. ¶¶ 9, 10. Rhodium's General Counsel Charles Topping submitted a declaration in support of the original retention application that likewise specified that "Debtors have agreed with Lehotsky Keller Cohn LLP to a discounted hourly billing arrangement *plus a contingent-fee arrangement for its representation of Debtors in the Whinstone Dispute if this Court grants the Application*." ECF No. 173 Topping Decl. ¶ 9 (emphasis added).

Because of the ongoing Rhodium-Whinstone litigation, however, the initial retention application did not disclose the specific details of the LKC success fee. Debtors' general counsel, Mr. Topping, understood at that time that the application's description of the partial contingency fee was sufficient to inform creditors and other interested parties about the existence of the success

fee. Topping Decl. ¶ 8. To Mr. Topping's knowledge, no creditor or other interested party raised any issue with respect to payment of a contingency fee to LKC until around February 2025. *Id.* ¶ 9. No party objected to LKC's retention.

Mr. Topping learned in mid-February, just before the February 19 mediation with Whinstone, that the AHG had recently asserted that the details of the LKC contingency fee had to be disclosed in order for LKC to be paid any contingency fee, and further that because the retention application did not disclose those details, LKC should not be paid any contingency fee. *Id.* ¶ 9. The AHG did not file anything with the Court, however, and did not object to LKC's First Interim Application for Payment, which again expressly disclosed the contingency fee. *See* ECF No. 765 at 9 ¶ 19 ("LKC's attorneys in this case are compensated on an hourly basis, plus a contingent fee depending on the outcome of the litigation.").

Regardless of whether the AHG's belated concern was valid, Rhodium decided to address it. Topping Decl. ¶ 10. One option for Rhodium was to seek to amend the LKC retention application to include the specific terms of the May 2023 engagement letter. *Id.* ¶ 11. At that point, however, it seemed possible (though by no means certain) that Rhodium and Whinstone might reach a settlement involving *both* the affirmative case for damages *and* the sale to Whinstone of the Rhodium assets in Rockdale. *Id.* The transaction documents for such a settlement might not specify the portion of the total proceeds attributable to the affirmative case and the portion attributable to the Rockdale assets. *Id.* Although the May 2023 engagement letter did not explicitly address this scenario (because Rhodium and LKC did not attempt to address every conceivable scenario in that letter), Rhodium believed that LKC was owed a contingency fee under the terms of the May 2023 agreement. *Id.* A settlement on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone. *Id.* Paying the contingency

fee under those circumstances was thus consistent with Rhodium's and LKC's intent at the outset. *Id.*; *see also, e.g.,* ECF No. 835 at 10 (Ex. A, May 2023 letter, describing success fee in part as percentage of "*any* recovered energy credits" and percentage of "*any* additional amounts" recovered, and referencing payment following utilization, settlement, or judgment (emphasis added)).

Accordingly, Rhodium and LKC decided to amend the May 2023 engagement letter to expressly address this potential settlement scenario. Rhodium then submitted a proposed amendment to LKC's retention that both disclosed the original May 2023 engagement letter and the amended March 4, 2025 engagement letter. Topping Decl. ¶ 12; ECF No. 835. The amended engagement letter expressly provides that any contingency fee payment to LKC is subject to Bankruptcy Court approval, and Debtors' proposed order says the same. ECF No. 835 at 14 (Ex. B); ECF No. 835-1 at 3 (proposed order).

ARGUMENT

The AHG's objection is based on a flawed premise. It claims that, through the request to amend LKC's retention order, LKC is seeking a "windfall" and "post-hoc success fee grab." ECF No. 891 at 2, 4. That is not true. LKC's engagement from the outset two years ago called for a combination of discounted fees plus a contingency, or success, fee. *See* ECF No. 835 at 9-10 (Ex. A). The AHG would likely prefer that the fee not be paid so that the SAFE holders can lay claim to those funds instead. But that's not a reason to deny LKC part of the fee that was agreed to and that LKC earned.

Debtors did not intend the original retention application to *sub silentio* eliminate the success fee. And in Debtors' view, LKC has earned a success fee as contemplated by the May 2023 engagement letter, because (1) this Court held that the Whinstone contracts were not terminated

and (2) the Whinstone settlement necessarily reflects value ascribed to Rhodium's affirmative damages claims against Whinstone. The calculation of the amount of the success fee is a separate matter; Debtors take no position here on the amount of the fee and amending the retention order will not determine the amount of the fee. That is subject to negotiation and ultimately this Court's approval. ECF No. 835 at 14-15; ECF No. 835-1 at 3. This Court should, however, exercise its discretion to amend the retention order to provide for the success fee as agreed by LKC and Rhodium and disclosed in the original application.

I. This Court has discretion to amend LKC's retention order to align with the terms agreed to by LKC and Rhodium and disclosed in the original retention application.

The AHG assumes, without citing any support, that Bankruptcy Rules 9023 and 9024 govern Debtors' request to amend LKC's retention order. *See* ECF No. 891, at 8. Rule 9023 governs new trials and altering or amending a judgment, while Rule 9024 governs requests for relief from judgment. *See* Fed. R. Bankr. P. 9023 & 9024. The retention order is not a judgment and Debtors are not seeking relief from any judgment or trial verdict. The AHG offers no explanation for why the time limits and standards in those rules would govern this request to amend a retention order.

Setting aside those inapplicable rules, relevant precedent confirms that this Court has discretion to amend the retention order. As discussed in *In re Wichita River Oil Corp.*, 214 B.R. 308, 309-10 (E.D. La. 1997), under Fifth Circuit law, bankruptcy courts have discretion to approve attorney retention *nunc pro tunc* where through "oversight" approval for the retention was not properly requested. *Wichita River* relies on the Fifth Circuit's decision in *Matter of Triangle Chemicals, Inc.*, 697 F.2d 1280 (5th Cir. 1983). *Triangle Chemicals* specifically holds that, "where through oversight the attorney has neglected to obtain such prior approval but has continued to perform services for the debtor/debtor in possession," the bankruptcy court "retains equitable

power in the exercise of its sound discretion, under exceptional circumstances, to grant such approval *nunc pro tunc*, upon proper showing, and to award compensation for all or part of the services performed by such attorney that have subsequently benefited the debtor's estate and, consequently, its creditors." *Id.* at 1289.

In *Wichita River*, the attorney responsible for filing the retention applications neglected to do so for co-counsel, and no one noticed for six months. 214 B.R. at 309. The bankruptcy court had declined to approve the late-filed application "with regret," indicating that the court had no discretion to do so. *Id.* (cleaned up). On appeal, the district court disagreed, holding that *Triangle Falls* controlled and the bankruptcy court had discretion to approve the order. *Id.* at 309-10.

The facts here present an even stronger basis for exercising discretion to amend the LKC retention order. This Court approved LKC's original retention based on an application that included multiple unambiguous disclosures of the existence of a contingency fee. All parties were thus on notice of the existence of the fee and no party timely objected. The fact that the proposed order submitted with the original application did not reference the contingency is a scrivener's error—that is, an "oversight." The Court has discretion to correct it and, as explained below, should do so.

II. Amending the retention order is fair and equitable.

The Court should exercise its discretion to amend LKC's retention order because doing so is fair and equitable given (1) the agreement between LKC and Debtors; (2) the substantial value LKC brought to the estate, in reliance on the terms of that agreement; and (3) the AHG's undue delay in raising any concerns about the contingency fee disclosed in the original retention application.

First, there is no dispute that LKC and Debtors agreed to the success fee as part of the original engagement and that both LKC and Debtors believed the fee had been approved for purposes of the bankruptcy retention. LKC has provided its services to Debtors, at discounted rates, in reliance on that agreement.[2]

Contrary to the AHG's claims, the revised engagement letter does not change the agreement. The new agreement does not alter the substantive terms and it is certainly not "much worse" or "vastly inferior" to the May 2023 engagement letter. With respect to each component of the success fee:

- The $600,000 payment tied to a ruling on the Rhodium-Whinstone contracts was triggered by this Court's interim ruling following Phase 1 of the motion to assume hearings. ECF No. 835, at 10 (Ex. A). The March 2025 letter merely recognized that and specified the timing for payment based on current circumstances. *Compare* ECF No. 835 at 10 (Ex. A) *with id.* at 14 (Ex. B).
- With respect to recovered energy credits, the only substantive change in the March 2025 letter is to require Bankruptcy Court approval for this component of the fee. *Compare* ECF No. 835 at 10 (Ex. A) *with id.* at 14 (Ex. B).
- With respect to the 10% success fee for "any additional amounts" recovered, the May 2023 letter already provided that this fee applied to a settlement or a judgment. ECF No. 835 at 10 (Ex. A). The March 2025 provision is the same, except again providing for Bankruptcy Court approval. *Compare* ECF No. 835 at 10 (Ex. A) *with id.* at 14 (Ex. B).

[2] The fact that LKC throughout the proceeding charged discounted rates, not its "normal" rates referenced in the retention order, confirms that the wording of the retention order was an oversight.

The March 2025 letter adds a procedural provision for determining the amounts of the latter two components of the fee in the event that the dispute settled either with Whinstone acquiring Debtors or Whinstone acquiring Debtors' assets at Rockdale. ECF No. 835 at 14 (Ex. B). All this provision does is make explicit what was already implicit in the May 2023 engagement letter: if a settlement doesn't specify the values attributed to portions of the recovery, LKC and Debtors would have to seek to determine those values for purposes of calculating the success fees. The provision in the March 2025 letter hardly breaks new ground: it merely provides that the parties will attempt in good faith to reach agreement and otherwise the Bankruptcy Court will decide. *Id.*

The AHG wrongly insists that Debtors have to justify this request by showing that LKC will be providing additional services, because otherwise LKC would receive a "windfall." ECF No. 891, at 13. There's no windfall here, because, to be clear: LKC is not seeking, and Debtors are not requesting approval for, any new or different contingency fee. Rhodium believes that, in the context of the type of settlement that the Court approved with Whinstone, LKC was owed a contingency fee under the terms of the May 2023 agreement. Topping Decl. ¶ 11. That's because settling "on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone." *Id.* "Paying the contingency fee under those circumstances was thus consistent with Rhodium and LKC's intent at the outset." *Id.* All that the March 2025 letter does is (1) provide for Bankruptcy Court approval[3] and (2) call for Debtors and LKC to attempt to reach agreement on the allocation of the settlement or have the Bankruptcy Court decide.

***Second*,** LKC provided enormous value to the estate. In partnership with Stris, LKC successfully litigated the motion to assume through discovery, hearing, and post-hearing motions.

[3] The AHG's references to a "backroom deal" (ECF No. 891, at 13) make no sense given the express provisions for court approval.

Following a lengthy hearing, this Court ruled in Rhodium's favor on every key issue of contract interpretation and alleged termination. *See generally* ECF No. 579. That win is what brought Whinstone to the table and facilitated the $185 million settlement—the settlement fund that is central to formulating a plan resolving the bankruptcy.

The Court should not entertain any after-the-fact armchair quarterbacking from the AHG, which had no role in litigating against Whinstone. *See* ECF 891 at 10. There is no merit to any suggestion that LKC's services were not needed in this case. From the outset, Whinstone litigated this case aggressively and tenaciously. Throughout the litigation and during the motion to assume proceedings, the resources of both firms—LKC and Stris—were needed to handle this fast-paced, hard-fought case.[4] Further, no party timely objected to the retention of LKC and Stris to handle the Whinstone litigation, and it is far too late to do so now.

In short, LKC's contributions were substantial and critical to the value of the estate. That too weighs heavily in favor of amending the retention order to align with the agreed-upon financial terms.

Third, the AHG's objection is exceptionally weak given the facts here. The existence of the contingency was disclosed from the outset in unambiguous terms. *See supra* at 6. Neither the AHG nor any other party could reasonably claim to be unaware that LKC's engagement included a contingency based on the outcome of the matter. To the extent any party believed the contingency had to be disclosed in more detail, that party could have objected to the original retention or

[4] To provide one example: the parties took 14 fact and expert depositions in a two-week period, often with two or even three taking place simultaneously. That deposition period overlapped with dispositive motion briefing and the motion to assume proceedings began just 16 days after depositions ended.

otherwise timely raised that concern. No party, including the AHG, even objected to LKC's first interim application for payment, *which again disclosed the contingency*. *See* ECF Nos. 765, 836.

Instead, the AHG waited for months and until after LKC had provided substantial services to the estate at discounted rates before raising any concern. It would be fundamentally *in*equitable to reward the AHG's delay in raising this issue. LKC has provided exceptional services to the Debtors in good-faith reliance on the terms of their agreement. That agreement should be honored.

CONCLUSION

For the reasons given here and in Debtors' Application (ECF No. 835), the Court should grant the application and issue an updated order for LKC's retention.

Dated: May 16, 2025.

STRIS & MAHER LLP

/s/ Colleen R. Smith

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Certificate of Service

I, Collen R. Smith, hereby certify that on the 16th day of May, 2025, a copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Colleen R. Smith
Colleen R. Smith

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

DECLARATION OF CHARLES TOPPING

I, Charles R. Topping, pursuant to 28 U.S.C. § 1746, declare as follows:

1. I am General Counsel and Secretary of Rhodium Enterprises, Inc., which directly or indirectly manages other Rhodium-family entities, including but not limited to Rhodium 30MW LLC, Rhodium JV LLC; Rhodium 2.0 LLC, Rhodium 10MW LLC, Rhodium Encore LLC, Jordan HPC LLC, and Air HPC LLC (collectively referred to as "Rhodium" herein). Except for any matters stated to be based upon information and belief, I have personal knowledge of the facts set forth below, and if called as a witness, I could and would competently attest to them.

2. I submit this Declaration in support of Debtors' Response to the Objection of the Ad Hoc Group of Safe Parties to Debtors' Application for an Updated Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP as Special Litigation Counsel.

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

3. On May 16, 2023, Rhodium retained Lehotsky Keller Cohn LLP ("LKC") to represent Rhodium in connection with a lawsuit that Whinstone commenced in Milam County, Texas, on May 2, 2023.

4. Rhodium and LKC negotiated the terms of the engagement at arms' length. Rhodium and LKC agreed that LKC would provide a significant discount on its hourly rates in exchange for a potential success fee. The potential success fee included components that would apply if Rhodium were to file affirmative claims against Whinstone for damages. The success fee is described in Rhodium's May 16, 2023 engagement letter with LKC. At the time, I understood that Rhodium's management team was unsure whether such a claim would be necessary because Rhodium's management team hoped instead that a good relationship with Whinstone could be restored.

5. LKC's discounted fees benefitted Rhodium by preserving cash flow. And indeed, over the course of the litigation, Whinstone's aggressive tactics, including refusal to arbitrate and self-help shutdowns, impinged on Rhodium's cash flow. The potential success fee aligned Rhodium's and LKC's incentives if Rhodium later pursued affirmative claims against Whinstone. The engagement letter also included a fixed fee for Jonathan Cohn's time that was intended to approximate his expected monthly fees at discounted rates.

6. Over the course of the engagement, LKC helped Rhodium successfully defend itself against Whinstone. LKC and Stris & Maher LLP obtained a temporary restraining order and three different injunctions, including two emergency injunctions after Whinstone shut down Rhodium's power. It is my belief that without the injunctions, Rhodium would likely have been forced out of business.

7. After Rhodium filed for bankruptcy, on September 14, 2024, Jonathan Cohn prepared a draft LKC retention application that set forth the specific terms of the May 2023 engagement letter, including the rate discounts and specific components of the potential success fee. At that time, the Rhodium-Whinstone dispute was in active litigation. It was not in Rhodium's interest to disclose to Whinstone the details of Rhodium's agreement with LKC. Ultimately, Rhodium via its bankruptcy counsel filed a retention application for LKC that disclosed that Rhodium's agreement with LKC included discounted hourly rates in exchange for a partial contingency fee based upon the successful outcome of the litigation. The retention application did not, however, disclose the specific details of the success fee.

8. It was my understanding at the time that the initial retention application was filed that its description of the partial contingency fee based upon the outcome of the litigation was sufficient to inform creditors and other interested parties about the existence of the success fee. This continued to be my understanding at least until February 2025.

9. To my knowledge, no issue was raised by a creditor or any other interested party with respect to payment of a contingency fee to LKC until around February 2025. On or around February 17, 2025, which was just two days before the scheduled mediation on February 19, 2025, I learned that counsel for the Ad Hoc Group had recently asserted that the details of the LKC contingency fee had to be disclosed in order for LKC to be paid any contingency fee. At that time I also learned that the Ad Hoc Group further asserted that because LKC's retention application did not disclose additional details, LKC should not be paid any contingency fee.

10. After Rhodium became aware that the Ad Hoc Group had raised this issue, Rhodium decided to address it regardless of whether the Ad Hoc Group's belatedly expressed concern was valid.

11. One option for Rhodium was to seek to amend the LKC retention application to include the specific terms of the May 2023 engagement letter. At that point, however, it appeared to be possible that Rhodium and Whinstone might reach a settlement involving *both* the affirmative case for damages *and* the sale to Whinstone of the Rhodium assets in Rockdale. Rhodium was concerned that the transaction documents might not identify what portion of the total proceeds is attributable to the affirmative case and what portion is attributable to the Rockdale assets. Although the engagement letter did not explicitly address this scenario (because Rhodium and LKC did not attempt to address every conceivable scenario that might hypothetically arise when they entered into the engagement in May 2023), Rhodium believed that LKC was owed a contingency fee under the terms of the agreement. A settlement on those terms would necessarily reflect value attributed to Rhodium's affirmative damages claims against Whinstone. Paying the contingency fee under those circumstances was thus consistent with Rhodium and LKC's intent at the outset.

12. Accordingly, Rhodium and LKC decided to amend the May 2023 engagement letter to expressly address this potential settlement scenario. Rhodium then submitted a proposed amendment to LKC's retention that both disclosed the original May 2023 engagement letter and the amended March 4, 2025 engagement letter.

13. Rhodium fully recognizes the value of the services that LKC provided over the past two years and also recognizes that LKC provided those services at a discounted rate in reliance on the potential success fee. LKC helped save Rhodium from going out of business multiple times and paved the way for a settlement with Whinstone. The value of LKC's services includes the affirmative claims against Whinstone that LKC helped develop and pursue in both the arbitration and the bankruptcy proceeding.

14. Rhodium had no intent to structure a deal with Whinstone that would attempt to circumvent LKC's success fee. Not paying the fee would be inconsistent with my understanding of Rhodium and LKC's intent. It is my opinion that it would also be unfair in light of LKC's successes and the discounted rates it provided for nearly two years.

15. Rhodium and LKC negotiated the language of the March 4, 2025 engagement letter in good faith and at arms' length. Rhodium and LKC also made other minor clarifying changes to the letter, including, for instance, specifying more precisely the trigger for the fee related to prevailing on Rhodium's interpretation of the contracts, which this Court addressed in resolving Debtors' Motion to Assume. The clarifying changes were consistent with the parties' intent from the beginning of the engagement, and in Rhodium's view, it was in the best interest of the estates to provide clarification.

16. Finally, although the objection to LKC's fee is being pressed by the Ad Hoc Group, I do not view payment of the fee as a matter between LKC and the Ad Hoc Group. LKC has represented Rhodium for two years through multiple periods of time when the survival of Rhodium's business was on the line. Together with Stris & Maher LLP, LKC obtained exceptional results for Rhodium and doing so often meant meeting imminent, after-hours needs and taking on emergency filings and emergency hearings on short notice. Rhodium has a reciprocal obligation to LKC and is committed to having LKC fully compensated for the work it has done and the success fee it has earned.

Dated: May 14, 2025

/s/Charles R. Topping
Charles R. Topping

EXHIBIT 17

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[1]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

APPLICATION FOR ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL

IF YOU OBJECT TO THE RELIEF REQUESTED, YOU MUST RESPOND IN WRITING. UNLESS OTHERWISE DIRECTED BY THE COURT, YOU MUST FILE YOUR RESPONSE ELECTRONICALLY AT HTTPS://ECF.TXSB.USCOURTS.GOV/ WITHIN TWENTY-ONE DAYS FROM THE DATE THIS MOTION WAS FILED. IF YOU DO NOT HAVE ELECTRONIC FILING PRIVILEGES, YOU MUST FILE A WRITTEN OBJECTION THAT IS ACTUALLY RECEIVED BY THE CLERK WITHIN TWENTY-ONE DAYS FROM THE DATE YOU WERE SERVED WITH THIS PLEADING. YOU MUST SERVE A COPY OF YOUR RESPONSE ON THE PERSON WHO SENT YOU THE NOTICE; OTHERWISE, THE COURT MAY TREAT THE PLEADING AS UNOPPOSED AND GRANT THE RELIEF REQUESTED.

TO THE UNITED STATES BANKRUPTCY JUDGE

Rhodium Encore LLC and its debtor affiliates, as debtors and debtors-in-possession in the above-captioned chapter 11 cases (collectively, "Debtors" or "Rhodium") respectfully submit this Application for Order Authorizing the Retention and Employment of Lehotsky Keller Cohn LLP

[1] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

as Special Litigation Counsel (the "Application") pursuant to sections 327(e), 328(a), 330, of 1107 of title 11 of the United States Code (the "Bankruptcy Code"), rules 2014 and 2016 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), rules 2014-1 and 2016-1 of the Local Bankruptcy Rules for the Southern District of Texas (the "Local Rules"), and paragraph 47 of the Procedures for Complex Chapter 11 Cases in the Southern District of Texas (the "Complex Case Procedures"). In support of this Application, Debtors submit the Declaration of Jonathan F. Cohn ("Cohn Declaration") and the Declaration of Charles Topping ("Topping Declaration").

JURISDICTION AND VENUE

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. §§ 157(b)(2)(A) and (O). Venue of Debtors' chapter 11 cases is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The relief requested in this Application is sought pursuant to 11 U.S.C. §§ 105, 327(e), 328(a), 330, 503, 507, and 1107(a).

BACKGROUND

3. On August 24, 2024 (the "Petition Date"), Debtors filed voluntary petitions under chapter 11 of the Bankruptcy Code. The factual background regarding Debtors, including their business operations, their capital and debt structures, and the events leading to the filing of Debtors' chapter 11 cases, is set forth in the Declaration of David M. Dunn in Support of Chapter 11 Petitions and First Day Relief (ECF No. 35).

4. On August 24, 2024, the Court entered an order jointly administering the bankruptcy cases under case number 24-90448 (ARP). *See* Order (I) Directing Joint Administration of Chapter 11 Cases; and (II) Granting Related Relief (ECF No. 8).

5. On August 24, 2024, Debtors filed a Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7). On August 29, 2024, Debtors filed a Supplemental Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 32).

6. Debtors now seek to retain Lehotsky Keller Cohn LLP as special litigation counsel for two separate matters. *See* Topping Decl. ¶ 6. Lehotsky Keller Cohn LLP represented Debtors in both matters before the Petition Date and continues to represent them in both matters currently. *Id.* ¶ 7. Lehotsky Keller Cohn LLP therefore has extensive knowledge of the factual and legal issues in each dispute and extensive knowledge of Debtors' business, corporate structure, and history. *Id.*

A. Whinstone Dispute

7. Debtors first seek to retain Lehotsky Keller Cohn LLP as special litigation counsel in its dispute with Whinstone US, Inc. (the "Whinstone Dispute"). As outlined below, the Whinstone Dispute consists of multiple lawsuits and an arbitration, and is the focus of Debtors' Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7) and Debtors' Supplemental Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 32) (collectively "Motions to Assume Contracts with Whinstone"). Lehotsky Keller Cohn LLP has represented Debtors in this critical and sweeping dispute with Whinstone since May of 2023 and thus has extensive knowledge of the legal and factual issues in the dispute. Topping Decl. ¶ 7.

8. The Whinstone Dispute, which is outlined fully in Debtors' Motion to Assume Certain Executory Contracts With Whinstone US, Inc. (ECF No. 7), began around May 2022 after Debtors' competitor, Riot, acquired Whinstone and became unhappy with the terms of the contracts between Whinstone and Debtors. At that time, Whinstone wrote to a number of

Rhodium entities, including Rhodium JV, to notify them that they had allegedly breached the Rhodium JV Profit Sharing Agreement (to which only Rhodium JV was a party) by failing to pay Whinstone the share of profits it was entitled to under the Agreement, and demanding over $10 million to remedy the breach.

9. A year later, in April 2023, Whinstone again alleged that various Rhodium entities were in breach of the Rhodium JV and Air HPC Profit Sharing Agreements by failing to pay Whinstone its share of profits and demanded $13.5 million to remedy the underpayments.

10. On May 2, 2023, Whinstone (flouting the parties' contractual agreement to arbitrate), filed breach of contract claims against certain Debtors in a case captioned *Whinstone US, Inc. v. Rhodium 30 MW LLC, Rhodium JV LLC, Air HPC LLC, and Jordan HPC LLC*, Cause No. CV41873, pending in the 20th District Court of Milam County, Texas (the "Milam County Litigation"). Whinstone now alleged that it was owed $26 million under the Rhodium JV and Air HPC Profit Sharing Agreements. It also sought a declaration that the two Profit Sharing Agreements replaced or superseded the Power Agreements it had with other Debtors.

11. Along with co-counsel (Stris & Maher LLP), Lehotsky Keller Cohn LLP appeared for Debtors in the Milam County Litigation, filed counterclaims against Whinstone, and successfully compelled the case to arbitration. In September 2023, the trial court ordered the parties to arbitrate and stayed the suit pending the outcome of the arbitration.

12. Instead of commencing arbitration, Whinstone (after a lengthy delay) sought mandamus review in the Texas appellate courts. *See In re Whinstone US, Inc.*, No. 03-23-00717-CV (Tex. App.—Austin). After Lehotsky Keller Cohn LLP successfully secured a victory for Rhodium in those proceedings, Whinstone engaged in extralegal, extracontractual self-help: The next business day, November 27, 2023, Whinstone, without notice and without cause, turned off

Debtors' power at the Rockdale site, forced Rhodium's staff out of the facility, declared the two Profit Sharing Agreements it has with Rhodium JV and Air HPC, respectively, terminated, and started the process of evicting Debtors.

13. Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, sought a temporary restraining order and a temporary injunction in the Milam County Litigation the next day to enjoin Whinstone's unlawful actions. The Milam County District Court granted both requests for relief and, on December 12, 2023, ordered Whinstone to "restore and maintain the status quo" including "with respect to the provision of electricity, access, and other services." The Court also ordered Debtors to post a $1 million bond, which they did.

14. In the meantime, and because Whinstone still had not commenced arbitration, Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, initiated arbitration against Whinstone in a case captioned *Rhodium JV LLC, Air HPC LLC, Rhodium 30MW LLC, Rhodium Encore LLC, Rhodium 2.0 LLC, Rhodium 10MW LLC, Jordan HPC LLC v. Whinstone US, Inc.*, Case No. 01-23-0005-7116, with the American Arbitration Association ("AAA") on December 11, 2023, relating to the claims and counterclaims at issue in the Milam County Litigation (the "Arbitration").

15. Despite the Temporary Injunction Order requiring Whinstone to "restore and maintain the status quo … *with respect to the provision of electricity*," Whinstone decided once again to turn off the power to Rhodium's operations. Late in the evening on Friday, January 12, 2024, Whinstone abruptly disconnected power to Building C at Rockdale—containing 80% of Rhodium's operations at the Rockdale Site. Whinstone attempted to justify cutting off the power by pointing to a trivial incident earlier that day, in which Rhodium had a minor failure of one of its over 600 cooling fans, resulting in a small spill of BitCool, a non-toxic, non-hazardous,

biodegradable coolant similar to a mineral oil that was used in Rhodium's immersion cooling systems. Whinstone, through a Riot attorney, sent Rhodium a "Notice of Suspension" that asserted it was suspending power indefinitely to Building C under the Rhodium JV Profit Sharing Agreement.

16. Because the AAA had yet to appoint an arbitrator, Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, sought emergency relief in the Milam County Litigation from the unlawful suspension. The Milam County District Court declined to grant further relief, finding it did not have jurisdiction to do so.

17. Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, asked the AAA to appoint an emergency arbitrator and to enjoin Whinstone from continuing to act on the Notice of Suspension. The AAA appointed Emergency Arbitrator James L. Young, who (on March 1 and 2, 2024) heard two full days of evidence and argument from the parties on Rhodium's motion for emergency relief. On March 7, 2024, the Emergency Arbitrator granted Rhodium's request for emergency relief, enjoined Whinstone from acting on the Notice of Suspension, and ordered Whinstone to restore power and services to Building C.

18. In the meantime, Whinstone had appealed the temporary injunction order issued in the Milam County Litigation. Lehotsky Keller Cohn LLP and Stris & Maher LLP again represented Debtors in that appeal. On March 27, 2024, the Texas Third Court of Appeals vacated that Temporary Injunction Order solely on the ground that certain provisions of the injunction order were vague. The appellate ruling did not disturb any of the district court's underlying factual or legal conclusions regarding the need for injunctive relief against the Notice of Termination.

19. On April 11, 2024, the AAA appointed former Texas Supreme Court Justice Harriet O'Neill as the Merits Arbitrator. One week later, Whinstone filed an "emergency" motion

to dissolve the Emergency Arbitrator's temporary injunction and a plea to jurisdiction. In addition, four days later, on April 22, 2024, Whinstone issued yet another Notice of Termination to Rhodium, this time purporting to terminate both the Profit Share Agreements with Rhodium JV and Air HPC, and all the Power Contracts with various Rhodium entities. As a result, Debtors, again represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP, were forced to file another request for emergency relief with the AAA, yet again seeking protection from Whinstone's efforts to evict it.

20. On June 4, 2024, Justice O'Neill issued an order denying all of Whinstone's motions, granting all of Debtors' motions, and setting the merits trial for January 20-25, 2025. The order enjoined Whinstone from acting on both of its Notices of Termination and its Notice of Suspension while the matter was litigated. Shortly thereafter, Justice O'Neill set a full schedule for the arbitration and the parties began discovery.

21. Unhappy with these results yet again, Whinstone turned back to the Milam County Litigation for relief. On June 5, 2024, Whinstone filed an "emergency" motion to vacate the Emergency Arbitrator's March 7, 2024 Order, but never noticed a hearing on the motion. Then on August 15, 2024, Whinstone filed an "emergency" motion to vacate Justice O'Neill's June 4, 2024 order and a motion to release the entirety of the $1 million bond Debtors had deposited with the Milam County District Court.

22. Unsuccessful in both the Milam County Litigation and the Arbitration, Whinstone tried another forum and another theory. On July 19, 2024, Whinstone filed a new action, this time in the District Court of Tarrant County, Texas: *Whinstone US, Inc. v. Imperium Investment Holdings LLC, Nathan Nichols, Chase Blackmon, Cameron Blackmon, Nicholas Cerasuolo, Rhodium Enterprises, Inc., Rhodium Technologies, LLC, and Rhodium Renewables, LLC*, Cause

No. 153-354718-24 (the "Tarrant County Litigation"). The main allegations paint Whinstone as a defrauded investor that suffered damages as a result of various capital transactions and expenditures by Debtors and their non-Debtor affiliates, which, Whinstone alleges, decreased the share of profits it expected from the Rhodium JV Profit Sharing Agreement. The Debtor defendants in that case (Rhodium Enterprises, Inc., Rhodium Technologies, LLC, and Rhodium Renewables, LLC) were represented by Lehotsky Keller Cohn LLP and Stris & Maher LLP.

23. Shortly after Debtors filed their Petitions in this Court on August 24, 2024, they filed suggestions of bankruptcy in the Milam County Litigation and the Arbitration. Thereafter, the Milam County Litigation and Arbitration were stayed. On September 2, 2024, certain Debtors removed the Tarrant County Litigation from state court to the United States Bankruptcy Court for the Northern District of Texas. They have moved to have the case transferred to this Court.

24. The Milam County Litigation, the Arbitration, and the Tarrant County Litigation all center around the same contractual dispute between Whinstone and Debtors. The parties' central disputes are which contracts are in effect and control the parties' relationship, how much is owed by the parties under those contracts, and whether Whinstone may lawfully terminate those contracts. These same disputes are the focus of the Motions to Assume Contracts With Whinstone (ECF Nos. 7, 32).

25. Debtors require knowledgeable counsel to represent them in the Whinstone Dispute. Lehotsky Keller Cohn LLP has represented Debtors in this Dispute from the beginning of litigation. Topping Decl. ¶ 7. It not only has substantial legal expertise, it has extensive historical knowledge of the factual and legal issues underlying the dispute. It is therefore uniquely positioned to effectively and efficiently continue representing Debtors in the Whinstone Dispute. *Id.* ¶¶ 7–8.

26. Lehotsky Keller Cohn LLP has billed Debtors for its work on the Whinstone Dispute, primarily on a hourly basis. All attorneys billed hourly, except one whose time was billed based on a monthly fixed fee. *Id.* ¶ 9. It will bill on the same basis, with an update to the Firm's 2024 standard rates, but still including the same discount and fixed fee for one attorney, if approved by this Court to serve as special litigation counsel. *Id.* ¶ 10. There is also a contingent fee depending on the outcome of litigation that has not changed. *Id.* ¶¶ 9–10.

Commented [WT1]: Change if Rhodium signs the newest engagement letter sent on 9/13/24

B. [redacted]

27. [redacted]

28. [redacted]

29. [redacted]

30. [redacted]

[redacted]

31. [redacted]

[redacted]

RELIEF REQUESTED

32. By this Application, and pursuant to sections 327(e), 328(a), and 330 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014-1 and 2016-1, and paragraph 47 of the Complex Case Procedures, Debtors request entry of an order approving the employment and retention of Lehotsky Keller Cohn LLP as its special litigation counsel in the [redacted] above described matters (the Whinstone Dispute and [redacted]) effective as of the Petition Date.

33. Bankruptcy Rule 2014(a) requires that an application for retention and employment pursuant to § 327 include the following: (1) specific facts showing the necessity for employment; (2) the name of the firm to be employed; (3) the reasons for the selection; (4) the professional services to be rendered; (5) any proposed arrangement for compensation; and (6) to the best of the applicant's knowledge, all of the person's connections with the debtor, creditor, any other party-in-interest, their respective attorneys and accountants, the United States Trustee, or any personnel employed in the Office of the United States Trustee. These requirements, and the requirements of the Local Rules, are addressed below.

A. The Necessity of Special Litigation Counsel, the Selection of Lehotsky Keller Cohn LLP, and the Proposed Scope of Services

34. Debtors have determined that the retention of special litigation counsel is necessary to protect their interests in the two above described matters. *See* Topping Decl. ¶ 6. Section 327(e) of the Bankruptcy Code states:

> The trustee, with the court's approval, may employ, for a specified special purpose, other than to represent the trustee in conducting the case, an attorney that has represented the debtor, if in the best interest of the estate, and if such attorney does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which such attorney is to be employed.

11 U.S.C. § 327(e).

35. "Section 327(e) promotes economy in administration by recognizing that continuing the retention of pre-petition counsel/creditors will avoid wasteful expense and delay that might result from having to hire disinterested counsel unfamiliar with the subject matter." *Pequeno v. Schmidt*, No. CV B-05-071, 2007 WL 9754362, at *4 (S.D. Tex. Sept. 27, 2007), *aff'd sub nom. In re Pequeno*, 299 F. App'x 372 (5th Cir. 2008) (cleaned up).

36. "The purpose for which an attorney is to be employed [under § 327(e)] must be specified and may not encompass bankruptcy services typically provided by the trustee's general bankruptcy counsel concerning the administration of the bankruptcy case." 3 COLLIER ON BANKRUPTCY ¶ 327.01 (16th ed. 2021).

37. Lehotsky Keller Cohn LLP has represented Debtors in these two matters since May of 2023 (Whinstone Dispute) and June [redacted] Topping Decl. ¶ 7. It continues to represent Debtors in all aspects of these two matters today. *Id.* Through its work, Lehotsky Keller Cohn LLP attorneys have gained extensive knowledge of Debtors' business, corporate structure, and the legal issues and relevant evidence at issue in each matter. *Id.* Based on Lehotsky Keller Cohn LLP's pre-petition work, Debtors believe that Lehotsky Keller Cohn

LLP is uniquely able to continue representing them in an effective and efficient manner in both matters. *Id.*

38. Lehotsky Keller Cohn LLP has represented Debtors in the Whinstone Dispute along with co-counsel Stris & Maher LLP. *Id.* ¶ 14. Lehotsky Keller Cohn LLP is a boutique firm with a small, but highly qualified, team of attorneys. The Whinstone Dispute has required a significant number of attorney hours, often on very short time frames. *Id.* ⁋ 8. Accordingly, Debtors retained both Lehotsky Keller Cohn LLP and Stris & Maher LLP, another small firm, to accomplish the substantial work needed to handle the Dispute. *Id.* ¶ 14. Both firms have extensive experience handling complex commercial disputes, such as this one. Lehotsky Keller Cohn LLP brings specialized knowledge of Texas law, practice, and procedure to the representation, while Stris & Maher LLP has broad knowledge of Debtors' business, corporate structure, and history. *Id.*

39. [redacted]

40. Based on the above, Debtors request that the Court enter an order permitting Debtors to retain and employ Lehotsky Keller Cohn LLP as follows:

a. Lehotsky Keller Cohn LLP, along with co-counsel Stris & Maher LLP, may represent Debtors in all matters in which the Whinstone Dispute is at issue, including specifically in the Motions to Assume Contracts With Whinstone (ECF Nos. 7, 32), and in the Tarrant County Litigation; and

b. [redacted]

B. Past Compensation Debtors Have Paid Lehotsky Keller Cohn LLP

41. Local Rule 2014-1(a) requires that any "application for employment by an attorney for the debtor . . . must have attached the statement required by Fed. R. Bankr. P. 2016(b) and § 329 of the Bankruptcy Code."

42. Section 329(a) requires "[a]ny attorney representing a debtor in a case" to "file with the court a statement of the compensation paid or agreed to be paid, if such payment or agreement was made after one year before the date of the filing of the petition, for services rendered or to be rendered in contemplation of or in connection with the case by such attorney, and the source of such compensation." 11 U.S.C. § 329(a).

43. As set forth in the Cohn Declaration: Lehotsky Keller Cohn LLP received its first retainer of $200,000 from Debtors to represent them in the Whinstone dispute on [date] 2023. Cohn Decl. ¶ 18. During the one year period prior to the Petition Date, Lehotsky Keller Cohn LLP received payments totaling $[amount] for fees and expenses in connection with the Whinstone Dispute, including the Tarrant County Litigation, and [redacted]. *Id.* ¶ 21. As of August 28, 2024, Debtors have paid all fees and expenses they owe to Lehotsky Keller Cohn LLP prior to the Petition Date, and have a remaining retainer of $400,000 on account with the Firm. *Id.* ¶ 22.

44. Federal Rule of Bankruptcy Procedure 16(b) requires "[e]very attorney for a debtor," to "file and transmit to the United States trustee . . . the statement required by § 329 of the Code including whether the attorney has shared or agreed to share the compensation with any other entity." The statement must "include the particulars of any such sharing or agreement to share by the attorney." *Id.* However, under section 504 of the Bankruptcy Code, "a person receiving compensation or reimbursement under section 503(b)(2) or 503(b)(4) of this title may not share or agree to share (1) any such compensation or reimbursement with another person; or

(2) any compensation or reimbursement received by another person under such sections." 11 U.S.C. 504(a).

45. As set forth in the Cohn Declaration, Lehotsky Keller Cohn LLP has neither shared nor agreed to share (a) any compensation or reimbursement it has received or may receive from Debtors with another person, other than the employees of Lehotsky Keller Cohn LLP, or (b) any compensation or reimbursement another person has received or may receive from Debtors. *See* Cohn Decl. ¶ 23.[2]

C. Proposed Arrangement for Future Compensation

46. Lehotsky Keller Cohn LLP has agreed to serve as special litigation counsel and to receive compensation from Debtors for its work on both above-described matters based on a combination of hourly billing, fixed fees, and contingent fees, plus reimbursement of the actual and necessary expenses that it incurs, subject to the approval of this Court, in compliance with sections 330 and 331 of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Complex Case Procedures, and/or any other orders of the Court. Topping Decl. ¶¶ 10–11. Lehotsky Keller Cohn LLP will also make a reasonable effort to comply with the requests for information and additional disclosures as set forth in the Guidelines for Reviewing Applications for Compensation and Reimbursement of Expenses filed under 11 U.S.C. § 330 by Attorneys in Larger Chapter 11 Cases, effective November 1, 2013 (the "U.S. Trustee Guidelines"), both in

[2] Again, Lehotsky Keller Cohn LLP worked with Stris & Maher LLP as co-counsel representing Debtors in the Whinstone Dispute. Topping Decl. ¶ 14. The two firms bill Debtors separately. *Id.* Lehotsky Keller Cohn LLP has not shared or agreed to share any compensation or reimbursement it has or may receive from Debtors with Stris & Maher LLP. Cohn Decl. ¶ 23. Similarly, Stris & Maher LLP has not shared or agreed to share any compensation or reimbursement it has or may receive from Debtors with Lehotsky Keller Cohn LLP. *Id.*

connection with this Application and any applications for compensation and reimbursement of expenses to be filed by Lehotsky Keller Cohn LLP in these chapter 11 cases.

47. For the Whinstone Dispute, Lehotsky Keller Cohn LLP agrees to receive fees on the basis of time billed at hourly rates, plus a contingent fee depending on the outcome of litigation. Cohn Decl. ¶ 6. Lehotsky Keller Cohn LLP's hourly rates vary with the seniority of its attorneys and are adjusted from time to time. *Id.* ¶¶ 6, 26. Work is assigned among attorneys so as to meet Debtors' needs, including timing requirements, in an economically efficient manner. *Id.* ¶ 9. Lehotsky Keller Cohn LLP agreed to discount its standard hourly rates in exchange for a contingent fee. *Id.* ¶ 6.

48. [redacted]

[redacted]

49. Expenses related to Lehotsky Keller Cohn LLP's services will be included in the monthly fee statements and quarterly fee applications and may include third-party disbursements, such as expert fees, and other costs. *Id.* ¶ 9. It is Lehotsky Keller Cohn LLP's intent to bill such expenses at cost. *Id.*

50. Lehotsky Keller Cohn LLP's fees and expenses incurred in connection with this representation are to be paid out of Debtors' estates. Lehotsky Keller Cohn LLP will apply to this Court for allowance of compensation and reimbursement of expenses in accordance with the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, the Complex Case Procedures, and any other applicable procedures and orders of the Court. *Id.* ¶ 25.

51. Lehotsky Keller Cohn LLP's standard rates for 2024 are as follows: $1400 per hour for name partners, $1300 per hour for other partners, $1000 per hour for counsel, $850 per hour for associates, and $500 per hour for a staff attorney. Cohn Decl. Sch. 3. These rates are

consistent with rates that Lehotsky Keller Cohn LLP has charged in other comparable complex cases with no variation based upon the geographical location of a case. *Id.* ¶ 6. For the Whinstone Dispute, however, Lehotsky Keller Cohn LLP has agreed to discount its rates in exchange for a contingent fee. For the first $250,000 of time at standard rates in a month, there will be a 20% discount. For the next $250,000 of time at standard rates in a month, there will be a 25% discount. For all additional time in a month, there will be a 30% discount. *Id.*

52. The contingent fee has three components: (a) $600,000 if (i) the contracts at issue in the Matter are not terminated and, if addressed by a court, Rhodium's interpretation of key contractual provisions is upheld or (ii) Rhodium is acquired by Whinstone or an affiliate; (b) 5% of any recovered energy credits up to $5 million, and 1% of any additional recovered energy credits; and (c) 10% of any additional damages not attributable to energy credits that Rhodium recovers, including, but not limited to, compensatory damages, incidental or consequential damages, punitive or exemplary damages, civil fines, costs, and attorneys fees. *Id.* ¶ 7.

53. Debtors recognize that they have the responsibility to closely monitor the billing practices of their counsel to ensure that the fees and expenses paid by the estates remain consistent with Debtors' expectations and the exigencies of these chapter 11 cases. Topping Decl. ¶ 13. Debtors will review and monitor the invoices that Lehotsky Keller Cohn LLP submits. *Id.*

D. Lehotsky Keller Cohn LLP Will Avoid Duplicative Work

54. Debtors have retained various other restructuring professionals and counsel in these chapter 11 cases for particular purposes. Debtors, Lehotsky Keller Cohn LLP, and such other counsel have fully discussed Lehotsky Keller Cohn LLP's role in these chapter 11 cases so as to avoid duplication of work. *See* Topping Decl. ¶ 14. Rather than resulting in any extra expense to Debtors' estates, it is anticipated that the efficient coordination of efforts of Debtors' attorneys and other professionals will promote the efficient prosecution and effective administration of

these chapter 11 cases. *Id.* Lehotsky Keller Cohn LLP has agreed to make reasonable efforts to avoid duplication of services by any other professionals employed by Debtors. Cohn Decl. ¶ 10.[3]

E. Lehotsky Keller Cohn LLP Neither Holds Nor Represents Any Adverse Interest

55. To the best of Debtors' knowledge, information, and belief, as set forth in the Cohn Declaration, Lehotsky Keller Cohn LLP, does not represent or hold any interest adverse to Debtors or their estates with respect to the matters on which Lehotsky Keller Cohn LLP is to be employed. *See* Cohn Decl. ¶ 14. Additionally, Lehotsky Keller Cohn LLP will conduct an ongoing review of its files to ensure that it continues to neither represent nor hold any interests adverse to Debtors or their estates with respect to the matters on which Lehotsky Keller Cohn LLP is to be employed pursuant to this Application. *Id.*

56. Bankruptcy Rule 2014(a) requires that any application for order of employment must "be accompanied by a verified statement of the person to be employed setting forth the person's connections with the debtor, creditors, any other party in interest, their respective attorneys and accountants, the United States trustee, or any person employed in the office of the United States trustee." The Cohn Declaration sets forth this required information. *See* Cohn Decl. ¶¶ 13–16.

* * *

Debtors respectfully request that this Court enter an order allowing the retention and employment of Lehotsky Keller Cohn LLP as special litigation counsel upon the terms described

[3] Again, Lehotsky Keller Cohn LLP has worked with Stris & Maher LLP as co-counsel representing Debtors in the Whinstone Dispute. Cohn Decl. ¶ 10 n.2. The firms have worked together to ensure their work is not duplicative and will continue to do so if approved by the Court to serve as special litigation counsel.

in this Application and for such other and further relief as the Court may deem just and appropriate.

Respectfully submitted this __th day of September, 2024.

QUINN EMANUEL URQUHART & SULLIVAN, LLP

/s/ Draft

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Counsel for Debtors and Debtors in Possession

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Draft
Patricia B. Tomasco

Certificate of Service

I, Patricia B. Tomasco, hereby certify that on the __th day of September, 2024, a copy of the foregoing Motion was served by the Electronic Case Filing System for the United State Bankruptcy Court for the Southern District of Texas.

/s/ Draft
Patricia B. Tomasco

IN THE UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	Chapter 11
	§	
RHODIUM ENCORE LLC, *et al.*,[4]	§	Case No. 24-90448 (ARP)
	§	
Debtors.	§	
	§	(Jointly Administered)
	§	

ORDER GRANTING THE APPLICATION FOR ORDER AUTHORIZING THE RETENTION AND EMPLOYMENT OF LEHOTSKY KELLER COHN LLP AS SPECIAL LITIGATION COUNSEL
(ECF No. _____)

This matter comes before the Court upon the application, dated __ (the "Application"),[5] of Rhodium Encore LLC and its debtor affiliates, as debtors and debtors in possession (collectively, "Debtors"), for entry of an order, pursuant to sections 327(e), 328(a), 330, and 1107 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014-1 and 2016-1, and paragraph 47 of the Procedures for Complex Case Procedures, authorizing Debtors to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel in connection with two separate matters.

The Court has considered the Application and the Cohn Declaration and the Topping Declaration submitted therewith. This Court has jurisdiction to consider the Application and the relief requested therein pursuant to 28 U.S.C. § 1334. Venue is proper before this Court pursuant

[4] Debtors in these chapter 11 cases and the last four digits of their corporate identification numbers are as follows: Rhodium Encore LLC (3974), Jordan HPC LLC (3683), Rhodium JV LLC (5323), Rhodium 2.0 LLC (1013), Rhodium 10MW LLC (4142), Rhodium 30MW LLC (0263), Jordan HPC Sub LLC (0463), Rhodium 2.0 Sub LLC (5319), Rhodium 10MW Sub LLC (3827), Rhodium 30MW Sub LLC (4386), Rhodium Encore Sub LLC (1064), Rhodium Enterprises, Inc. (6290), Rhodium Industries LLC (4771), Rhodium Ready Ventures LLC (8618), Rhodium Renewables LLC (0748), Rhodium Renewables Sub LLC (9511), Rhodium Shared Services LLC (5868), and Rhodium Technologies LLC (3973). The mailing and service address of Debtors in these chapter 11 cases is 2617 Bissonnet Street, Suite 234, Houston, TX 77005.

[5] Capitalized terms used but not otherwise defined herein have the meanings ascribed to such terms in the Application.

to 28 U.S.C. §§ 1408 and 1409. The Court may consider and rule on the Application as it is a core proceeding pursuant to 28 U.S.C. § 157(b).

The Court is satisfied, based on the representations made in the Application and Cohn Declaration that Lehotsky Keller Cohn LLP "does not represent or hold any interest adverse to the debtor or to the estate with respect to the matter on which [Lehotsky Keller Cohn LLP] is to be employed," as required by 11 U.S.C. § 327(e). The Court is satisfied that due and proper notice of the Application was provided, that such notice was adequate and appropriate under the circumstances, and no other or further notice need be provided. All objections, if any, to the Application have been withdrawn, resolved, or overruled. The Court has determined that the legal and factual bases set forth in the Application establish just cause to grant the relief requested therein. The relief requested in the Application is necessary for Debtors' reorganization and is in the best interest of Debtors and their respective estates and creditors. Accordingly,

IT IS HEREBY ORDERED THAT:

1. Debtors are authorized, but not directed, pursuant to sections 327(e), 328(a), 329, and 504 of the Bankruptcy Code, Bankruptcy Rules 2014 and 2016, Local Rules 2014 and 2016, and paragraph 47 of the Complex Case Procedures, to retain and employ Lehotsky Keller Cohn LLP as special litigation counsel in these chapter 11 cases, effective as of the Petition Date, as follows:

   a. Lehotsky Keller Cohn LLP, along with co-counsel Stris & Maher LLP, may represent Debtors in all matters in which the Whinstone Dispute is at issue, including specifically in the Motions to Assume Contracts With Whinstone (ECF Nos. 7, 32), and in the Tarrant County Litigation; and

b. Lehotsky Keller Cohn LLP may represent Debtors [redacted]

[redacted]

2. Debtors shall retain and employ Lehotsky Keller Cohn LLP under a general retainer in accordance with Lehotsky Keller Cohn LLP's normal hourly rates and disbursement policies, as contemplated by the Application.

3. Lehotsky Keller Cohn LLP shall be compensated in accordance with, and will file interim and final fee applications for allowance of its compensation and expenses, and shall be subject to, sections 330 and 331 of the Bankruptcy Code and applicable provisions of the Bankruptcy Rules, the Local Rules, the U.S. Trustee Guidelines and any other applicable procedures and orders of the Court. For billing purposes, Lehotsky Keller Cohn LLP will keep its time in one-tenth (1/10) hour increments in accordance with the U.S. Trustee Guidelines. Lehotsky Keller Cohn LLP also intends to make a reasonable effort to comply with the U.S. Trustee's requests for information and additional disclosures as set forth in the U.S. Trustee Guidelines, both in connection with the Application and any interim and final fee applications to be filed by Lehotsky Keller Cohn LLP in these chapter 11 cases. All billing records filed in support of Lehotsky Keller Cohn LLP's fee applications will use an open and searchable LEDES or other electronic data format and will use the U.S. Trustee's standard project categories.

4. Lehotsky Keller Cohn LLP shall be reimbursed for reasonable and necessary expenses as provided by the U.S. Trustee Guidelines.

5. Lehotsky Keller Cohn LLP shall use its best efforts to avoid any duplication of services provided by any of Debtors' other retained professionals in these chapter 11 cases.

6. Lehotsky Keller Cohn LLP shall provide seven days' notice to Debtors, the U.S. Trustee, and the attorneys for any statutory committee appointed in these chapter 11 cases of any

increase in Lehotsky Keller Cohn LLP's hourly rates as set forth in the Cohn Declaration. The U.S. Trustee retains all rights to object to any rate increase on all grounds, including the reasonableness standard set forth in section 330 of the Bankruptcy Code, and the Court retains the right to review any rate increase pursuant to section 330 of the Bankruptcy Code.

7. To the extent the Application is inconsistent with this Order, the terms of this Order shall govern.

8. Debtors are authorized to take all actions necessary or appropriate to carry out the relief granted in this Order.

9. This Court retains jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, or enforcement of this Order.

Dated: _____, 2024

The Honorable Alfredo R. Pérez
United States Bankruptcy Judge

EXHIBIT 18

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May 30, 2025

VIA ELECTRONIC MAIL
MHURLEY@AKINGUMP.COM
Mitchell P. Hurley
Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
Bank of America Tower
New York, NY 10036

Re: ***Rhodium Encore LLC, et al., Case No. 24-90448***

Dear Counsel:

On behalf of the Debtors and Debtors-in-Possession ("Debtors"), we are producing documents Bates numbered REI0727420-REI0727956 both in response to your requests for tax work papers and as required by the Court's forthcoming *Order Regarding the Emergency Motion of the SAFE AHG to Compel Production by Imperium Parties and Debtors* ("Discovery Order"). This production now concludes the Debtors productions pursuant to its agreement to provide informal discovery.

With respect to the documents required by paragraph 3(b) of the forthcoming Discovery Order, the Lehotsky Keller Cohn LLP ("LKC") invoices do not identify any of the time Mr. Cohn devoted to the Whinstone litigation pre-petition. Mr. Cohn was retained on a fixed fee regardless of the number of hours worked and therefore did not record his hours; instead, administrative staff inserted a single input for billing purposes. LKC has retained counsel and you may contact them if you have any questions.

The Debtors had previously agreed to provide discovery under Federal Rule of Bankruptcy Procedure 2004 without compliance with the Local Bankruptcy Rules and Complex Case Procedures. As you know, the purpose of that agreement was to ensure that providing discovery to ad hoc group of SAFE parties ("SAFE AHG") would not interfere with the ongoing litigation against Whinstone US, Inc. ("Whinstone"). Pursuant to that agreement, the Debtors have now produced to SAFE AHG 35 volumes totaling 92,110 documents. Given the volume of information provided to date, the fact that the transaction with Whinstone has closed, the SAFE AHG's

publication of allegations against the Debtors' management, and the pendency of multiple contested matters such as the omnibus objection to proofs of claim filed by the SAFE parties and the motion to approve the adequacy of the Debtors' disclosure statement, the Debtors withdraw their agreement to provide informal discovery and will no longer produce documents to the SAFE AHG absent full compliance with the Federal Rules of Bankruptcy Procedure, Local Bankruptcy Rules, Complex Case Procedures, and all other applicable law. As just one example, requests for productions of documents must be made pursuant to Fed. R. Civ. P. 34 and provide sufficient time to object to the requests and provide documents thereafter.

The Debtors reserve all rights, including the right to re-urge their Motion for Protective Order, should the SAFE AHG fail to conduct any future discovery in strict compliance with the applicable rules.

Sincerely,

Patricia Tomasco