PIN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (BLS)
Debtors.	)	(Jointly Administered)

NOTICE OF (I) SUCCESSFUL BIDDER FOR THE SALE OF CERTAIN OF THE DEBTORS' RESPIRATORY DIAGNOSTICS ASSETS, (II) PROPOSED PURCHASE AGREEMENT IN CONNECTION THEREWITH, AND (III) PROPOSED SALE ORDER IN CONNECTION THEREWITH

PLEASE TAKE NOTICE that, on June 9, 2024, each of the above-captioned debtors and certain of its subsidiaries (collectively, the "Debtors") filed a petition with this Court under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

PLEASE TAKE FURTHER NOTICE that, on July 11, 2024, the United States Bankruptcy Court for the District of Delaware (the "Court") entered the *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VI) Granting Related Relief* [Docket No. 249] (the "Bidding Procedures Order"), authorizing the Debtors to solicit and select the highest or otherwise best offer(s) for a sale (or sales) (each, a "Sale Transaction") of (a) all or substantially all of the assets or (b) one or more, or any combination of, assets of one or more Debtors.[2]

PLEASE TAKE FURTHER NOTICE that the Debtors, in the exercise of their reasonable and good-faith business judgment, have selected Trudell Medical Limited ("Trudell") as the Successful Bidder (the "Purchaser") in connection with the sale of certain of the Debtors' Respiratory Diagnostics Assets and cancelled any auction in connection with the sale of such assets.

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1 The last four digits of Debtor Vyaire Medical, Inc.'s federal tax identification number are 6495. A complete list of each of the Debtors in these chapter 11 cases and each such Debtor's federal tax identification number may be obtained on the website of the Debtors' claims and noticing agent at https://omniagentsolutions.com/Vyaire. The location of Debtor Vyaire Medical, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 26125 North Riverwoods Boulevard, Mettawa, Illinois, USA 60045.

2 Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that, as set forth more fully in that certain asset purchase agreement, attached hereto as **Exhibit A** (the "Trudell Asset Purchase Agreement"), entered into with Trudell in connection with the sale of such Respiratory Diagnostics Assets (the "Acquired Assets"), between the Debtors (collectively, the "Sellers") and the Purchaser, the Successful Bid provides, among other things and as set forth in the Trudell Asset Purchase Agreement, cash consideration in the amount of $53.5 million and the assumption of certain liabilities in exchange for the Acquired Assets.

PLEASE TAKE FURTHER NOTICE that the Debtors have determined to effectuate the Sale Transaction as reflected in the Trudell Asset Purchase Agreement.

PLEASE TAKE FURTHER NOTICE that the proposed form of order that the Debtors will seek to have the Court enter to authorize the Sale Transaction under the Trudell Asset Purchase Agreement is attached hereto as **Exhibit B**. The Debtors reserve the right to modify such proposed order prior to the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale Transaction of these Assets to the Purchaser at the Sale Hearing scheduled to commence on **August 26, 2024, at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Judge Brendan L. Shannon, United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, 6th Floor, Courtroom No. 1, Wilmington, Delaware 19801. The Sale Hearing may be adjourned by announcement in open Court or on the Court's calendar without any further notice required.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, the Debtors, with the consent of the Required DIP Lenders, and in consultation with the Committee, may adjourn any key dates and deadlines in the Bidding Procedures Order by filing a notice with the Court reflecting any such changes.

PLEASE TAKE FURTHER NOTICE that objections specific to the (i) the particular terms of the proposed Sale Transaction as contemplated in the Trudell Asset Purchase Agreement or (ii) the identity of the Successful Bidder for the Respiratory Diagnostics Assets are due on or before **August 21, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Transaction Objection Deadline"). Any such objection must be made in writing, state the basis of such objection with specificity, and shall be filed with the Court, with a courtesy copy to chambers, and must be filed no later than the Transaction Objection Deadline and must be served on the following parties: (i) the Debtors, 26125 North Riverwoods Boulevard, Mettawa, Illinois, 60045; (ii) co-counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), Chris Ceresa (chris.ceresa@kirkland.com), and Tiffani Chanroo (tiffani.chanroo@kirkland.com), and Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com) and Yusuf U. Salloum (yusuf.salloum@kirkland.com); (iii) co-counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, Attn: Patrick J. Reilley, Esq. (preilley@coleschotz.com), and Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com); and (iv) the Debtors' investment banker, PJT Partners LP, 280 Park Avenue, New York, New York 10017, Attn: Michael Schlappig (schlappig@pjtpartners.com), Jaimie Baird (baird@pjtpartners.com), and Dylan Friesner (friesner@pjtpartners.com). (v) counsel to the 1L Ad Hoc Group, (i) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, Attn.: Scott J. Greenberg (sgreenberg@gibsondunn.com), Jason Zachary Goldstein (jgoldstein@gibsondunn.com), Joshua Brody (jbrody@gibsondunn.com), and Kevin Liang (kliang@gibsondunn.com) and (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn.: Laura Davis Jones (ljones@pszjlaw.com); (vi) counsel to the Committee, McDermott Will & Emery LLP, One Vanderbilt Avenue, New York, NY 10017-3852, Attn: Darren Azman (dazman@mwe.com) and Kristin Going (kgoing@mwe.com) and McDermott Will & Emery LLP, The Brandywine Building, 1000 N. West Street, Suite 1400, Wilmington, Delaware 19801, Attn.: David Hurst (dhurst@mwe.com) and Maris Kandestin (mkandestin@mwe.com); (vii) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, (viii) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Benjamin A. Hackman (benjamin.a.hackman@usdoj.gov); and (ix) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (such parties, collectively, the "Notice Parties").

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures Order, any objection to the adequate future performance of Trudell as a Successful Bidder ***must***: (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, and (c) be filed with the Court and served so as to be ***actually received*** by no later than **August 21, 2024 at 4:00 p.m. (prevailing Eastern Time)** on the Notice Parties; *provided* that, to the extent not consensually resolved, any such objection may be set for hearing at a date and time following the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that at the Sale Hearing, the Debtors will seek the Court's approval of the Successful Bid by the Purchaser. Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the Sale Transaction, and there will be no further bidding at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, unless an objection is timely filed regarding the assumption or assignment to the Successful Bidder of a contract or lease, such contract or lease shall be assumed and assigned to the Successful Bidder as of the closing date of the applicable Sale Transaction (the "Assignment Date").

PLEASE TAKE FURTHER NOTICE that this Successful Bidder Notice is subject to the terms and conditions of the Bidding Procedures and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information concerning the above-captioned chapter 11 cases at the website maintained in these chapter 11 cases at https://omniagentsolutions.com/Vyaire.

Dated: August 20, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

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Co-Counsel to the Debtors and Debtors in Possession

<u>Exhibit A</u>

Trudell Asset Purchase Agreement

ASSET PURCHASE AGREEMENT

DATED AS OF AUGUST [20], 2024

BY AND AMONG

PURCHASER,

AND

VYAIRE HOLDING COMPANY

AND ITS SUBSIDIARIES NAMED HEREIN, AS SELLERS

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ASSET PURCHASE AGREEMENT

This Asset Purchase Agreement (this "Agreement"), dated as of August [20], 2024, is made by and among Trudell Medical Limited, an Ontario corporation ("Purchaser"), and Vyaire Holding Company, a Delaware corporation (as in existence on the date hereof as a debtor-in-possession, and as reorganized as a Debtor, as applicable, "Vyaire") and the Subsidiaries of Vyaire that are indicated on the signature pages attached hereto (together with Vyaire, each a "Seller" and collectively "Sellers"). Purchaser and Sellers are referred to herein individually as a "Party" and collectively as the "Parties." Capitalized terms used and not otherwise defined herein shall have the meanings set forth in Article XI.

WHEREAS, on June 9, 2024, Sellers, together with certain of Sellers' Subsidiaries and Affiliates (the "Debtors"), commenced voluntary cases under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code"), in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), which cases are jointly administered for procedural purposes under Case No. 24-11217 (BLS) (collectively, the "Bankruptcy Cases");

WHEREAS, on June 10, 2024, Debtors filed a motion (Docket No. 16) for entry of an Order approving bidding procedures in connection with the sale of substantially all of their assets, among other things;

WHEREAS, on July 11, 2024, the Bankruptcy Court entered the Order (I) Approving Bidding Procedures in Connection With the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures For the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granted Related Relief (Docket No. 249) (the "Bidding Procedures Order");

WHEREAS, in the absence of Sellers acceptance of a superior bid made in accordance with the Bidding Procedures Order, Purchaser shall purchase the Acquired Assets and assume the Assumed Liabilities from Sellers, and Sellers shall sell, convey, assign, and transfer to Purchaser the Acquired Assets together with the Assumed Liabilities, in a sale authorized by the Bankruptcy Court pursuant to, *inter alia*, sections 105, 363 and 365 of the Bankruptcy Code, in accordance with the other applicable provisions of the Bankruptcy Code and the Federal Rules of Bankruptcy Procedure and the local rules for the Bankruptcy Court, all on the terms and subject to the conditions set forth in this Agreement and subject to the entry and terms of the Sale Order; and

WHEREAS, Sellers have certain Subsidiaries and Affiliates that are not debtors-in-possession in the Bankruptcy Cases and not subject to the jurisdiction of the Bankruptcy Court, but which possess certain assets (including executory Contracts) that are necessary for the operation of the Business (collectively, the "Non-Debtors").

NOW, THEREFORE, in consideration of the foregoing and the mutual representations, warranties, covenants, and agreements set forth herein, intending to be legally bound hereby, the Parties hereby agree as follows.

ARTICLE I
PURCHASE AND SALE OF THE ACQUIRED ASSETS; ASSUMPTION OF ASSUMED LIABILITIES

Section 1.1 Purchase and Sale of Acquired Assets. Pursuant to sections 105, 363 and 365 of the Bankruptcy Code, on the terms and subject to the conditions set forth herein and in the Sale Order, at the Closing, Sellers shall sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from the applicable Seller, all of such Seller's right, title and interest in and to, as of the Closing, the Acquired Assets, free and clear of all Encumbrances other than Permitted Encumbrances. "Acquired Assets" means all of the properties, rights, interests and other assets that are Related to the Business, whether tangible or intangible, real, personal, or mixed, wherever located and whether or not required to be reflected on a balance sheet prepared in accordance with GAAP, including any such properties, rights, interests, and other assets acquired by any Seller after the date hereof and prior to the Closing that are Related to the Business, and including Sellers' right, title and interest in and to, as of the Closing, the following assets of Sellers, but excluding in all cases the Excluded Assets:

(a) subject to Section 1.5, all Contracts (i) listed on Schedule 1.1(a), (ii) all purchase orders or similar instruments, in each case, that are either with (A) customers, including end customers, distributors, resellers and channel partners of the Business, or (B) vendors, service providers, manufacturers or suppliers to the Business, and (iii) that are leases governing tangible assets otherwise included in the Acquired Assets, but in all cases, excluding Leases, which are addressed in Section 1.1(d) (collectively, the "Assigned Contracts");

(b) all accounts receivable, notes receivable, negotiable instruments, chattel paper, and other rights to payment of any Seller, in each case to the extent Related to the Business, together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto, and in each case other than owing from any other Seller;

(c) all Documents that are Related to the Business (including organizational documents of the Acquired Entities, copies of the organizational documents of Sellers, and copies of the Transferred Employee Records), but excluding from the foregoing any credit card numbers or related customer payment sources, social security numbers, or other information to the extent prohibited by Law;

(d) the Leased Real Property listed on Schedule 1.1(d) (the "Acquired Leased Real Property" and the Lease governing any Acquired Leased Real Property, an "Acquired Lease"), including any Leasehold Improvements and all permanent fixtures, improvements, and appurtenances thereto;

(e) all tangible assets (including Equipment) of Sellers that are Related to the Business, including the tangible assets of Sellers located at any Leased Real Property and any such tangible assets on order to be delivered to any Seller; provided that, with respect to any such tangible asset that is leased to any Seller, the lease agreement covering such leased tangible asset is an Assigned Contract;

(f) all rights against third parties (including customers, suppliers, vendors, merchants, manufacturers and counterparties to any Assigned Contract) that are Related to the Business, whether known or unknown, contingent or noncontingent, including causes of action, claims, counterclaims, defenses, credits, rebates (including any vendor or supplier rebates), demands, allowances, non-Tax refunds, causes of action, rights of set off, rights of recovery, rights of recoupment or rights under or with respect to express or implied guarantees, warranties, representations, covenants or indemnities made by such third parties;

(g) all Tax attributes and Tax assets that transfer to Purchaser by automatic operation of law as a result of such Purchaser acquiring the Acquired Assets or Business, and any Tax refunds solely to the extent such refunds relate to Assumed Taxes ("Purchaser Tax Benefits");

(h) all Equity Interests that any Seller owns in the Persons set forth on Schedule 1.1(h) (the "Transferred Subsidiaries" and, together with the Subsidiaries of any Transferred Subsidiary, the "Acquired Entities");

(i) to the extent transferable under applicable Law, all of the rights, interests and benefits (if any) accruing under all Permits and Governmental Authorizations that are Related to the Business, and all pending applications therefor, and, to the extent transferable under applicable Law, all such Permits and Governmental Authorizations and pending applications therefor are set forth in Schedule 1.1(i);

(j) all Intellectual Property owned directly or indirectly by the Sellers that is Related to the Business, all rights to collect royalties and proceeds in connection with such Intellectual Property with respect to the period from and after the Closing, all rights to sue and recover for past, present and future infringements, dilutions, misappropriations of, or other conflicts with, such Intellectual Property and any and all corresponding rights that, now or hereafter, may be secured throughout the world, including the Intellectual Property set forth on Schedule 1.1(j) (collectively, the "Acquired Intellectual Property");

(k) all Inventory and supplies of the Sellers that are Related to the Business; and

(l) all goodwill, payment intangibles and general intangible assets and rights of Sellers that are Related to the Business.

Section 1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement, in no event shall Sellers be deemed to sell, transfer, assign, convey or deliver, and Sellers shall retain all right, title and interest to, in and under the following properties, rights, interests and other assets of Sellers (collectively, the "Excluded Assets"):

(a) all properties, rights, interests and other assets expressly excluded pursuant to Section 1.1(c) and Section 1.1(e);

(b) all Cash and Cash Equivalents of Sellers, all bank accounts, and all deposits (including maintenance deposits, and security deposits for rent, electricity, telephone or otherwise) or prepaid or deferred charges and expenses, including all lease and rental payments, that have been prepaid by any Seller, and any retainers or similar amounts paid to Advisors or other professional service providers, for clarity it is understood that in all cases any of the foregoing in this Section 1.2(b) held by any of the Acquired Entities is not an Excluded Asset;

(c) subject to Section 1.5, all Contracts of Sellers listed on Schedule 1.2(c) (collectively, the "Excluded Contracts");

(d) all Documents (i) to the extent they relate to any of the Excluded Assets or Excluded Liabilities, (ii) that are Sellers' financial accounting Documents, Tax Returns and records (and any related work papers), (iii) all minute books, organizational documents, stock certificates or other Equity Interests instrument, stock registers and such other books and records of any Seller pertaining to the ownership, organization or existence of such Seller, corporate seal, checkbooks, and canceled checks, (iv) that any Seller is required by Law to retain or (v) that are governed under applicable data privacy Laws that prohibit the transfer or sale of Personal Information, solely, with respect to (ii), to the extent such Documents are not Related to the Business; provided that Purchaser shall have the right to receive (x) copies of any Documents that relate in any way to the Business (other than Excluded Tax Returns), (y) redacted copies of any reasonably requested relevant portions of such Documents that relate to any business of Seller (other than Excluded Tax Returns), to the extent not prohibited by applicable Law, and (z) pro forma or redacted portions of any Excluded Tax Returns requested by Purchaser that are reasonably available to the Sellers and their Affiliates and reasonably relevant to Taxes of the Acquired Entities or Acquired Assets;

(e) all documents prepared or received by any Seller or any of its Affiliates (other than the Acquired Entities, except where privilege originates with any Seller) or on their behalf in connection with the sale of the Acquired Assets, this Agreement or the other Transaction Agreements, the Transactions, or the Bankruptcy Case, including (i) all records and reports prepared or received by Sellers or any of their respective Affiliates or Advisors in connection with the sale of the Acquired Assets and the Transactions, including all analyses relating to the business of any Seller or its Affiliates so prepared or received, (ii) all bids and expressions of interest received from third parties with respect to the acquisition of any of Sellers' businesses or assets, (iii) all privileged materials, documents and records of any Seller or any of its Affiliates (other than the Acquired Entities), including any privileged materials, documents and records where privilege originates with any Seller that are in the possession of any Acquired Entity, (iv) confidentiality agreements with prospective purchasers of the Acquired Assets or the Assumed Liabilities or any portion thereof, and (v) any other files or records to the extent relating exclusively to any Excluded Assets, Excluded Liabilities or the Bankruptcy Case;

(f) all current and prior insurance policies and Employee Benefit Plans of any Seller or its Affiliates, including for the avoidance of doubt all director and officer insurance policies, and all rights and benefits of any nature of Sellers or its Affiliates with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to any such insurance recoveries;

(g) all Equity Interests of any Seller or any of their respective Subsidiaries, or any other Person, in all cases, other than the Equity Interests of the Acquired Entities;

(h) (i) all preference or avoidance claims or actions arising under the Bankruptcy Code or applicable Law, (ii) to the extent not Related to the Business, all other rights, claims, causes of action, rights of recovery, rights of set-off, and rights of recoupment as of the Closing of any Seller, in each case, arising out of or relating to events occurring on or prior to the Closing Date, and (iii) all claims that any Seller may have against any Person with respect to any other Excluded Assets or any Excluded Liabilities;

(i) Sellers' claims, causes of action or other rights under this Agreement, including the Closing Consideration hereunder, or any agreement, certificate, instrument, or other document executed and delivered between any Seller or its Affiliates and Purchaser in connection with the Transactions, or any other agreement between any Seller or its Affiliates and Purchaser entered into on or after the date hereof, but excluding any agreement between any Acquired Entities and Purchaser;

(j) all Tax refunds, Tax attributes and Tax assets, other than Purchaser Tax Benefits;

(k) every asset of Sellers or their Affiliates that would otherwise constitute an Acquired Asset (if owned immediately prior to the Closing) if conveyed or otherwise disposed of during the period from the date hereof until the Closing Date (i) in the Ordinary Course, (ii) as authorized by a Final Order of the Bankruptcy Court, or (iii) as otherwise expressly permitted by the terms of this Agreement;

(l) all demands, credits, statements, allowances, refunds, rebates (including any vendor or supplier rebates), rights (including under or with respect to express or implied guarantees, warranties, representations, covenants and indemnities), claims, counterclaims, defenses, credits, causes of action, rights of set off, rights of recovery or rights of recoupment relating to or arising against suppliers, vendors, merchants, manufacturers and counterparties to Leases, or any Contract to which Seller or its Affiliates (other than Acquired Entities) is a party, arising out of or relating to events occurring prior to the Closing Date;

(m) all Liabilities or other amounts owing from any Sellers or any of their respective Affiliates (other than the Acquired Entities);

(n) Seller Names and Internet domain names that include or incorporate Seller Names;

(o) all Permits that are not assignable or that are not permitted to be transferred to Purchaser, in each case, under applicable Law; and

(p) the properties, rights, interests and assets set forth on Schedule 1.2(p).

Section 1.3 Assumption of Certain Liabilities. On the terms and subject to the conditions set forth herein and in the Sale Order, effective as of the Closing, in addition to the payment of the Cash Payment in accordance with Section 2.1, Purchaser shall irrevocably assume from each Seller (and from and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and Sellers (or with respect to Taxes, if applicable, Sellers' applicable Affiliate) shall irrevocably transfer, assign, convey, and deliver to Purchaser, only the following Liabilities, without duplication and only to the extent not paid, performed, discharged or otherwise satisfied prior to the Closing (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations of any Seller under the Assigned Contracts arising out of, first accrued, or relating to the period beginning on or after the Closing Date based on facts, actions, omissions, circumstances or conditions occurring or accruing after the Closing;

(b) all cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Assigned Contracts as set forth on Schedule 1.3(b) ("Cure Costs");

(c) all Liabilities (including all government charges or fees) arising out of the Purchaser's conduct of the Business or the Purchaser's ownership or operation of the Acquired Assets or the Business, in each case, arising out of, first accrued, or relating to the period beginning on or after the Closing Date based on facts, actions, omissions, circumstances or conditions occurring after the Closing;

(d) customer deposits of the Business and unearned or deferred revenue of the Business related to the payments the Business has received or accrued for in respect of service or training obligations that are to be delivered or performed after the Closing Date, but only such Liabilities of Sellers that are organized in the United States;

(e) rebate payment obligations in relation to the group purchasing organization, integrated delivery network and similar contracts in the United States (the "Accrued Customer Rebates Liability GPO")

(f) accounts payable and accrued liabilities to the extent related the Business (the "Trade A/P Liability")

(g) subject to Section 9.1, all Liabilities relating to Transfer Taxes;

(h) all Liabilities for Taxes with respect to the Acquired Assets, the Assumed Liabilities, or the Business arising from or attributable to any taxable period (or portion thereof) beginning after the Closing Date ("Assumed Taxes");

(i) all Liabilities arising under Section 503(b)(9) of the Bankruptcy Code that are Related to the Business (the "Assumed 503(b)(9) Liabilities");

(j) all Liabilities relating to Purchaser's employment of the Transferred Employees and all Liabilities and obligations expressly assumed by Purchaser under Section 6.3(a), 6.3(b), 6.3(c), and 6.3(f);

(k) all Liabilities under Environmental Law that are Related to the Business or otherwise relate to the Acquired Assets arising out of, first accrued, or relating to the period beginning on or after the Closing Date based on facts, actions, omissions, circumstances or conditions occurring or accruing after the Closing; and

(l) solely with respect to those current or former U.S.-based employees of Sellers (and their eligible dependents) who are "M&A qualified beneficiaries" as defined in 26 C.F.R. §54.4980B-9 with respect to the Transactions and the Business, the obligation to offer COBRA continuation coverage to such individuals and all Liabilities associated therewith.

Section 1.4 Excluded Liabilities. Purchaser shall not assume, be obligated to pay, perform or otherwise discharge or in any other manner be liable or responsible for any Liabilities of, or Action against, any Seller of any kind or nature whatsoever, whether absolute, accrued, contingent or otherwise, liquidated or unliquidated, due or to become due, known or unknown, currently existing or hereafter arising, matured or unmatured, direct or indirect, and however arising, whether existing on the Closing Date or arising thereafter as a result of any act, omission, circumstances or any other reason, taking place prior to the Closing, other than the Assumed Liabilities (all such Liabilities that are not Assumed Liabilities being referred to collectively herein as the "Excluded Liabilities"). Purchaser hereby acknowledges and agrees that no Liability of any Acquired Entity shall be an Excluded Liability and that all Liabilities of any Acquired Entity as of the Closing shall continue to be the Liabilities of such Acquired Entity following the Closing.

Section 1.5 Assumption/Rejection of Certain Contracts.

(a) Assumption and Assignment of Executory Contracts. Sellers shall provide timely and proper written notice of a proposed Sale Order to all parties to any executory Contracts, all of which are set forth on Schedule 1.5(a), or unexpired Leases to which any Seller is a party that are Assigned Contracts and take all other actions reasonably necessary to cause such Contracts to be assumed by Sellers and assigned to Purchaser pursuant to Section 365 of the Bankruptcy Code to the extent that such Contracts are Assigned Contracts at Closing. The Sale Order shall provide that as of and conditioned on the occurrence of the Closing, the applicable Sellers shall assume and assign or cause to be assigned to the applicable Purchaser, as applicable, the Assigned Contracts, each of which shall be identified by the name or appropriate description and date of the Assigned Contract (if available), the other party to the Assigned Contract and the address of such party for notice purposes, all included in a notice filed with the Bankruptcy Court. Such notice shall also set forth Sellers' good faith estimate of the amounts necessary to cure any defaults under each of the Assigned Contracts as itemized on Schedule 1.5(a) and determined by Sellers based on their books and records or as otherwise determined by the Bankruptcy Court. At the Closing, Sellers shall, pursuant to the Sale Order, and the Assignment and Assumption Agreement(s) assume and assign to Purchaser (the consideration for which is included in the Closing Consideration), all Assigned Contracts that may be assigned by any such Seller to Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code, subject to adjustment pursuant to Section 1.1(a). At the Closing, Purchaser shall (i) pay all Cure Costs and (ii) assume, and thereafter in due course and in accordance with its respective terms pay, fully satisfy, discharge and perform all of the obligations under each Assigned Contract pursuant to Section 365 of the Bankruptcy Code.

(b) Excluding or Adding Assigned Contracts Prior to Closing. The Purchaser shall have the right to notify Sellers in writing of any Assigned Contract (other than purchase orders) that it does not wish to assume or any previously considered Excluded Contract that is Related to the Business (other than any Mixed-Use Contract) to which any Seller is a party that the Purchaser wishes to add as an Assigned Contract up to two (2) Business Days prior to the

Closing, and (i) any such previously considered Assigned Contract that the Purchaser no longer wish to assume shall be automatically deemed removed from the Schedules related to Assigned Contracts and automatically deemed added to the Schedules related to Excluded Contracts, in each case, without any adjustment to the Closing Consideration, and (ii) any such previously considered Excluded Contract that is Related to the Business (other than any Mixed-Use Contract) that the Purchaser wishes to assume as an Assigned Contract shall be automatically deemed added to the Schedules related to Assigned Contracts, automatically deemed removed from the Schedules related to Excluded Contracts, and assumed by the applicable Seller to sell and assign to the applicable Purchaser, in each case, without any adjustment to the Closing Consideration. The applicable Purchaser shall be solely responsible for the payment, performance and discharge when due of the Liabilities under the Assigned Contracts arising or that are otherwise payable from the time of and after the Closing.

(c) Non-Assignment.

(i) Notwithstanding anything to the contrary in this Agreement, a Contract shall not be assigned to, or assumed by, Purchaser to the extent that such Contract (A) is terminated by a Seller, its Affiliates; provided that, no Seller or its Affiliates shall terminate any Contract Related to the Business or concerning Leased Real Property unless Purchaser otherwise consents in writing (such consent not to be unreasonably withheld, conditioned or delayed), (B) is terminated by any other party (excluding any Seller or its Affiliates) thereto in accordance with its terms, or (C) terminates or expires by its terms, on or prior to such time as it is to be assumed by Purchaser as an Assigned Contract hereunder and is not continued or otherwise extended upon assumption.

(ii) Notwithstanding anything to the contrary in this Agreement, to the extent an Acquired Asset requires a Consent or Governmental Authorization (other than, and in addition to and determined after giving effect to any Order of the Bankruptcy Court, including the Sale Order) in order to permit the sale or transfer to Purchaser of the applicable Seller's right, title and interest in and to such asset, and such Consent or Governmental Authorization has not been obtained prior to such time as such right, title and interest is to be transferred by Purchaser hereunder, such asset shall not be transferred to, or received by, Purchaser. If any Acquired Asset is deemed not to be assigned pursuant to this clause (ii), the Closing shall nonetheless take place subject to the terms and conditions set forth herein and, thereafter, through the earlier of (x) such time as such Consent or Governmental Authorization is obtained and (y) six months following the Closing (or the closing of the Bankruptcy Cases or dissolution of the applicable Seller(s), if earlier), Sellers and Purchaser shall (A) use reasonable best efforts to secure such Consent or Governmental Authorization as promptly as practicable after the Closing and (B) cooperate in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing, or sublicensing to Purchaser any or all of any Seller's rights and obligations with respect to any such Acquired Asset, under which (1) Purchaser shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits (net of the amount of any related Tax costs imposed on Sellers or their respective Affiliates or any direct costs associated with the retention and maintenance of such Acquired Asset incurred by any Seller or its Affiliates) with respect to such Acquired Asset with respect to which the

Consent or Governmental Authorization has not been obtained and (2) Purchaser shall assume and timely discharge any related burden and obligation with respect to such Acquired Asset. Upon satisfying any requisite Consent or Governmental Authorization requirement applicable to such Acquired Asset after the Closing, the applicable Seller's right, title and interest in and to such Acquired Asset shall promptly be transferred and assigned to Purchaser in accordance with the terms of this Agreement, the Sale Order and the Bankruptcy Code. Notwithstanding anything herein to the contrary, (x) the provisions of this Section 1.5(c) shall not apply to any Consent or approval required under the HSR Act and any other applicable antitrust, competition, foreign direct investment or "FDI", or merger control Laws promulgated by any Governmental Body ("Foreign Competition Laws"), which Consent or approval shall be governed by Section 6.4 and (y) no Seller will be obligated to pay any consideration therefor to any third party from whom Consent or Governmental Authorization is requested or to initiate any litigation to obtain any such Consent or Governmental Authorization.

Section 1.6 Certain Non-Debtors.

(a) At the Closing, subject to the terms and subject to the conditions set forth herein, Sellers shall cause each Non-Debtor set forth on Schedule 1.6 (which schedule shall be agreed upon by the Parties as promptly as practicable and in any event prior to the Closing Date) to sell, transfer, assign, convey, and deliver to Purchaser, and Purchaser shall purchase, acquire, and accept from such Non-Debtors, all of such Non-Debtor's right, title and interest in and to, as of the Closing, the assets set forth on Schedule 1.6 with respect to such Non-Debtor, free and clear of all Encumbrances other than Permitted Encumbrances.

(b) On the terms and subject to the conditions set forth herein, effective as of the Closing, Purchaser shall irrevocably assume from each Non-Debtor set forth on Schedule 1.6 (and after the Closing pay, perform, discharge, or otherwise satisfy in accordance with their respective terms), and such Non-Debtor shall irrevocably transfer, assign, convey, and deliver to Purchaser, the Liabilities of such Non-Debtor set forth on Schedule 1.6 with respect to such Non-Debtor.

(c) Where applicable, the assets set forth on Schedule 1.6 shall constitute Acquired Assets; provided that (i) no Non-Debtor is or shall in any event be a Debtor and (ii) as such, none of the provisions of this Agreement to the extent relating to or involving the Bankruptcy Code shall apply to the transactions contemplated by this Section 1.6.

(d) Except as otherwise provided in Section 6.3(i), Purchaser shall have the right to notify Sellers in writing of any asset or liability of any Non-Debtor included in Schedule 1.6 or previously set forth on Schedule 1.6 that it does not wish to acquire or assume up to two (2) Business Days prior to the Closing, and any such asset or liability that the Purchaser no longer wishes to acquire or assume shall be automatically deemed removed from Schedule 1.6.

ARTICLE II
CONSIDERATION; PAYMENT; CLOSING

Section 2.1 Consideration; Payment.

(a) The aggregate consideration to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) the assumption of Assumed Liabilities and (ii) the payment of the Closing Consideration in accordance with Section 2.6 and this Section 2.1. For purposes of this Agreement, "Closing Consideration" shall mean an amount equal to a cash payment of $53,500,000 (the "Cash Payment").

(b) Purchaser has deposited into escrow with Acquiom Clearinghouse LLC (the "Escrow Agent") an amount equal to $5,500,000 (such amount, together with all interest and other earnings accrued thereon, the "Deposit"), by wire transfer of immediately available funds pursuant to the terms of the Bidding Procedures Order. The Deposit shall not be subject to any lien, attachment, trustee process, or any other judicial process of any creditor of any Seller or Purchaser.

(c) At the Closing, Purchaser shall deliver, or cause to be delivered, to Sellers an aggregate amount equal to (i) the Cash Payment *less* (ii) the Deposit *plus* (iii) the Acquired Cash Amount *less* (iv) $8,000,000 (the "Holdback Amount," and collectively with (i), (ii), and (iii), the "Closing Date Payment"). The Closing Date Payment and any payment required to be made pursuant to any other provision hereof shall be made in cash by wire transfer of immediately available funds to such bank account as shall be designated in writing by the applicable Party to (or for the benefit of) whom such payment is to be made at least three (3) Business Days prior to the date such payment is to be made.

(d) The Holdback Amount shall be deposited with the Escrow Agent, pursuant to an escrow agreement to be entered into among Vyaire, Purchaser, and the Escrow Agent, in customary form and substance reasonably satisfactory to the Parties.

Section 2.2 Deposit Release. The Deposit shall be released by the Escrow Agent and delivered to either (x) Purchaser or (y) Sellers, as follows:

(a) If, prior to the Closing, this Agreement has been terminated by Sellers pursuant to Section 8.1(d) or 8.1(f) (or by Purchaser pursuant to Section 8.1(b) or 8.1(c), in each case in circumstances where Sellers would be entitled to terminate this Agreement pursuant to Section 8.1(d) or 8.1(f)), then Sellers shall retain the Deposit together with all received investment income, if any.

(b) If, prior to the Closing, this Agreement has been terminated by any Party, other than as contemplated by Section 2.2(a), then the Deposit, together with all received investment income, if any, shall be returned to Purchaser within five (5) Business Days after such termination.

(c) The Parties agree that Sellers' right to retain the Deposit, as set forth in Section 2.2(a), is not a penalty, but rather is liquidated damages in a reasonable amount that will compensate Sellers for their efforts and resources expended and the opportunities foregone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the Transactions, which amount would otherwise be impossible to calculate with precision.

(d) If the Closing occurs, at the Closing, Sellers shall deliver instructions to the Escrow Agent directing the Escrow Agent to transfer by wire transfer of immediately available funds 100% of the Deposit (together with any and all investment interest thereon, if any) to such account(s) as may be designated by Sellers.

Section 2.3 Holdback Amount.

(a) Subject to the terms and conditions of this Section 2.3, Purchaser shall have the right to reduce the Closing Consideration by deducting from the Holdback Amount an amount based upon certain Liabilities related to the Business and determined in accordance with Schedule 2.3 (the total amount of such deduction, the "Closing Consideration Reduction Amount").

(b) No later than twenty (20) Business Days after the Closing Date, Purchaser shall in good faith prepare and deliver to the Sellers a statement (the "Closing Liabilities Statement") containing Purchaser's calculation, as of the Closing Date, of the Closing Consideration Reduction Amount and each of the components thereof and prepared in accordance using the accounting methods, practices, principles, policies and procedures, with consistent classifications, judgments and valuation and estimation methodologies used by Sellers and their Affiliates in the preparation of the Financial Statements.

(c) The Sellers shall have twenty (20) Business Days after receipt of the Closing Liabilities Statement to review and to notify Purchaser of any disputes regarding the Closing Liabilities Statement (the "Closing Liabilities Review Period"). During the Closing Liabilities Review Period, Sellers and their respective Advisors shall, upon reasonable prior notice to Purchaser and during regular business hours, have reasonable access to the books and records and other documents and materials relevant to analyzing the accuracy of the Closing Liabilities Statement. Upon Purchaser's receipt of Sellers' written acceptance of the Closing Liabilities Statement and subject to the terms and conditions set forth in this Section 2.3, the Parties shall promptly provide joint written instructions to the Escrow Agent to pay to (i) Sellers by wire transfer of immediately available funds to the bank account(s) designated in writing by Sellers an amount equal to (A) the Holdback Amount, *less* (B) the Closing Consideration Reduction Amount (the result of (A) and (B), the "Holdback Payment"); provided that the Holdback Payment shall not be less than zero, and (ii) Purchaser the remaining amounts, if any, of the Holdback Payment.

(d) In the event that the Sellers dispute the calculation of the Closing Consideration Reduction Amount (or any component thereof) set forth in the Closing Liabilities Statement (each such item, a "Disputed Item"), Sellers shall notify Purchaser in writing of such dispute (the "Dispute Notice") prior to the end of the Closing Liabilities Review Period. Purchaser and Sellers shall work together in good faith to resolve any Disputed Items as soon as practicable after the delivery of a Dispute Notice. All discussions related thereto will be governed by Rule 408 of the Federal Rules of Evidence (as in effect as of the date of this Agreement) and any applicable similar state rule, unless otherwise agreed in writing by Sellers and Purchaser.

(e) If Purchaser and Sellers are unable to resolve in writing all Disputed Items within fifteen (15) Business Days from the date of Purchaser's receipt of the Dispute Notice, then Purchaser and Sellers shall jointly submit the dispute to Kroll, LLC (provided that Kroll, LLC shall have confirmed in writing to the Parties that it is impartial and independent with respect to the Parties at the time of such submission), or if such firm is not able or willing, such other nationally or regionally recognized independent public accounting, valuation or similar dispute resolution firm as shall be mutually agreed by Purchaser and Sellers (the "Accounting Expert") to make a binding determination, as an expert and not as an arbitrator, as to the disputed items in accordance with this Agreement; provided that the basis of the Accounting Expert's determination must be based solely on the definitions and other applicable provisions of this Agreement or correcting mathematical errors (and not with the use of or introduction of any other principles, practices, policies, procedures, conventions, classifications, estimation techniques, judgements or methodologies). The Accounting Expert will have exclusive jurisdiction over any disputes arising out of or relating to the adjustments pursuant to this Section 2.3, and resort to the process involving the Accounting Expert as provided in this Section 2.3 will be the only recourse and remedy of the Parties against one another with respect to any such dispute. The Parties agree that all adjustments shall be made without regard to materiality.

(f) All presentations and submissions by Purchaser and Sellers shall be made to the Accounting Expert no later than fifteen (15) days after the engagement of the Accounting Expert, and the Accounting Expert shall, under the terms of its engagement, have no more than fifteen (15) Business Days from thereafter to render its written decision (it being acknowledged and agreed that the failure of the Accounting Expert to timely deliver its written decision shall not render the determination of the Accounting Expert invalid) with respect to the Disputed Items (and only with respect to any unresolved Disputed Items set forth in the Dispute Notice) and the final calculations of Closing Consideration Reduction Amount shall be based solely on the resolution of the Disputed Items. All discussions and presentations by Purchaser or Sellers to the Accounting Expert must take place in the presence (including by telephone) of the other Party, and all submissions made by Purchaser or Sellers to the Accounting Expert must be concurrently delivered to the other Party. In resolving any Disputed Item, the Accounting Expert may not assign a value to any item greater than the maximum value for such item claimed by either Party or less than the minimum value of such item claimed by either Party in the Closing Liabilities Statement and the Dispute Notice. The fees and expenses of the Accounting Expert shall be allocated between Purchaser and Sellers (as determined by the Accounting Expert) so that Sellers' share of such fees and expenses shall be equal to the product of (i) the aggregate amount of such fees and expenses, and (ii) a fraction, the numerator of which is the aggregate amount in dispute that is ultimately unsuccessfully disputed by Sellers and the denominator of which is the total amount in dispute submitted to the Accounting Expert. The balance of such fees and expenses shall be paid by Purchaser.

(g) Following the final determination of the Closing Consideration Reduction Amount and the Holdback Payment in accordance with this Section 2.3, the Parties shall promptly provide joint written instructions to the Escrow Agent to pay to (i) Sellers by wire transfer of immediately available funds to the bank account(s) designated in writing by Sellers an amount equal to the Holdback Payment and (ii) Purchaser the remaining amounts, if any, of the Holdback Payment.

(h) Schedule 2.3 sets forth illustrative calculations of the Closing Consideration Reduction Amount, the components thereof and the Holdback Payment.

Section 2.4 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Closing Consideration and the assumption of the Assumed Liabilities in accordance with this Agreement (the "Closing") will take place by telephone conference and electronic exchange of documents (or, if the Parties agree to hold a physical closing, at the offices of Kirkland & Ellis LLP, located at 601 Lexington Avenue, New York, New York 10022) at 10:00 a.m. Eastern Time on the second Business Day following full satisfaction or due waiver (by the Party entitled to the benefit of such condition) of the closing conditions set forth in Article VII (other than conditions that by their terms or nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of those conditions), or at such other place and time as the Parties may agree in writing. The date on which the Closing actually occurs is referred to herein as the "Closing Date."

Section 2.5 Closing Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver, or caused to be delivered, to Purchaser:

(a) a bill of sale and assignment and assumption agreement substantially in the form of Exhibit A (the "Assignment and Assumption Agreement") duly executed by the applicable Sellers;

(b) a short-form Intellectual Property assignment agreement substantially in the form of Exhibit B (the "IP Assignment Agreement"), duly executed by the applicable Sellers;

(c) a transition services agreement substantially in the form attached hereto as Exhibit D, together with schedules to such agreement in form and substance reasonably acceptable to the Parties (which the Parties shall negotiate in good faith to finalize as promptly as practicable) (the "Transition Services Agreement"), duly executed by the applicable Sellers, setting forth the terms and conditions upon which certain Sellers will perform specified services to Purchaser after the Closing in order to transition the Business to Purchaser;

(d) certificates (to the extent such Equity Interests are certificated) representing all of the Equity Interests of the Acquired Entities, duly endorsed in blank or accompanied by transfer powers or such other instruments, in each case, in customary form and substance, sufficient to transfer to the Purchaser of the Equity Interests of the Acquired Entities under applicable Law, free and clear of any Encumbrances (other than Permitted Encumbrances), which instruments shall not expand any representation or warranty, or any remedy or Liability, of any Party, duly executed by the applicable Sellers or Non-Debtor; provided, however, that if any such equity certificate (to the extent such Equity Interests are certificated) has been lost, damaged, or destroyed, then the applicable Person shall execute and deliver to the Purchaser an affidavit and indemnity agreement, in customary form, with respect to such lost, damaged, or destroyed stock certificate;

(e) instruments, agreements, or other documents, in each case in customary form that are necessary to transfer the applicable Non-Debtor's right, title and interest in and to, as of the Closing, the assets and the Liabilities set forth on Schedule 1.6 to Purchaser in the manner required by applicable Law, which instruments, agreements, or documents shall not expand any representation or warranty, or any remedy or Liability, of any Party, duly executed by the applicable Sellers;

(f) (i) an IRS Form W-9 or IRS Form W-8, as applicable, executed by each Seller or each Seller's regarded owner for U.S. federal income Tax purposes and (ii) as requested by Purchaser, a certificate or certificates from the Acquired Entities, dated as of the Closing Date and in accordance with Treasury Regulation Section 1.1445-2(c)(3) and Treasury Regulation Section 1.897-2(h), that each such Acquired Entity has not and has never been a "United States real property holding corporation" within the meaning of Section 897(c)(2) of the Code; provided that the failure to deliver such forms shall not be deemed a breach of any condition or covenant in this Agreement and Purchaser's sole remedy for the failure to provide any such form shall be to withhold any required amount under Section 1445 of the Tax Code or any other applicable Tax Law from the consideration otherwise payable to Sellers hereunder in accordance with Section 2.7;

(g) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Vyaire certifying that the conditions set forth in Section 7.2(a) and Section 7.2(b) have been satisfied;

(h) letters of resignation, in form reasonably satisfactory to Purchaser, from the individuals listed on Schedule 2.5(h), which Schedule will be provided to Sellers no later than five (5) Business Days prior to Closing; and

(i) a written instruction, duly executed by Seller, instructing the Escrow Agent to release to the Seller by wire transfer of immediately available funds, the Deposit.

Section 2.6 Closing Deliveries by Purchaser. At the Closing, Purchaser shall deliver to (or at the direction of) Sellers:

(a) the Closing Date Payment;

(b) the Assignment and Assumption Agreement, duly executed by Purchaser;

(c) the IP Assignment Agreement, duly executed by Purchaser;

(d) the Transition Services Agreement, duly executed by Purchaser;

(e) an officer's certificate, dated as of the Closing Date, executed by a duly authorized officer of Purchaser certifying that the conditions set forth in Section 7.3(a) and 7.3(b) have been satisfied; and

(f) instruments, agreements, or other documents, in each ease in customary form that are necessary to transfer the applicable Non-Debtor's right, title and interest in and to, as of the Closing, the assets and the Liabilities set forth on Schedule 1.6 to Purchaser in the manner required by applicable Law, which instruments, agreements, or documents shall not expand any representation or warranty, or any remedy or Liability, of any Party, duly executed by Purchaser (to the extent Purchaser's execution of such instruments, agreements, or other documents is necessary).

Section 2.7 Withholding. Each Purchaser shall be entitled to deduct and withhold any Taxes from any amounts otherwise payable pursuant to this Agreement under any applicable Law; provided that in the event any Purchaser intends to withhold any Taxes from the Closing Date

Payment (other than in respect of a Seller's failure to satisfy its obligations under Section 2.5(f)), Purchaser shall exercise commercially reasonable efforts to provide at least five (5) Business Days' notice to such Seller of the intent to withhold and shall exercise commercially reasonable efforts to work together in good faith with such Seller to determine if an exemption from or reduced rate of withholding is available. All such amounts withheld and remitted to the appropriate Governmental Body shall be treated as delivered to Seller in respect of which such deduction or withholding was made hereunder. Prior to the Closing, in connection with Schedule 1.6, the Parties shall mutually and reasonably agree to the Tax structure of Purchaser, taking into consideration any applicable withholding requirements and the Transactions.

Section 2.8 Indirect Taxes.

(a) Wherever possible, the Parties intend that Article 19 and Article 29 of EC Directive 2006/112 (or any provision imposed in a member state of the European Union pursuant thereto or any similar equivalent provision imposed in any other jurisdiction) ("TOGC Relief") shall apply to the sale and transfer of the relevant Acquired Assets pursuant to this Agreement, and accordingly agree to use commercially reasonable efforts to ensure that the sale and transfer of the relevant Acquired Assets shall be treated as neither a supply of goods nor a supply of services for Indirect Tax purposes pursuant to such TOGC Relief under the law of each applicable jurisdiction in which Indirect Tax would otherwise be chargeable. If the application of any TOGC Relief is subsequently challenged by any relevant Taxing Authority, the Parties shall consult in good faith and take all reasonable steps to defend and resist such challenge.

(b) All amounts payable pursuant to this Agreement which (in whole or in part) constitute the consideration for any supply for Indirect Tax purposes shall be deemed to be exclusive of any Indirect Taxes which are chargeable on that supply. Accordingly, if (notwithstanding Section 2.8(a)) any Indirect Taxes become chargeable on any supply made by any Party (or any of its Affiliates) (the "Supplier") to the other Party (or any of its Affiliates) (the "Recipient") under this Agreement and the Supplier is required to account to the relevant Taxing Authority for the Indirect Tax, the Supplier shall provide an appropriate Indirect Tax invoice to the Recipient and the Recipient shall pay to the Supplier (in addition to and at the same time as paying any other consideration for such supply or, if later, within ten (10) Business Days of the Recipient's receipt of a valid Indirect Tax invoice complying with all requirements under the applicable VAT laws in respect of such supply) an additional amount equal to the amount of the Indirect Tax (excluding, for the avoidance of doubt, any penalties, fines or interest attributable thereto).

(c) The Parties shall reasonably cooperate with each other in the provision of any information or preparation of documentation that may be necessary or useful for obtaining any available mitigation, reduction or exemption of Indirect Taxes or for seeking a refund or credit of Indirect Taxes, including duly executing and filing any invoices, forms or certificates required with respect thereto; provided that, none of the Parties or any of their Affiliates shall be required to file any claim for exemption or exclusion from the application or imposition of any Indirect Taxes, or any claim for any reduction thereof, if such Party determines in its sole discretion that the filing of such claim or any related action would have an adverse effect on such Party or any of its Affiliates. Any Tax Return that is required to be filed with respect to Indirect Taxes will be prepared and filed by the Party that customarily has primary responsibility for filing such Tax Return pursuant to applicable Law.

(d) "Indirect Tax" means any value added, goods and services, or similar tax, including VAT, imposed by any Governmental Body in any country at whatever level.

(e) "VAT" means any value added tax within the meaning of EC Directive 2006/112/EC (as amended from time to time) as transposed into the applicable law of the relevant member state of the European Union and any other similar Tax in any other relevant non-EU jurisdiction.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as set forth in the Schedules delivered by Sellers concurrently herewith and subject to Section 10.11, Sellers represent and warrant to Purchaser as of the date hereof as follows.

Section 3.1 Organization and Qualification. Each Seller and each of the Acquired Entities is a corporation, limited liability company or limited partnership, as applicable, duly incorporated or organized, validly existing, and in good standing under the Laws of the jurisdiction of its incorporation or formation, and has all requisite power and authority necessary to carry on the Business as it is now being conducted, except (other than with respect to any Seller's due formation and valid existence) as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. Each Seller and each of the Acquired Entities is duly licensed or qualified to do business and is in good standing (where such concept is recognized under applicable Law) in each jurisdiction in which the nature of the business conducted by it or the character or location of the properties and assets owned or used by it makes such licensing or qualification necessary, except where the failure to be so licensed, qualified or in good standing would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

Section 3.2 Authorization of Agreement. Subject to requisite Bankruptcy Court approvals, each Seller has all necessary power and authority to execute and deliver this Agreement and the Transaction Agreements to which it is a party and to perform such Seller's obligations hereunder and to consummate the Transactions. The execution, delivery and performance by each Seller of this Agreement and the other Transaction Agreements to which such Seller is a party, and the consummation by such Seller of the Transactions, subject to requisite Bankruptcy Court approvals, have been duly authorized by all requisite corporate or similar organizational action on the part of such Seller, as applicable, and no other corporate or similar organizational proceedings on such Seller's part are necessary to authorize the execution, delivery and performance by such Seller of this Agreement or the other Transaction Agreements to which it is a party and the consummation by it of the Transactions. Subject to requisite Bankruptcy Court approvals, this Agreement and the other Transaction Agreements to which any Seller is a party have been, or will be, duly executed and delivered by such Seller and, assuming due authorization, execution and delivery hereof and thereof by the other parties hereto and thereto, constitutes, or will constitute, legal, valid and binding obligations of such Seller, enforceable against such Seller in accordance with its and their terms, except that such enforceability (a) may be limited by bankruptcy, insolvency, fraudulent transfer, reorganization, moratorium and other similar Laws of general application affecting or relating to the enforcement of creditors' rights generally and (b) is subject to general principles of equity, whether considered in a proceeding at law or in equity (collectively, the "Enforceability Exceptions").

Section 3.3 Conflicts; Consents.

(a) Other than (a) requisite Bankruptcy Court approvals, (b) the notices, authorizations, approvals, Orders, Permits or Consents set forth on Schedule 3.3, (c) the requirements of the HSR Act and any other Foreign Competition Laws and (d) any filings required by any applicable federal or state securities or "blue sky" Laws, the execution and delivery by Sellers of this Agreement and the other Transaction Agreements, and the consummation by Sellers of the Transactions contemplated hereby and the performance or compliance by Sellers with any of the terms or provisions hereof or thereof, do not and will not (i) conflict with or violate any provision of a Seller's organizational documents (ii) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, or cancelation of any obligation or to the loss of any benefit, of any of the terms or provisions of any loan or credit agreement or other Contract to which any Seller or an Acquired Entity is a party or accelerate any Seller's or Acquired Entities obligations under any such Contract, (iii) violate any Law or Order applicable to Sellers, or (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any Acquired Assets, except in the case of clauses (i) through (iv), as would not, individually or in the aggregate, reasonably be expected to be material to the Acquired Assets, Assumed Liabilities and the Business.

Section 3.4 Equity Interests of Acquired Entities.

(a) The authorized and outstanding Equity Interests of each of the Acquired Entities are as set forth on Schedule 3.4(a) and are expressly and appropriately identified therein as either a Transferred Subsidiary or a Subsidiary of a Transferred Subsidiary. No other Acquired Entity exists other than those set forth on Schedule 3.4(a). All of the Equity Interests of the Acquired Entities have been duly authorized, validly issued, fully paid and are non-assessable (where such concepts are legally recognized in the jurisdictions of organization of such Acquired Entities). Except as set forth on Schedule 3.4(a), there are no outstanding options, warrants, convertible, exercisable or exchangeable securities, "phantom" stock rights, stock appreciation rights, stock-based performance units, rights to subscribe to, purchase rights, calls or commitments relating to the issuance, purchase, sale or repurchase of any Equity Interests issued by the Acquired Entities, or Contracts, commitments, understandings, arrangements or other obligations by which any of the Acquired Entities is bound to issue, deliver or sell, or cause to be issued, delivered or sold, additional capital stock or other Equity Interests, or options, warrants, convertible, exercisable or exchangeable securities, "phantom" stock rights, stock appreciation rights, stock-based performance units, rights to subscribe to, purchase rights, calls or commitments relating to any capital stock or other Equity Interests of the Acquired Entities, or that otherwise give any Person the right to receive any benefits or rights similar to any rights enjoyed by or accruing to the holders of shares of capital stock or other Equity Interests of any Acquired Entity (including any rights to receive any payment in respect, or based on the price or value, thereof). None of the Sellers or the Acquired Entities is a party to any shareholders' agreement, voting trust agreement, registration rights agreement or other similar agreement or understanding relating to any such securities or any other agreement relating to the disposition, voting or dividends with respect to any such securities. The Sellers and each Transferred Subsidiary (each as set forth in Schedule 3.4(a)), own all of the outstanding capital stock and any other Equity Interests of the Acquired Entities, free and clear of all Encumbrances (other than Permitted Encumbrances).

(b) Except as set forth on Schedule 3.4(b), there are no other corporations, limited liability companies, partnerships, joint ventures, associations or other entities or Persons in which the Acquired Entities own as of the date of this Agreement, of record or beneficially, any direct or indirect equity or other interest or any right (contingent or otherwise) to acquire the same.

Section 3.5 Financial Statements.

(a) Attached to Schedule 3.5 is (i) a consolidated balance sheet of the Business and other businesses for the fiscal years 2022, 2023, and the first, second and third quarter of 2024, (ii) quarterly revenue statements by product and geography for the fiscal years 2019, 2020, 2021, 2022, 2023 and through the second quarter of fiscal year 2024, (iii) monthly management profit and loss statements of the Business for the first, second and third quarters of 2024 and (iv) profit and loss statements of the Business for the first, second and third quarters of fiscal year 2024 (collectively, the "Financial Statements").

(b) The Financial Statements:

(i) do not materially misstate the financial condition of the Business as set forth therein as of the dates thereof and for the periods covered thereby and were prepared on a consistent basis with the audited financial statements of Vyaire for the fiscal years 2022 and 2023; provided that the Financial Statements include allocations of certain revenue, assets, liabilities and expenses of Sellers and their Subsidiaries (including "overhead") attributable to the Business and thus may not necessarily reflect what the financial condition, financial position and results of operation of the Business would have been had the Business operated independently of Sellers and their Subsidiaries as of the dates or for the periods covered thereby; and

(ii) do not include (A) year-end audit adjustments for the period ending September 30, 2023, which are material to the profit and loss statements of the Business for the twelve-month period ending June 30, 2024, (B) the notes to financial statements, (C) the impact of accounting for income Taxes, (D) allocations of certain expenses, except, solely with respect to the twelve-month periods ending September 30, 2023 and June 30, 2024, those listed on Schedule 3.5, and (E) one-time non-recurring transactions, except, solely with respect to the twelve-month periods ending September 30, 2023 and June 30, 2024, those listed on Schedule 3.5.

Section 3.6 Title to Properties.

(a) Sellers have or the applicable Non-Debtor has good and valid title to all of the Acquired Assets, free and clear of any and all Encumbrances (other than Permitted Encumbrances) and each Acquired Entity has good and valid title to all of such Acquired Entity's assets, whether tangible or intangible, real, personal, or mixed, free and clear of any and all Encumbrances (other than Permitted Encumbrances).

(b) Sellers, the Non-Debtors, or the Acquired Entities, as applicable have a good and valid leasehold interest to all real property leased, licensed, used or occupied by Sellers, the Non-Debtors, and the Acquired Entities that is Related to the Business (the "Leased Real Property"), free and clear of all Encumbrances (other than Permitted Encumbrances). Sellers and Acquired Entities, as applicable, have performed all material obligations required to be performed and are entitled to all of the benefits under any Leased Real Property relating to the Business to which the Sellers and Acquired Entities are a party or by which they are bound.

(c) Schedule 3.6(c) sets forth the address of each Leased Real Property. The Sellers have made available to the Purchaser or the Purchaser's Advisors true and complete copies of each Acquired Lease, together with all amendments, or supplements, memoranda of agreement, assignments, consents, subordination, recognition, non-disturbance, non-termination or attornment agreements, guaranties, surety agreements, letters of credit and other instruments and security agreements and all extensions, expansions, contractions, renewals or terminations thereto. Except as set forth on Schedule 3.6(c) (and subject to entry of the Sale Order), with respect to each Acquired Leases (i) such Acquired Lease is legal, valid, binding, enforceable and in full force and effect; (ii) to the Knowledge of Sellers, there are no existing material disputes with respect to such Acquired Lease; (iii) none of Sellers, the Acquired Entities or, to the Knowledge of Sellers, any other party to the Acquired Lease is in material breach or material default under such Acquired Lease, and, to the Knowledge of Sellers, no event has occurred within the three (3) years preceding the date hereof or circumstance exists which, with the delivery of notice, the passage of time or both, would constitute such a material breach or material default, or permit the termination, modification or acceleration of rent under such Acquired Lease, except, in each case, for such breaches or defaults as would not reasonably be expected to be material to the Acquired Assets; (iv) neither Sellers nor any of the Acquired Entities have currently subleased, licensed or otherwise granted any Person the right to use or occupy such Leased Real Property or any portion thereof; and (v) none of the Acquired Leases, or any interest therein, is collaterally assigned or subject to a security interest.

(d) Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (1) no security deposit, letter of credit, or other security is required under the Acquired Leases which has not already been paid or otherwise provided; (2) no tenant of an Acquired Lease has subordinated its interest under the Acquired Leases to any Person, including any lenders of the landlord; (3) no Acquired Lease is subject to any prime, ground or master lease or Encumbrance which would entitle the interest holder thereof to interfere with or disturb the rights of the lessee under the Acquired Lease, or if it is, then Seller has delivered or caused to be delivered a fully executed and recordable subordination and non-disturbance agreement to Purchaser for the applicable Acquired Leased Real Property confirming that the rights of the tenant will not be disturbed; and (4) none of the Acquired Leased Real Property or Leasehold Improvements thereon, or the condition or use thereof, including the operation of the business of the tenant, materially contravenes or violates any building, zoning, fire safety, seismic, design, conservation, parking, architectural barriers to the handicapped, occupational safety and health or other applicable requirements of Law, or any restrictive covenant (whether or not permitted on the basis of prior nonconforming use, waiver or variance), including the Americans with Disabilities Act of 1990, and the tenant has not received written notice to the effect of any of the foregoing.

Section 3.7 Contracts.

(a) Schedule 3.7(a) sets forth a true and complete list of each Material Contract, as of the date of this Agreement. For purposes of this Agreement, "Material Contract" means any Contract to which the Sellers or the Acquired Entities are party that is Related to the Business, in all cases other than purchase orders on Sellers' standard form a true and correct copy of which has been made available to Purchaser, or similar instruments and any Employee Benefit Plan, that:

(i) relates to the formation, creation, governance, economics, or control of any joint venture, partnership, strategic alliance or other similar arrangement with a third party (in each case, other than organizational documents of any Seller or Acquired Entity);

(ii) provides for indebtedness for borrowed money of Sellers or the Acquired Entities having an outstanding or committed amount in excess of $200,000, in each case, other than letters of credit, credit terms extended to customers in the Ordinary Course and advancement of expenses made to employees and independent contractors in the Ordinary Course;

(iii) relates to the acquisition or disposition of any material business (whether by merger, sale of stock, sale of assets or otherwise), which such acquisition was consummated during the past three years or under which any Seller or Acquired Entity has any material ongoing Liabilities;

(iv) is a Contract pursuant to which any Intellectual Property that is material to the Business is licensed to or by Sellers or the Acquired Entities (other than licenses that are granted in the Ordinary Course or incidental to a services or other agreement or arrangement not material to the Business, the primary purpose of which is something other than the grant of rights under Intellectual Property);

(v) if terminated, or allowed to expire without being renewed, would have a Material Adverse Effect;

(vi) is a Contract that is Related to the Business pursuant to which Sellers or the Acquired Entities would reasonably be expected to make payments, individually or in the aggregate, of more than $250,000, during any fiscal year;

(vii) is a Contract that is Related to the Business pursuant to which Sellers or the Acquired Entities would reasonably be expected to receive payments, individually or in the aggregate, of more than $500,000, during any fiscal year;

(viii) contains any provision (A) limiting, in any material respect, the right of Sellers or the Acquired Entities to engage in any business, make use of any Acquired Intellectual Property that is material to Sellers or the Acquired Entities (other than with respect to provisions in any license agreements for Intellectual Property limiting Seller's or the Acquired Entity's use of such Intellectual Property to specified fields of use or specified territories), compete with any Person, or operate anywhere in the world, or (B) granting any exclusivity right to any third party or containing a "most favored nation" provision in favor of any third party; or

(ix) is a commitment or agreement to enter into any of the foregoing.

(b) Subject to requisite Bankruptcy Court approvals, and assumption by the applicable Seller or Acquired Entity of the applicable Contract in accordance with applicable Law (including satisfaction by Purchaser of any applicable Cure Costs) and except (i) as a result of the commencement of the Bankruptcy Cases, (ii) with respect to any Contract that has previously expired in accordance with its terms, been terminated, restated, or replaced, or (iii) as set forth in Schedule 3.7(b), (A) each Material Contract is valid and binding on the Seller or Acquired Entity that is a party thereto and, to the Knowledge of Sellers, each other party thereto, and is in full force and effect, subject to the Enforceability Exceptions, (B) the applicable Seller or Acquired Entity, and, to the Knowledge of Sellers, any other party thereto, have performed all obligations required to be performed by it under each Material Contract, (C) Sellers or Acquired Entities have received no written notice of the existence of any breach or default on the part of any Sellers and the Acquired Entities under any Material Contract, (D) there are no events or conditions which constitute, or, after notice or lapse of time or both, will constitute a default on the part of a Seller or Acquired Entity, or to the Knowledge of Sellers, any counterparty under such Material Contract and (E) to the Knowledge of Sellers, Sellers and the Acquired Entities have not received any notice from any Person that such Person intends to terminate, or not renew, any Material Contract, except in each case of clauses (A) through (E), as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect.

(c) Schedule 3.7(c) sets forth a true and complete list of purchase orders of the Business as of August 15, 2024 that are for a face amount in excess of $250,000.

Section 3.8 No Litigation. Except as set forth on Schedule 3.8, there are no, and since January 1, 2021, there has not been any, Actions pending or, to Sellers' Knowledge, threatened against or affecting any of the Sellers or Acquired Entities that would reasonably be expected to materially and adversely affect the Acquired Assets, Assumed Liabilities and the Business, or any Seller's performance of its obligations under this Agreement or the consummation of the Transactions.

Section 3.9 Permits; Compliance with Laws.

(a) Except as set forth on Schedule 3.9(a), (i) each Seller and its respective directors, managers, officers, equityholders, employees and independent contractors (in each case, in their capacity as such and acting on behalf of Sellers) are (with respect to the Business) and each Acquired Entity is, and since January 1, 2021 has been, in compliance in all material respects with all Laws and Orders, applicable to such Seller or Acquired Entity, or the Business, and in the last three (3) years has not received any written notice from any Governmental Body alleging a violation of such Laws that has not been resolved in all respects, (ii) to the Knowledge of Sellers, no event, condition or circumstance exists or has occurred in the last three (3) years, that would be reasonably be expected to (with or without notice or lapse of time) constitute a violation of, or constitute a failure by, the Sellers to comply with any applicable Law. The Sellers have not received at any time in the last three (3) years any written or, to the Knowledge of Sellers, oral notice, investigation, inquiry, non-routine review or inspection or assertion from any Governmental Body regarding any actual, alleged, or potential violation of, or failure to comply with, any term or requirement of any applicable Law, or any notice threatening any investigation under any applicable Law for any failure to so comply and (iii) the Sellers and the Acquired Entities hold all licenses, franchises, permits, certificates, Governmental Authorizations or other approvals and authorizations from Governmental Bodies (collectively, "Permits") necessary for the lawful conduct of the Business as currently conducted, in each case of (i) through (iii), except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets and the Assumed Liabilities.

(b) A correct and complete list of all Permits Related to the Business received or held by any Seller or its Affiliates and its and their respective employees or any other Person acting for or on behalf of any Seller or its Affiliates is set forth in Schedule 3.9(b). Each of such Permits has been duly granted by the applicable Governmental Body and is valid, subsisting and in full force and effect. (i) Neither Sellers nor any of its Affiliates (with respect to the Business) (A) is, or in the last three (3) years has been, in violation of any such Permits, (ii) has received any written or, to the Knowledge of Sellers, oral notice of such a violation or that any Governmental Body has taken or is taking action to limit, suspend, modify, or revoke any such Permits, (iii) no written or, to the Knowledge of Sellers, oral notice has been received by Sellers or its Affiliates (with respect to the Business) or the Sellers in the last three (3) years, and (iv) to the Knowledge of Sellers, no event or circumstance exists that, with or without notice, the lapse of time or both (including as a result of the execution and delivery of this Agreement or the consummation of the Transactions), would reasonably be expected to result in the termination, impairment, modification or nonrenewal of, or any penalty, payment or fine in respect of, any Permit, in each case of (i) through (iv), except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets and the Assumed Liabilities.

(c) Except as set forth on Schedule 3.9(c), in the last three (3) years there have been no recalls, field notifications or seizures ordered or adverse regulatory actions taken (or, to Seller's Knowledge, threatened) by any Governmental Body with respect to any of the Acquired Assets. All written (including electronic) filings with and submissions to any Governmental Body made by or on behalf of the Sellers or any Acquired Entity with regard to the Acquired Assets were true, accurate and complete in all material respects as required by applicable Law as of the date made.

(d) Each Seller and Acquired Entity and each of their respective directors, officers and employees acting in such capacity and, to the Knowledge of Sellers, each of its and their other agents acting on its or their behalf, is, and since January 1, 2021 has been, in compliance in all material respects with all applicable foreign or domestic anti-corruption and anti-bribery Laws, including the Foreign Corrupt Practices Act of 1977 and the U.K. Bribery Act of 2010, and with respect to each of the foregoing, any rules and regulations promulgated thereunder.

Section 3.10 Environmental Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect, (a) Sellers and the Acquired Entities are, and since January 1, 2021 have been, in compliance with all applicable Environmental Laws with respect to the conduct of the Business, (b) since January 1, 2021, none of Sellers or the Acquired Entities has received any written notice alleging that any Seller or Acquired Entity is in violation of or liable under, any Environmental Law that is unresolved with respect to the conduct of the Business, (c) Sellers and the Acquired Entities possess and are in compliance with all Permits required under Environmental Laws for the operation of the Business as currently conducted ("Environmental Permits"), (d) there is no Action under or pursuant to any Environmental Law or Environmental Permit that is pending or, to the Knowledge of Sellers, threatened against any Seller or Acquired Entity or that is Related to the Business, (e) Sellers and the Acquired Entities are not subject to any Order imposed by any Governmental Body pursuant to Environmental Laws under which there are uncompleted, outstanding or unresolved obligations on the part of any Seller or Acquired Entity or that is Related to the Business, and (f) no Seller or Acquired Entity has released any Hazardous Substances at the Leased Real Property in quantities or concentrations that currently require Sellers or the Acquired Entities to conduct remedial activities, or that have given rise to any Action against any Seller or the Acquired Entities, under Environmental Laws.

Section 3.11 Intellectual Property.

(a) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets, or the Assumed Liabilities, Sellers and the Acquired Entities own all of the rights, title and interest in and to the Acquired Intellectual Property, free and clear of all Encumbrances (other than Permitted Encumbrances). Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets, or the Assumed Liabilities, of the Acquired Intellectual Property is subsisting, and to the Knowledge of Sellers, valid and enforceable.

(b) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets and the Assumed Liabilities, (i) Sellers and the Acquired Entities own or have legally enforceable and sufficient rights to use all Intellectual Property necessary to the conduct of the Business as currently conducted by the Sellers and the Acquired Entities free and clear of all Encumbrances (other than Permitted Encumbrances) and (ii) Sellers and the Acquired Entities have taken commercially reasonable steps to maintain the confidentiality of all material non-public Acquired Intellectual Property; provided that nothing in this Section 3.11(b) shall be interpreted or construed as a representation or warranty with respect to whether there is any infringement, misappropriation, or violation of any Intellectual Property, which is the subject of Section 3.11(d).

(c) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets, or the Assumed Liabilities, no Actions are pending or, to the Knowledge of Sellers, threatened against any Seller or Acquired Entity in a writing received by a Seller or Acquired Entity, and since January 1, 2021, Sellers and the Acquired Entities have not received any written notice or claim, (i) challenging the ownership, validity, enforceability or use by any Seller or Acquired Entity of any Intellectual Property owned by or exclusively licensed to any such Seller in connection with the Business or Acquired Entity or (ii) alleging that any Seller in connection with the Business or Acquired Entity is infringing, misappropriating or otherwise violating the Intellectual Property of any Person.

(d) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets, or the Assumed Liabilities, to the Knowledge of Sellers, since January 1, 2021, (i) no Person has infringed, misappropriated or otherwise violated the rights of Sellers or the Acquired Entities with respect to any Intellectual Property that is Related to the Business and owned by or exclusively licensed to Sellers or the

Acquired Entities and (ii) the operation of the Business by Sellers and the Acquired Entities has not violated, misappropriated or infringed the Intellectual Property of any other Person.

(e) The consummation of the Transactions will not result in the grant of any right or license to any third party other than Purchaser or any Affiliate of Purchaser of any Intellectual Property that is owned by or exclusively licensed to any Seller or Acquired Entity.

Section 3.12 Data Privacy and Security.

(a) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets or the Assumed Liabilities, taken as a whole, each Seller and Acquired Entity, and the conduct of the Business, are, and since January 1, 2021, have been, in compliance in all material respects with all applicable data privacy Laws.

(b) Except as would not, individually or in the aggregate, reasonably be expected to be material to the Business, the Acquired Assets, or the Assumed Liabilities, taken as a whole, and except as set forth on Schedule 3.12(b), since January 1, 2021, there has been no unauthorized intrusions into the information technology systems owned by any Seller or Acquired Entity or breaches of security in which Personal Information in the possession of any Seller or Acquired Entity was exfiltrated without authorization.

Section 3.13 Tax Matters. Except as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) Each Seller (or its applicable Affiliate) has prepared (or caused to be prepared) and timely filed (taking into account valid extensions of time within which to file) all Tax Returns with respect to the Acquired Assets and the Business required to be filed by it, and all Tax Returns required to be filed by the Acquired Entities have been timely filed (taking into account valid extensions of time within which to file), and all such filed Tax Returns (taking into account all amendments thereto) are true, complete and accurate in all material respects.

(b) All Taxes with respect to the Acquired Assets, the Business and the Restructuring Transactions owed by a Seller that are due, and all Taxes required to be paid by an Acquired Entity (including, for the avoidance of doubt, in connection with the Restructuring Transactions), in each case, that are due (whether or not shown on any Tax Return) have been timely paid or have been adequately reserved against in accordance with GAAP.

(c) There are no Encumbrances for Taxes on any of the Acquired Assets, the Business or any assets of the Acquired Entities other than (i) Encumbrances for Taxes not yet due and payable, or that are being contested in good faith, or (ii), solely with respect to the Acquired Assets, the nonpayment of which is required or permitted by the Bankruptcy Code.

(d) None of the Sellers or the Acquired Entities has waived any statute of limitations in respect of Taxes with respect to the Acquired Assets or the Business or Taxes of the Acquired Entities or agreed to any extension of time with respect to an assessment or deficiency for Taxes with respect to the Acquired Assets, the Business or Taxes of the Acquired Entities (in each case, other than pursuant to extensions of time to file Tax Returns obtained in the Ordinary

Course and which, with respect to the Acquired Entities, are disclosed on Schedule 3.13(d)), in each case, which waiver or extension is currently in force and could have effect after the Closing Date.

(e) None of the Acquired Entities has participated in any "listed transaction" within the meaning of 26 C.F.R. § 1.6011-4(b) (or any similar provision of state, local or foreign Law).

(f) The Acquired Entities (or with respect to clause (v), Purchaser) will not be required to include any amount in taxable income, exclude any item of deduction or loss from taxable income, in each case, for any taxable period (or portion thereof) ending after the Closing Date as a result of (i) any installment sale or open transaction disposition made on or prior to the Closing Date, (ii) any prepaid amount received or deferred revenue accrued on or prior to the Closing Date, (iii) any improper use of accounting method or change in method of accounting for a taxable period ending on or prior to the Closing Date, (iv) any "closing agreement" as described in Section 7121 of the Tax Code (or any similar provision of state, local or foreign Law) executed on or prior to the Closing Date, or (v) the application of Section 965 of the Tax Code (or any similar provision of state, local or foreign Law).

(g) With respect to the Acquired Assets, the Business or the Acquired Entities, there are no Tax incentives, holidays or similar abatements or arrangements with a Governmental Body currently in effect that could be impacted or impaired as a result of the Transactions.

(h) There is no pending Tax audit or other administrative or court proceeding with regard to any Taxes or Tax Returns of any Acquired Entity or Taxes with respect to the Acquired Assets or the Business, nor has there been any written notice, or to the Knowledge of Sellers, any other notice, to any of the Acquired Entities or Sellers by any Governmental Body regarding any such audit or other proceeding.

(i) Neither Sellers with respect to the Acquired Assets or the Business, nor any Acquired Entity, has requested or received a ruling from any Governmental Body or signed any binding agreement with any Governmental Body that might increase the amount of Tax due by any Acquired Entity or with respect to the Acquired Assets or Business after the Closing Date.

Section 3.14 Employee Benefit Plans.

(a) Schedule 3.14(a) sets forth a list of each Employee Benefit Plan in which the Business Employees participate or are eligible to participate. With respect to each Employee Benefit Plan listed in Schedule 3.14(a), Sellers have made available to Purchaser copies (to the extent applicable) of (i) the most recent summary plan description or similar document describing the material terms of such Employee Benefit Plan, (ii) the most recent annual report on Form 5500 filed with the Department of Labor, and (iii) the most recent IRS determination or opinion letter applicable to such Employee Benefit Plan.

(b) Each Employee Benefit Plan intended to be "qualified" within the meaning of Section 401(a) of the Tax Code has received a favorable determination letter from the Internal Revenue Service or is entitled to rely upon a favorable opinion letter issued by the Internal Revenue Service. There are no pending, or to the Knowledge of Sellers, threatened Actions (other than routine claims for benefits) by, on behalf of or against any Employee Benefit Plan which could reasonably be expected to result in any material Liability to Purchaser. The Employee Benefit Plans comply in form and in operation in all material respects with their terms and applicable Laws, including the applicable requirements of the Tax Code and ERISA, except as would not reasonably be expected to be material to Purchaser.

(c) None of Sellers or the Acquired Entities maintains, contributes to, or has any material Liability (including on account of any entity which is or at any relevant time was a member of a controlled group of corporations, under common control or in an affiliated service group with Seller or an Acquired Entity within the meaning of Section 414(b), (c) or (m) of the Tax Code ("ERISA Affiliate")) with respect to any (i) pension plan that is subject to Title IV of ERISA or Section 412 of the Tax Code or (ii) "multiemployer plan" (as defined in Section 4001(a)(3) of ERISA).

(d) No Employee Benefit Plan provides benefits or coverage in the nature of health or life insurance following retirement or other termination of employment, other than coverage or benefits required to be provided under Part 6 of Subtitle B of Title I of ERISA or Section 4980B of the Tax Code, or any other applicable Law.

(e) The consummation of the Transactions is not reasonably expected to (i) accelerate the time of payment or vesting, or materially increase the compensation due to any Business Employee under any Employee Benefit Plan, (ii) cause a Seller or Acquired Entity to transfer or set aside any assets to fund any material benefits under any Employee Benefit Plan or (iii) result in any "disqualified individual" with respect to any Seller or Acquired Entity receiving any "excess parachute payment" (as each such term is defined in Section 280G of the Tax Code), determined without regard to any arrangements that may be implemented by, or at the direction of, Purchaser or any of its Affiliates.

(f) There are no lawsuits, actions, proceedings, investigations, audits or claims pending or, to the Knowledge of Sellers, threatened on behalf of or against any Employee Benefit Plan, the assets of any trust relating to an Employee Benefit Plan, the plan sponsor, plan administrator, any employer or any other fiduciary of an Employee Benefit Plan, other than routine claims for benefits.

Section 3.15 Employees.

(a) Set forth on Schedule 3.15(a) is a list of, as of the date hereof, (i) the name of all Business Employees and independent contractors of the Sellers and the Acquired Entities (with respect to the Business) and the country and state in which each such Business Employee and/or independent contractor normally works (ii) the job title, hire or retention date(s), employment status, current annual base salary (or with respect to individuals compensated on an non-salary basis, the amount and basis for the rate of compensation), including any bonus or contingent earned for 2024, the amounts and types of each form of accrued and unused leave time; and estimated or target annual incentive compensation of each such person at the director level or above; (iii) the exempt or non-exempt classification of each such person under the Fair Labor Standards Act and any other applicable Law regarding the payment of wages; (iv) the estimated total annual compensation of each officer during the fiscal year ending December 31, 2023, (including any bonus or contingent compensation); (v) any loans between any such person and Sellers or any Acquired Entity; (vi) visa status; and (vii) for any employee who is not fully available to perform work because of disability or other leave (including any temporary absence for any reason whatsoever from active employment), the date of the start of any such absence or leave, the basis of such disability or leave, and the anticipated date of return to full service. Except as set forth in Schedule 3.15(a), as of the date hereof, all compensation, including wages, commissions, bonuses, fees and other compensation, in each case, that is due and payable as of the date hereof in accordance with applicable payroll practices to all Business Employees, former employees, and current or former independent contractors or consultants of the Sellers and the Acquired Entities for services performed on or prior to the date hereof have been paid in full. To the Knowledge of Sellers, none of Sellers or the Acquired Entities have made any written promise or representation to any employee, consultant, or independent contractor regarding continued employment or services for any specified period of time after the Closing, or regarding the terms of any such employment or engagement.

(b) None of Sellers (with respect to the Business or Business Employees) or the Acquired Entities is party to any collective bargaining agreements or similar labor-related Contracts with any labor union representing any Business Employees. There is no written demand from any labor union seeking recognition as the exclusive bargaining representative of any Business Employees by any Seller or Acquired Entity and there is no pending or, to the Knowledge of Sellers, threatened or planned, strike, lockout, organized labor slowdown, or concerted work stoppage by any Business Employees.

(c) Sellers (with respect to the Business or Business Employees) are in compliance with all applicable Laws respecting employment practices related to current or former employees, consultants, or independent contractors and labor, including those related to labor relations, equal employment opportunities, fair employment practices, employment discrimination, harassment, retaliation, reasonable accommodation, disability rights or benefits, immigration, wages, hours, overtime compensation, classification of employees, overtime exemption classification, immigration (including Form I-9 requirements and any applicable E-Verify obligations), child labor, hiring, promotion and termination of employees, affirmative action, meal and break periods, privacy, health and safety, workers' compensation, leaves of absence, paid sick leave, collective bargaining, workers' compensation, unemployment insurance and employee layoffs, in each case, except where the failure to be in compliance would not reasonably be expected to be material to the Business, the Acquired Assets or the Assumed Liabilities. Except as would not result in material Liabilities for the Acquired Entities or Assumed Liabilities, (i) all individuals currently characterized and treated by the Sellers as consultants or independent contractors of the Business are properly treated as independent contractors for purposes of all applicable employment Laws, and (ii) all Business Employees identified on Schedule 3.15(a) who are currently classified as exempt under the Fair Labor Standards Act and similar state and local wage and hour Laws are properly classified for overtime pay purposes under such Laws.

(d) Except as set forth in Schedule 3.15(d), there is no Action pending or, to the Knowledge of Sellers, threatened against any Seller (with respect to the Business or Business Employees) or any Acquired Entity alleging a violation of any applicable labor or employment Law or employment Contract, or any claim arising out of any other employment-related matter, brought by any current or former Business Employee, independent contractor, or Governmental Body before any Governmental Body or arbitrator.

(e) Each Seller, as applicable, with respect to the Business and Business Employees, in the past three (3) years, (i) has in all material respects complied with the Worker Adjustment and Retraining Notification Act of 1988, as amended, or any similar foreign, state, provincial or local plant closing or mass layoff Law (collectively, the "WARN Act"), and (ii) has not implemented any plant closing or layoff of employees that triggered the WARN Act.

(f) To the Knowledge of Sellers, there are no allegations of sexual harassment since January 1, 2021 that have been made against any current officer, director or senior manager of any Seller or any Acquired Entity (with respect to the Business).

(g) Except as set forth on Schedule 3.15(g) as of the date of this Agreement, no officer or manager of any Seller or any Affiliate of Seller or any of the Acquired Entities, and no group of employees or contractors of the Business (including salespersons), has informed Sellers of any plan to terminate such employment or services with respect to the Acquired Assets or the Business.

Section 3.16 Insurance. Schedule 3.16 sets forth a description of all material insurance policies maintained by Sellers or the Acquired Entities, identifying such policies as either "claims made" or "occurrence" policies, as applicable, other than any policies maintained in connection with an Employee Benefit Plan (the "Business Insurance Policies"). All such Business Insurance Policies are in full force and effect. No Seller or any of Acquired Entities since January 1, 2021, has received written notice from any insurer or agent of such insurer with respect to the cancellation or termination of any such Business Insurance Policies.

Section 3.17 Affiliate Transactions. Except for the matters set forth in Schedule 3.17 no Affiliate of any Seller or Acquired Entity (other than any of the Sellers and Acquired Entities themselves) (i) owns any material property or right, tangible or intangible, that is Related to the Business or (ii) owes any money to, or is owed any money by, the Business.

Section 3.18 Sufficiency of Assets. Subject to Bankruptcy Court approval, entry of the Bidding Procedures and Sale Orders and assumption by the applicable Seller or Acquired Entity of the applicable Contract in accordance with applicable Law (including satisfaction of any applicable Cure Costs), except (i) for the exclusion of all Cash and Cash Equivalents of Sellers, all bank accounts, and all deposits or prepaid or deferred charges and expenses, and all financing engagements, letters of credit and similar support instruments, (ii) Excluded Contracts, (iii) Employee Benefit Plans, (iv) insurance policies, (v) employees that do not become Transferred Employees and (vi) the assets, properties and rights and corporate-level services and enterprise-wide services and benefits provided to the Business by Seller and its Subsidiaries, the Acquired Assets (A) constitute all of the material assets, properties and rights owned, leased or licensed by Seller or its Subsidiaries that are Related to the Business as it is currently being conducted and (B) are sufficient to operate the Business immediately after the Closing in all material respects as the Business is currently conducted.

Section 3.19 Inventory. Except as set forth in Schedule 3.19 all finished goods Inventory included in the Acquired Assets and all finished goods Inventory of the Acquired Entities and Related to the Business (collectively the "Finished Goods Inventory") is of a quality usable and salable in the Ordinary Course, subject to applicable reserves. All Finished Goods Inventory has been, in all material respects, packaged, produced and labeled in accordance with applicable Laws. No Finished Goods Inventory in the last three (3) years has been labeled or marketed deceptively. All Finished Goods Inventory conform in all material respects to all the standards applicable to such Finished Goods Inventory, or its use or sale imposed by, any Governmental Body.

Section 3.20 Brokers. Except for PJT Partners, Inc. ("PJT Partners"), the fees and expenses of which will be paid by Sellers, no broker, investment banker, financial advisor or other Person is entitled to any broker's, finder's, financial advisor's or other similar fee or commission, or the reimbursement of expenses in connection therewith, in connection with this Agreement, the Transaction Agreements or the Transactions based upon arrangements made by or on behalf of Sellers.

Section 3.21 Absence of Changes. Since May 31, 2024, through the date hereof, except for any Effects arising from the filing of the Bankruptcy Cases, there has not occurred any Material Adverse Effect.

Section 3.22 No Other Representations or Warranties. Except for the representations and warranties expressly contained in this Article III (as qualified by the Schedules and in accordance with the express terms and conditions (including limitations and exclusions) of this Agreement) or the certificate delivered pursuant to Section 2.5(g) (the "Express Representations") (it being understood that Purchaser and the Purchaser Group have relied only on such Express Representations and warranties), Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that no Seller nor any other Person on behalf of any Seller makes, and neither Purchaser nor any member of the Purchaser Group has relied on, is relying on, or will rely on the accuracy or completeness of any express or implied representation or warranty with respect to any Seller, the Acquired Entities, the Business or any of their other businesses, the other Acquired Assets, or the Assumed Liabilities or with respect to any information, statements, disclosures, documents, projections, forecasts or other material of any nature made available or provided by any Person (including in any presentations or other materials prepared by PJT Partners) (the "Information Presentation") or in that certain Project Crystal datasite administered by Datasite, (the "Dataroom") or elsewhere to Purchaser or any of its Affiliates or Advisors on behalf of Sellers or any of their Affiliates or Advisors. Without limiting the foregoing, no Seller or any of its Advisors nor any other Person will have or be subject to any Liability whatsoever to Purchaser, or any other Person, resulting from the distribution to Purchaser or any of its Affiliates or Advisors, or Purchaser's or any of its Affiliates' or Advisors' use of or reliance on, any such information, including the Information Presentation, the Projections, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom or otherwise in expectation of the Transactions or any discussions with respect to any of the foregoing information. Notwithstanding anything herein to the contrary, nothing herein shall limit, Purchaser's remedies for Fraud.

ARTICLE IV
REPRESENTATIONS AND WARRANTIES OF PURCHASER

Purchaser represents and warrants to Sellers as of the date hereof as follows.

Section 4.1 Organization and Qualification. Purchaser is a corporation duly formed, validly existing and in good standing under the Laws of the Province of Ontario, Canada and has all requisite power and authority necessary to carry on its business as it is now being conducted, except (other than with respect to Purchaser's due formation and valid existence) as would not, individually or in the aggregate, reasonably be expected to have a material adverse effect on Purchaser's ability to consummate the Transactions.

Section 4.2 Authorization of Agreement. Each Purchaser has all necessary power and authority to execute and deliver this Agreement and the Transaction Agreements and to perform its obligations hereunder and to consummate the Transactions. The execution, delivery and performance by Purchaser of this Agreement, and the consummation by Purchaser of the Transactions, subject to requisite Bankruptcy Court approvals, have been duly authorized by all requisite corporate or similar organizational action and no other corporate or similar organizational proceedings on the part of any Purchaser are necessary to authorize the execution, delivery and performance by such Purchaser of this Agreement and the consummation by it of the Transactions. Subject to requisite Bankruptcy Court approvals, this Agreement has been duly executed and delivered by each Purchaser and, assuming due authorization, execution and delivery hereof by the other Parties, constitutes a legal, valid and binding obligation of Purchaser, enforceable against each Purchaser in accordance with its terms, except that such enforceability may be limited by the Enforceability Exceptions.

Section 4.3 Conflicts; Consents.

(a) Subject to requisite Bankruptcy Court approvals, neither the execution and delivery by Purchaser of this Agreement, nor the consummation by Purchaser of the Transactions, nor performance or compliance by Purchaser with any of the terms or provisions hereof, will (i) conflict with or violate any provision of any Purchaser's organizational documents, (ii) violate any Law or Order applicable to any Purchaser, (iii) violate or constitute a breach of or default (with or without notice or lapse of time, or both) under or give rise to a right of termination, modification, or cancelation of any obligation or to the loss of any benefit, any of the terms or provisions of any loan or credit agreement or other material Contract to which any Purchaser is a party or accelerate any Purchaser's obligations under any such Contract, or (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets of any Purchaser or any of such Purchaser's Subsidiaries, except, in the case of clauses (i) through (iv), as would not, individually or in the aggregate, reasonably be expected to prevent or materially impair, alter or delay the ability of Purchaser to consummate the Transactions.

(b) Purchaser is not required to file, seek or obtain any notice, authorization, approval, Order, Permit or Consent of or with any Governmental Body in connection with the execution, delivery and performance by any Purchaser of this Agreement or the consummation by any Purchaser of the Transactions, except (i) any filings required to be made under the HSR Act or any other Foreign Competition Laws, or (ii) where failure to obtain such Consent, approval, authorization or action, or to make such filing or notification, would not, individually or in the aggregate, reasonably be expected to prevent or materially impair, alter or delay the ability of Purchaser to consummate the Transactions, or (iii) as set forth on Schedule 4.3(b).

Section 4.4 Financing. Purchaser has, and will have at the Closing, sufficient funds in an aggregate amount necessary to pay the Closing Consideration, to perform the Assumed Liabilities as they become due in accordance with their terms and to consummate all of the other Transactions, including the payment of the Closing Consideration and all fees, expenses of, and other amounts required to be paid by, Purchaser in connection with Transactions. Purchaser is and shall be capable of satisfying the conditions contained in sections 365(b)(1)(C) and 365(f) of the Bankruptcy Code with respect to the Assigned Contracts and the related Assumed Liabilities.

Section 4.5 Brokers. Except for Deloitte Corporate Finance Inc., all of whose fees and expenses will be borne solely by Purchaser, there is no investment banker, broker, finder, or other intermediary which has been retained by or is authorized to act on behalf of Purchaser that might be entitled to any fee or commission in connection with the Transactions based upon arrangements made by or on behalf of Purchaser.

Section 4.6 No Litigation. There are no Actions pending or, to the knowledge of Purchaser, threatened against or affecting Purchaser that will or would reasonably be expected to adversely affect Purchaser's performance of its obligations under this Agreement or the consummation of the Transactions.

Section 4.7 Investment Representation; Investigation. Purchaser is acquiring the Equity Interests of the Acquired Entities for its own account with the present intention of holding such securities for investment purposes and not with a view to, or for sale in connection with, any distribution of such securities in violation of any federal or state securities Laws. Purchaser is an "accredited investor" within the meaning of Regulation D promulgated pursuant to the Securities Act. Purchaser is knowledgeable about the industries in which the Acquired Entities operate and is capable of evaluating the merits and risks of the Transactions and is able to bear the substantial economic risk of such investment for an indefinite period of time. Purchaser has conducted its own independent investigation, review and analysis of the Acquired Entities, and acknowledges that it has been provided reasonably adequate access to the books and records, facilities and personnel of the Acquired Entities for such purpose.

Section 4.8 Certain Arrangements. As of the date hereof, there are no Contracts, undertakings, commitments, agreements or obligations, whether written or oral, between any member of the Purchaser Group, on the one hand, and any member of the management of any Seller or its respective board of directors (or applicable governing body of any Affiliate of any Seller), any holder of equity or debt securities of any Seller, or any lender or creditor of any Seller or any Affiliate of any Seller, on the other hand, (a) relating in any way to the acquisition of the Acquired Assets or the Transactions or (b) that would be reasonably likely to prevent, restrict, impede or affect adversely the ability of any Seller or any of its Affiliates to entertain, negotiate or participate in any of the Transactions.

Section 4.9 No Foreign Person. As of Closing, Purchaser will not be a "foreign person," as defined in Section 721 of the U.S. Defense Production Act of 1950, including any implementing regulations thereof.

Section 4.10 Solvency. Purchaser is, and immediately after giving effect to the Transactions each of Purchaser and the Acquired Entities shall be, solvent and at all times shall: (a) be able to pay its debts as they become due; (b) own property that has a fair saleable value greater than the amounts required to pay its debt (including a reasonable estimate of the amount of all contingent Liabilities) and (c) have adequate capital to carry on its business. No transfer of property is being made and no obligation is being incurred in connection with the Transactions with the intent to hinder, delay or defraud either present or future creditors of Purchaser or any of the Acquired Entities. In connection with the Transactions, Purchaser has not incurred, nor plans to incur, debts beyond its ability to pay as they become absolute and matured.

Section 4.11 WARN Act and Mass Layoffs. Purchaser does not currently plan or contemplate any plant closings, reduction in force, terminations of employees, or similar personnel actions impacting Business Employees that would trigger obligations under the WARN Act or similar Laws.

Section 4.12 No Competitive Assets. Neither Purchaser nor, to the knowledge of Purchaser, any their "associates" or "affiliates" (each as defined in 16 CFR 801.1(d)) hold five percent (5%) or more of the economic interest, voting securities or non-corporate interests (as "hold," "voting securities" and "non-corporate interest" are defined under 16 CFR 801) of any entity that competes with any of Sellers or the Acquired Entities to the extent that any such holdings would reasonably be expected to prevent or materially delay the expiration or termination of the waiting period under the HSR Act or applicable Foreign Competition Laws in connection with the Transactions.

Section 4.13 No Additional Representations or Warranties. Except for the representations and warranties contained in this Article IV, Sellers acknowledge that neither Purchaser nor any other Person on behalf of Purchaser makes any other express or implied representation or warranty with respect to Purchaser or with respect to any other information provided to Sellers by Purchaser.

ARTICLE V
BANKRUPTCY COURT MATTERS

Section 5.1 Bankruptcy Actions.

(a) The bidding procedures to be employed with respect to this Agreement shall be those reflected in the Bidding Procedures Order. Purchaser agrees and acknowledges that Sellers, including through their representatives, are and may continue soliciting inquiries, proposals or offers from third parties in connection with any Alternative Transaction pursuant to the terms of the Bidding Procedures Order. The terms of the Sale Order shall be reasonably acceptable to Purchaser.

(b) From the date hereof until the earlier of (i) the termination of this Agreement in accordance with Article VIII and (ii) the Closing Date, the Parties shall use their respective commercially reasonable efforts to obtain entry by the Bankruptcy Court of the Sale Order.

(c) Sellers shall promptly take all actions as are reasonably necessary to cause the Bankruptcy Court's entry of the Sale Order, and any other Order reasonably necessary in connection with the Transactions as promptly as practicable, including furnishing affidavits, financial information, or other documents or information for filing with the Bankruptcy Court and making such employees and Advisors of each Seller and its Affiliates available to testify before the Bankruptcy Court for the purposes of, among other things, demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code. Purchaser shall promptly take all actions as are reasonably requested by Sellers to assist in obtaining the Bankruptcy Court's entry of the Sale Order, and any other Order reasonably necessary in connection with the Transactions as promptly as practicable, including furnishing affidavits, financial information, or other documents or information for filing with the Bankruptcy Court and making such employees and Advisors of Purchaser and its Affiliates available to testify before the Bankruptcy Court for the purposes of, among other things, providing necessary assurances of performance by Purchaser under this Agreement and demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code, as well as demonstrating Purchaser's ability to pay and perform or otherwise satisfy any Assumed Liabilities following the Closing.

(d) Each Seller and Purchaser shall (i) appear formally or informally in the Bankruptcy Court if reasonably requested by the other Party or required by the Bankruptcy Court in connection with the Transactions and (ii) keep the other reasonably apprised of the status of material matters related to this Agreement, including, upon reasonable request promptly furnishing the other with copies of notices or other communications received by Sellers from the Bankruptcy Court with respect to the Transactions.

(e) If the portion of the Auction with respect to the Acquired Assets or the Business (the "RDx Auction") is conducted, and Purchaser is not the prevailing party at the conclusion of such RDx Auction (such prevailing party, the "Successful Bidder") but is the next highest bidder at the RDx Auction, Purchaser shall be required to serve as a back-up bidder (the "Backup Bidder") and keep Purchaser's bid to consummate the Transactions on the terms and conditions set forth in this Agreement (as the same may be revised in the RDx Auction) open and irrevocable in accordance with the terms of the Bidding Procedures Order. If the Successful Bidder fails to consummate the applicable Alternative Transaction as a result of a breach or failure to perform on the part of such Successful Bidder, the Backup Bidder will be deemed to have the new prevailing bid, and Sellers may consummate the Transactions on the terms and conditions set forth in this Agreement (as the same may have been improved upon in the RDx Auction).

(f) Sellers and Purchaser acknowledge that this Agreement and the sale of the Acquired Assets are subject to higher and better bids and Bankruptcy Court approval. Purchaser acknowledges that Sellers must take reasonable steps to demonstrate that they have sought to obtain the highest or otherwise best price for the Acquired Assets, including giving notice thereof to the creditors of Sellers and other interested parties, providing information about Sellers to prospective bidders, entertaining higher and better offers from such prospective bidders, and, in the event that additional qualified prospective bidders desire to bid for the Acquired Assets, conducting an Auction.

(g) Purchaser shall provide adequate assurance of future performance as required under Section 365 of the Bankruptcy Code for the Assigned Contracts. Purchaser agrees that it will take all actions reasonably required to assist in obtaining a Bankruptcy Court finding that there has been a sufficient demonstration of adequate assurance of future performance under the Assigned Contracts, such as furnishing affidavits, non-confidential financial information and other documents or information for filing with the Bankruptcy Court and making Purchaser's Advisors available to testify before the Bankruptcy Court.

(h) Nothing in this Section 5.1 shall prevent Sellers from modifying the bidding procedures as necessary or appropriate to maximize value for Sellers' estate in accordance with Sellers' fiduciary obligations.

Section 5.2 Cure Costs.

(a) Upon objection by any Contract counterparty to the proposed Cure Costs asserted by the Sellers with regard to any Contract that Purchaser desires to include as an Assigned Contract (such contract, a "Disputed Contract") the Sellers shall, at Purchaser's prior written direction, either use commercially reasonable efforts to settle the objection of such party or shall litigate such objection (at Purchaser's sole expense if after the Closing). In no event shall the Sellers settle a Cure Cost objection with regard to any Disputed Contract without the express written consent of Purchaser (email being sufficient), which shall not be unreasonably withheld, delayed or conditioned. Upon entry of an Order determining any Cure Costs regarding any Disputed Contract (which may be the Bidding Procedures Order or Sale Order), Purchaser shall have the option to designate the Disputed Contract as an Excluded Asset, in which case, for the avoidance of doubt, Purchaser shall not assume the Disputed Contract and shall not be responsible for the associated Cure Costs, if any, with such Disputed Contract. The Sellers agree that they will promptly take such commercially reasonable actions as are necessary to obtain a Final Order of the Bankruptcy Court providing for the assumption and assignment of the Assigned Contracts.

(b) Notwithstanding anything in this Agreement to the contrary, to the extent any Contract that Purchaser desires to include as an Assigned Contract is not assumable and assignable by the Sellers to Purchaser under Section 365 of the Bankruptcy Code without the consent of the applicable counterparty thereto, this Agreement shall not constitute an agreement to assign any such Contract and the Sellers shall use their commercially reasonable efforts prior to Closing to obtain all such required consents of third parties under any such Contracts (the "Required Consents"). All such Required Consents shall be in writing, in form and substance reasonably acceptable to Purchaser. If a Required Consent is not obtained prior to Closing, or if an attempted assignment thereof would be ineffective or would affect the rights thereunder so that Purchaser would not receive all such rights, the Sellers shall continue to use their commercially reasonable efforts to obtain such Required Consents promptly, but in no event later than forty-five days following the Closing and, until obtained, use their commercially reasonable efforts after Closing to provide to Purchaser the benefits under any such Contract or any claim or right, including, (i) enforcement for the benefit of Purchaser of any and all rights of the Sellers against a third party thereto arising out of the default or cancellation by such third party or otherwise or (ii) cooperating in good faith in any lawful and commercially reasonable arrangement reasonably proposed by Purchaser, including subcontracting, licensing or sublicensing to Purchaser any or all of any Seller's rights and obligations with respect to any such Contract, under which Purchaser shall obtain (without infringing upon the legal rights of such third party or violating any Law) the economic rights and benefits under such Contract; provided, however, that if any Required Consent with respect to any Contract is not received within forty-five days after Closing, such Contract shall be deemed to be an Excluded Contract.

(c) Subject to entry of the Sale Order, Purchaser shall, on the Closing (or, in the case of any Contract that is to be assigned following the Closing pursuant to Section 1.5, on or prior to the date of such assignment), pay the Cure Costs and cure any and all other defaults and breaches under the Assigned Contracts so that such Contracts may be assumed by the applicable Seller and assigned to the applicable Purchaser, in accordance with the provisions of Section 365 of the Bankruptcy Code and this Agreement.

Section 5.3 Sale Order. The Sale Order shall, among other things, (a) approve, pursuant to sections 105, 363 and 365 of the Bankruptcy Code, (i) the execution, delivery and performance by Sellers of this Agreement, (ii) the sale of the Acquired Assets to Purchaser on the terms set forth herein and free and clear of all Encumbrances (other than Encumbrances included in the Assumed Liabilities and Permitted Encumbrances), and (iii) the performance by Sellers of their obligations under this Agreement, (b) authorize and empower Sellers to assume and assign to Purchaser the Assigned Contracts, (c) find that Purchaser is a "good faith" buyer within the meaning of Section 363(m) of the Bankruptcy Code, find that Purchaser is not a successor to any Seller, and grant Purchaser the protections of Section 363(m) of the Bankruptcy Code, (d) find that Purchaser shall have no Liability or responsibility for any Liability or other obligation of any Seller arising under or related to the Acquired Assets other than as expressly set forth in this Agreement, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, environmental, successor, or transferee Liability, labor Law, *de facto* merger, or substantial continuity, (e) find that Purchaser has provided adequate assurance (as that term is used in Section 365 of the Bankruptcy Code) of future performance in connection with the assumption of the Assigned Contracts and (f) find that Purchaser shall have no Liability for any Excluded Liability. Purchaser agrees that it will promptly take such actions as are reasonably requested by any Seller to assist in obtaining Bankruptcy Court approval of the Sale Order, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for purposes, among others, of (A) demonstrating that Purchaser is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code and (B) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code and in accordance with the Bidding Procedures Order.

Section 5.4 Approval. Sellers' obligations under this Agreement and in connection with the Transactions are subject to entry of and, to the extent entered, the terms of any Orders of the Bankruptcy Court (including entry of the Sale Order). Nothing in this Agreement shall require Sellers or their respective Affiliates to give testimony to or submit a motion to the Bankruptcy Court that is untruthful or to violate any duty of candor or other fiduciary duty to the Bankruptcy Court or its stakeholders.

Section 5.5 No Successor Liability. The Parties agree that the Sale Order shall provide that to the fullest extent permitted by Section 363(f) of the Bankruptcy Code, (a) Purchaser shall not be liable for any Liability or Encumbrances (other than the Assumed Liabilities and Permitted Encumbrances) against the Seller, the Debtors, or any of their predecessors, and (b) Purchaser shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Acquired Assets or any of the Liabilities of Seller, the Debtors, or any of their predecessors arising prior to the Closing.

ARTICLE VI
COVENANTS AND AGREEMENTS

Section 6.1 Conduct of the Business of Sellers.

(a) Except (i) as required by applicable Law, Order or a Governmental Body, (ii) any limitations on operations imposed by a Final Order of the Bankruptcy Court or the Bankruptcy Code or Sellers' debtor-in-possession financing or use of cash collateral, as the case may be, (iii) as expressly contemplated, required or permitted by this Agreement, or (iv) as set forth on Schedule 6.1, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VIII), unless Purchaser otherwise consents in writing (such consent not to be unreasonably withheld, conditioned or delayed), Sellers shall, and shall cause the Acquired Entities and the Non-Debtors to, use their commercially reasonable efforts to carry on the Business in the Ordinary Course and in accordance with all applicable Laws, Permits and Governmental Authorizations, in each case except as would not reasonably be expected to be material to the Acquired Entities, the Acquired Assets or the Business or result in any net increase in Assumed Liabilities, Liabilities assumed from the Non-Debtors or the Liabilities of the Acquired Entities; provided that no action by any Seller or Acquired Entity with respect to matters specifically addressed by Section 6.1(b) shall be deemed to be a breach of this Section 6.1(a) unless such action would constitute a breach of Section 6.1(b).

(b) Except (i) as required by applicable Law, Order or a Governmental Body, (ii) any limitations on operations imposed by a Final Order of the Bankruptcy Court or the Bankruptcy Code or Sellers' debtor-in-possession financing or use of cash collateral, as the case may be, (iii) as expressly contemplated, required or permitted by this Agreement, including for purposes of Section 1.6 and Section 6.17 (iv) to the extent related to an Excluded Asset or an Excluded Liability or (v) as set forth on Schedule 6.1, during the period from the date of this Agreement until the Closing (or such earlier date and time on which this Agreement is terminated pursuant to Article VIII), unless Purchaser otherwise consents in writing (such consent not to be unreasonably withheld, delayed or conditioned), Sellers shall not, and shall cause the Acquired Entities not to, take any of the following actions with respect to the Business:

(i) (A) other than transactions among the Sellers and the Acquired Entities as contemplated by, and in furtherance of or necessary for, the Transactions, issue, sell, encumber or grant any shares of the capital stock or other equity or voting interests of the Acquired Entities, or any securities or rights convertible into, exchangeable or exercisable for, or evidencing the right to subscribe for any shares of such capital stock or other equity or voting interests, or any rights, warrants or options to purchase any shares of such capital stock or other equity or voting interests; (B) other than transactions among the Sellers and the Acquired Entities as contemplated by, and in furtherance or necessary for, of the Transactions, redeem, purchase or otherwise acquire any of the outstanding shares of capital stock or other equity or voting interests of the Acquired Entities, or any rights, warrants or options to acquire any shares of such capital stock or other equity or voting interests, (C) establish a record date for, declare, set aside for payment or pay any dividend on, or make any other distribution in respect of, any shares of the capital stock or other equity or voting interests of the Acquired Entities, other than dividends and distributions by an Acquired Entity to another Acquired Entity in the Ordinary Course, or (D) split, combine, subdivide or reclassify any shares of the capital stock or other equity or voting interests of the Acquired Entities, except, in each case, to the extent permitted under the terms of any Employee Benefit Plan;

(ii) (A) incur, assume or otherwise become liable for any indebtedness for borrowed money, issue or sell any debt securities or rights to acquire any debt securities of Sellers or the Acquired Entities, guarantee any such indebtedness or any debt securities of another Person or enter into any "keep well" or other agreement to maintain any financial statement condition of another Person (collectively, "Indebtedness"), except (1) for intercompany Indebtedness among Sellers and their Affiliates, (2) for letters of credit, bank guarantees, security or performance bonds or similar credit support instruments, overdraft facilities or cash management programs, in each case issued, made or entered into in the Ordinary Course, (3) for Indebtedness incurred under arrangements that do not relate to the Business, are not secured by the Acquired Assets and that the Acquired Entities are not responsible for (whether as borrowers or guarantors), and (4) for Indebtedness incurred in connection with the refinancing of any Indebtedness existing on the date of this Agreement or permitted to be incurred, assumed or otherwise entered into hereunder, in each case of this clause (A), other than Excluded Liabilities, (B) enter into any swap or hedging transaction or other derivative agreements or (C) make any loans, capital contributions or advances to, or investments in, any Person other than (1) as permitted pursuant to Section 6.1(b)(v) or (2) in the Ordinary Course;

(iii) sell, lease, exclusively license, assign, transfer or otherwise dispose of, abandon, or subject to any Encumbrance (other than Permitted Encumbrances), in a single transaction or series of related transactions, any of the Acquired Assets, including, for the avoidance of doubt, all assets of the Acquired Entities, and the Acquired Intellectual Property (other than with respect to the expiration of any Acquired Intellectual Property in accordance with its maximum statutory term including all available renewals), except for (A) Ordinary Course dispositions of Inventory and dispositions of surplus or worn out assets or assets that are no longer used or useful in the conduct of the Business, and (B) transfers among the Sellers and the Acquired Entities as contemplated by, and made in furtherance of or necessary for, the Transactions;

(iv) make or authorize any capital expenditures or capital investment, or enter into any agreement or arrangement providing for a capital expenditure or capital investment or otherwise commit to do so, including for property, plant and Equipment in an amount in excess of $100,000 in the aggregate per calendar quarter;

(v) except for acquisitions made with Purchaser's prior written consent, make any acquisition of or investment in (including by merger, consolidation or acquisition of stock or assets or any other means), any material properties, assets, securities or business (including by merger) or authorize or announce an intention to so acquire, or enter into any agreements providing for any of the foregoing, except for the acquisition of supplies, Inventory or Equipment in the Ordinary Course;

(vi) except (A) in the Ordinary Course or (B) as permitted pursuant to the terms of any Employee Benefit Plan, (1) grant to any Business Employee any material increase in compensation (including bonus or long-term incentive opportunities), (2) hire any employee whose base salary exceeds $150,000 per annum, (3) establish, adopt, enter into, materially amend or terminate any Employee Benefit Plan or (4) take any action to accelerate any rights or benefits of any Business Employee under any Employee Benefit Plan; provided that the foregoing shall not restrict any Seller from (x) entering into or making available, to newly hired employees or to employees in the context of promotions based on job performance or workplace requirements, in each case, for the avoidance of doubt, in the Ordinary Course, plans, agreements, benefits and compensation arrangements (including incentive grants) that have a value that is consistent with the past practice of making compensation and benefits available to newly hired or promoted employees in similar positions or (y) taking any action or establishing any Employee Benefit Plan or other compensation or benefit plan that is not targeted at Business Employees or that will not result in Purchaser bearing Liability therefore after the Closing;

(vii) make any material changes in financial accounting methods, principles or practices materially affecting the consolidated assets, Liabilities or results of operations of Sellers and the Acquired Entities with respect to the Business, except insofar as may be required (A) by GAAP (or any interpretation thereof), (B) by any applicable Law or (C) by any Governmental Body or quasi-governmental authority (including the Financial Accounting Standards Board or any similar organization);

(viii) (x) amend or propose to amend or otherwise change any of the Acquired Entities' constitutive documents, including certificates of incorporation, bylaws, certificates of formation, operating agreements, and other governing documents, and any work council agreements;

(ix) cancel, terminate or make any material changes to the Business Insurance Policies;

(x) take any action that could be reasonably expected to increase Purchaser's, the Business' or Acquired Entities' liability for Taxes after the Closing outside of the Ordinary Course;

(xi) grant any Encumbrance (other than Permitted Encumbrances) on any of its material Acquired Assets other than to secure Indebtedness and other obligations in existence at the date of this Agreement (and required to be so secured by their terms) or permitted under Section 6.1(b)(ii);

(xii) settle or compromise any pending or threatened Action against any Seller or Acquired Entity that is Related to the Business and that would result in an Assumed Liability in an amount in excess of $25,000 or that would have a material impact on the Business, any of the Acquired Entities, or any of the Acquired Assets; or

(xiii) authorize any of, or commit or agree, in writing or otherwise, to take any of, the foregoing actions.

(c) Nothing contained in this Agreement is intended to give Purchaser or its Affiliates, directly or indirectly, the right to control or direct the Business (or the other business of Sellers and their Affiliates) prior to the Closing, and nothing contained in this Agreement is intended to give any Seller, directly or indirectly, the right to control or direct Purchaser's or its Affiliates operations. Prior to the Closing, each of Purchaser and Sellers shall exercise, consistent with the terms and conditions of this Agreement, complete control and supervision over its and its Subsidiaries' respective operations.

Section 6.2 Access to Information and Confidentiality.

(a) From the date hereof until the Closing, Sellers will provide each Purchaser and its authorized Advisors with reasonable access and upon reasonable advance notice and during regular business hours to the properties, offices, Assigned Contracts, Acquired Intellectual Property, employees, equipment and books and records of Sellers and the Acquired Entities, in each case, to the extent Related to the Business, in order for each Purchaser and its authorized Advisors to access such information regarding the Business, the Acquired Assets and the Assumed Liabilities as is reasonably necessary in connection with the preparation for and consummation of the Transactions; provided that (i) such access does not unreasonably interfere with the normal operations of any Seller or Acquired Entity, (ii) such access will occur in such a manner as Sellers reasonably determine to be appropriate to protect the confidentiality of the Transactions and such books and records, (iii) all requests for access will be directed to PJT Partners or such other Person(s) as Sellers or PJT Partners may designate in writing from time to time, (iv) Sellers and the Acquired Entities are not obligated to disclose and may redact or remove any information that is not related to the Business, and (v) nothing herein will require Sellers or any Acquired Entity to provide access to, or to disclose any information to, any Purchaser if such access or disclosure (A) would cause significant competitive harm to any Seller or any Acquired Entity if the Transactions are not consummated, (B) would require any Seller or the Acquired Entities to disclose any financial or proprietary information of or regarding the Affiliates of any Seller (other than any Seller or Acquired Entity) or otherwise disclose information regarding the Affiliates of any Seller (other than any Seller or Acquired Entity) that such Seller deems to be commercially sensitive, (C) would waive any legal privilege or (D) would be in violation of applicable Laws (including the HSR Act and Foreign Competition Laws) or the provisions of any agreement to which any Seller or Acquired Entity is bound or would violate any fiduciary duty. Nothing herein will permit Purchaser or its Advisors to conduct any sampling or testing of environmental media or any other invasive investigation or assessment at any Leased Real Property or other property of the Acquired Entities, including of the type commonly known as a Phase II environmental site assessment.

(b) The information provided pursuant to this Section 6.2 will be used solely for the purpose of consummating the Transactions and will be governed by all the terms and conditions of the Confidentiality Agreement, which Confidentiality Agreement shall not terminate upon the execution of this Agreement notwithstanding anything to the contrary therein. Purchaser will, and will cause its Advisors to, abide by the terms of the Confidentiality Agreement with respect to such access and any information furnished to Purchaser or any of its Advisors. Sellers and their Affiliates make no representation or warranty as to the accuracy of any information, if any, provided pursuant to this Section 6.2, and Purchaser may not rely on the accuracy of any such information, in each case, other than the Express Representations.

(c) Upon Sellers' Knowledge of (i) the institution after the date of this Agreement of any adverse legal proceeding not previously disclosed in writing by Sellers to Purchaser or (ii) any material development in any adverse proceeding whether in the Bankruptcy Cases or otherwise, that, in the case of either (i) or (ii), if adversely determined, could be reasonably expected to be material to the Business, the Acquired Assets, or the Acquired Entities, Sellers shall provide written notice thereof, and thereafter, such other information as may be reasonably requested by Purchaser.

(d) From and after the Closing for a period of three (3) years following the Closing Date (or, if later, the closing of the Bankruptcy Cases), Purchaser will provide Sellers and their Advisors, subject to Sellers and Advisors entering into a confidentiality disclosure agreement in a form reasonably acceptable to the Purchaser, with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records, Tax Returns, Tax schedules, Tax rulings, and other documents (for the purpose of examining and copying) relating to the Acquired Assets, the Acquired Entities, the Excluded Assets, the Assumed Liabilities or the Excluded Liabilities with respect to periods or occurrences prior to the Closing Date, and reasonable access, during normal business hours, and upon reasonable advance notice, to employees, officers, Advisors, accountants, offices and properties of Purchaser (including for the purpose of better understanding the books and records). Unless otherwise consented to in writing by Sellers, Purchaser will not, for a period of three (3) years following the Closing Date, destroy, alter or otherwise dispose of any of such books and records without first offering to surrender to Sellers such books and records or any portion thereof that Purchaser may intend to destroy, alter or dispose of. From and after the Closing, Purchaser will, and will cause its employees to, provide Sellers, at Seller's cost and expense, with reasonable assistance, support and cooperation with Sellers' wind-down and related activities (*e.g.*, helping to locate documents or information related to preparation of Tax Returns or prosecution or processing of insurance/benefit claims); provided, however, that Purchaser, including any employees of Purchaser or any of Purchaser's Affiliates, shall not provide any Tax or legal advice or be responsible for signing any Tax Returns on behalf of Sellers pursuant to this Section 6.2(d).

(e) Purchaser will not, and will not permit any member of the Purchaser Group to, contact any officer, manager, director, employee, customer, supplier, lessee, lessor, lender, licensee, licensor, distributor, noteholder or other material business relation of any Seller prior to the Closing with respect to any Seller, its businesses or the Transactions without the prior written consent of such Seller for each such contact, such consent not to be unreasonably withheld, conditioned or delayed.

(f) The Confidentiality Agreement shall terminate as of the Closing Date with respect to confidential information Related to the Business. If this Agreement is terminated for any reason prior to the Closing Date, the Confidentiality Agreement will continue in full force and effect in accordance with the terms and conditions therein.

(g) The Sellers acknowledge that that they have had access to and use of confidential information and data, and that the protection of the confidential information and data is necessary to protect and preserve the value of the Business and the Acquired Assets after the Closing. After the Closing, the Sellers shall not, and shall cause their applicable controlled Affiliates not to (i) use for themselves or others or (ii) disclose or divulge or convey to any other Persons any confidential information and data, except to the extent necessary to fulfill the Sellers' obligations or exercise Sellers' rights under the Transaction Agreements or in connection with the administration and completion of the Bankruptcy Cases and wind down and liquidation of Sellers and their Subsidiaries. To the extent permitted under applicable Law, any of the foregoing permitted disclosures shall be subject to the Sellers first obtaining reasonable assurance that confidential treatment will be accorded to such confidential information and data and will be subject to use restrictions limited to the purpose for which the permitted disclosure is made. If the Sellers or any of their applicable Affiliates (excluding, after the Closing, any Acquired Entities) are required by applicable Law to disclose any such confidential information and data, the Sellers shall promptly notify Purchaser in writing and will disclose only that portion of the confidential information and data that the Sellers are, based on advice of counsel, legally required to disclose; <u>provided</u> that the Sellers shall use commercially reasonable efforts to obtain an appropriate protective Order or other reasonable assurance that confidential treatment will be accorded such confidential information and data and subject to use restrictions limited to the purpose for which the permitted disclosure is made. As used in this <u>Section 6.2(g)</u>, "<u>confidential information and data</u>" means trade secrets, non-public aspects of the Intellectual Property of the Acquired Assets and other proprietary or confidential matters relating to the Business not published or generally known in the relevant trade or industry.

Section 6.3 <u>Employee Matters</u>.

(a) At least fifteen (15) Business Days prior to Closing, Purchaser shall extend to each Business Employee employed by Sellers a written offer of at-will employment reviewed by Sellers, and which Sellers have had an opportunity to comment on, providing for a position that is the same or no less favorable than such employee's position immediately prior to the Closing (including level of responsibility, primary location of employment and authority) and on the terms set forth in this <u>Section 6.3</u> ("<u>Transfer Offer</u>") and that, if accepted, shall become effective immediately after the Closing. Business Employees who accept such Transfer Offers and begin employment with Purchaser or an Affiliate of Purchaser, shall be collectively referred to herein as "<u>Transferred Employees</u>." Purchaser shall notify Sellers in a reasonable timeframe (but in any event within three Business Days of receiving a response from the applicable Business Employee and no later than immediately prior to the Closing) with respect to whether each such offer has been accepted or rejected. Nothing herein shall be construed as a representation or guarantee by any Seller or any of their respective Affiliates that any or all Business Employees employed by Sellers will accept the Transfer Offer, or that any Transferred Employee or Business Employee employed by the Acquired Entities as of the Closing Date will continue in employment with Purchaser following the Closing for any period of time. Purchaser shall carry out all necessary actions to effect the timely employment by it of each Business Employee who has accepted a Transfer Offer. Effective as of the Closing, each Transferred Employee previously employed by Sellers shall cease to be an employee of each Seller.

(b) For a period of one year from and after the Closing Date, to the extent the Transferred Employee remains employed by Purchaser, Purchaser shall provide each Transferred Employee, or cause each Transferred Employee to be provided, with: (i) a base compensation or wage rate, as applicable, and annual cash bonus (excluding equity-based compensation) that, in the aggregate, are either substantially similar to the base compensation or wage rate and annual cash bonus provided to such Transferred Employee as of immediately prior to the Closing or, at Purchaser's sole option, substantially comparable to those made available to similarly situated employees of Purchaser and its Affiliates; and (ii) employee benefits (other than any defined benefit pension or equity or equity-related benefits) that are either substantially similar in the aggregate to those provided by Sellers to such Transferred Employees as of immediately prior to the Closing or, at Purchaser's sole option, substantially comparable to those made available to similarly situated employees of Purchaser and its Affiliates. For purposes of eligibility, vesting and determining level of benefits under the benefit plans and programs maintained by Purchaser or any of its Affiliates after the Closing Date (the "Purchaser Plans") and subject to the reasonable cooperation of and timely provision of necessary information by Seller or any applicable plan administrators, service providers, insurers and/or vendors, each Transferred Employee shall be credited with his or her years of service with Sellers (including, if applicable, any years of service credited by Sellers for years of service with a predecessor of Sellers) before the Closing Date, except to the extent such credit would result in a duplication of benefits.

(c) At the Closing, Transferred Employees (and their eligible dependents and beneficiaries) shall cease active participation in the Employee Benefit Plans of Sellers. Without limiting the generality of any other provision of this Agreement: (i) each Transferred Employee shall be immediately eligible to participate, without any waiting time, in any and all Purchaser Plans available to similarly situated employees of Purchaser or its Affiliates; (ii) for purposes of each Purchaser Plan providing health or welfare benefits and subject to the reasonable cooperation of and timely provision of necessary information by Seller or any applicable plan administrators, service providers, insurers and/or vendors, Purchaser shall cause all pre-existing condition exclusions and actively-at-work requirements of such Purchaser Plan to be waived for such Transferred Employee and his or her covered dependents (unless such exclusions or requirements were applicable under comparable Employee Benefit Plans or would result in duplication of benefits); and (iii) subject to the reasonable cooperation of and timely provision of necessary information by Seller or any applicable plan administrators, service providers, insurers and/or vendors, Purchaser shall cause any co-payments, deductible and other eligible expenses incurred by such Transferred Employee or his or her covered dependents during the plan year in which the Closing Date occurs to be credited for purposes of satisfying all deductible, coinsurance and maximum out-of-pocket requirements applicable to such Transferred Employee and his or her covered dependents for the applicable plan year of each comparable Purchaser Plan. Nothing in this Agreement shall prevent Purchaser from amending employment agreements between Acquired Entities and the Business Employees of Acquired Entities, as such may be necessary or proper in order to carry out effect the terms of this Agreement or comply with Purchaser's employment policies.

(d) Sellers shall be solely responsible, and Purchaser shall have no obligations whatsoever for, any compensation or other amounts payable to any current or former Business Employee, officer, director, independent contractor or consultant of any Seller, including hourly pay, commission, bonus, salary, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with such Seller at any time prior to the Closing Date, all of which shall be Excluded Liabilities.

(e) Sellers shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits or severance brought by or in respect of current or former employees, officers, directors, independent contractors or consultants of the Business or the spouses, dependents or beneficiaries thereof, which claims relate to events occurring on or prior to the Closing Date. Sellers also shall remain solely responsible for all worker's compensation claims of any current or former employees, officers, directors, independent contractors or consultants of the Business which relate to events occurring prior to the Closing Date, all of which shall be Excluded Liabilities. Notwithstanding any other provision of this Agreement or the Sale Order, effective as of the Closing Date the Purchaser and its Affiliates (including, following the Closing Date, the Acquired Entities) shall assume all obligations under COBRA with respect to each current or former Business Employee (or their eligible spouses or dependents) who have experienced a COBRA "qualifying event" and any other M&A qualified beneficiaries (within the meaning assigned to such term under Q&A-4 of Treasury Regulation Section 54.4980B-9). Sellers shall timely provide, or caused to be provided, to Purchaser and its Affiliates the information necessary to fulfill their obligations under the preceding sentence, including identification of all M&A qualified beneficiaries.

(f) Purchaser shall pay, provide or satisfy when due the following: (i) all accrued and unused vacation, personal days, sick pay and other paid time off for Transferred Employees set forth on Schedule 3.15(a) earned but unused as of the Closing Date (the "PTO Liabilities"); and (ii) all compensation (including salary, wages, commissions, bonuses, incentive compensation, overtime, premium pay and shift differentials), vacation, personal days, sick pay and other paid time off, benefits and benefit claims, severance and termination pay, notice, and benefits (including any employer Taxes or other payments related thereto), in each case of this clause (ii), arising as a result of employment or separation from employment with Purchaser on or after the Closing Date with respect to Transferred Employees.

(g) The provisions of this Section 6.3 are for the sole benefit of the Parties and nothing herein, express or implied, is intended or shall be construed to confer upon or give any Person (including for the avoidance of doubt any employees of Sellers or Transferred Employees), other than the Parties and their respective permitted successors and assigns, any legal or equitable or other rights or remedies (with respect to the matters provided for in this Section 6.3 or under or by reason of any provision of this Agreement). Nothing contained herein, express or implied: (i) shall be construed to establish, amend, or modify any benefit plan, program, agreement or arrangement; (ii) shall, subject to compliance with the other provisions of this Section 6.3, alter or limit Purchaser's or Sellers' ability to amend, modify or terminate any particular benefit plan, program, agreement or arrangement; or (iii) is intended to confer upon any current or former employee any right to employment or continued employment for any period of time by reason of this Agreement, or any right to a particular term or condition of employment.

(h) Purchaser will, or will cause its Affiliates to, provide any required notice under the WARN Act and to otherwise comply with the WARN Act with respect to any "plant closing" or "mass layoff" or group termination or similar event under the WARN Act affecting Business Employees or Transferred Employees (including as a result of the consummation of Transactions) and occurring on and after the Closing. Purchaser will not, and will cause its Affiliates not to, take any action on or after the Closing Date that would cause any termination of employment of any employees by Sellers or their Affiliates occurring prior to or at the Closing to constitute a "plant closing," "mass layoff" or group termination or similar event under the WARN Act, or to create any Liability or penalty to Sellers or any of their Affiliates for any employment terminations under applicable Law. Purchaser shall indemnify and hold Sellers harmless for any and all Liabilities under the WARN Act arising out of, relating to, or in respect of any actions of Purchaser occurring on or after the Closing (including as a result of the consummation of Transactions).

(i) Purchaser will extend offers of employment to Business employees of Non-Debtors and the applicable terms of this Section 6.3 shall apply *mutatis mutandis* to such offers, except that Purchaser shall have the option, in its sole discretion, but not the obligation, to extend offers to the Business employees of Intermed Equipamento Medico Hospitalar (Brazil). For the avoidance of doubt, the terms of Sections 6.3(b) and (c) shall not apply to the Business employees of Non-Debtors.

Section 6.4 Regulatory Approvals.

(a) Subject to Section 6.5, Sellers will (i) cooperate with each Purchaser in exchanging such information and providing such assistance as such Purchaser may reasonably request in connection with any filings made by the Purchaser Group pursuant to Section 6.4(b), and (ii) (A) supply promptly any additional information and documentary material that may be requested in connection with the filings made pursuant to Section 6.4(b) and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances in connection with such filings.

(b) Subject to Section 6.5, each Purchaser will, and will cause its Affiliates and Advisors to, (i) make or cause to be made all filings and submissions required to be made by any member of the Purchaser Group under any applicable Laws for the consummation of the Transactions, if any, (ii) cooperate with Sellers in exchanging such information and providing such assistance as Sellers may reasonably request in connection with any filings made by a Seller pursuant to Section 6.4(a), and (iii) (A) supply promptly any additional information and documentary material that may be requested in connection with the filings made pursuant to this Section 6.4(b) or Section 6.4(a) and (B) use reasonable best efforts to take all actions necessary to obtain all required clearances, including to obtain the permit contemplated by Section 7.2(j) as promptly as practicable.

Section 6.5 Antitrust Notification.

(a) Sellers and Purchaser will (and will cause their respective Affiliates, if applicable, to), as promptly as practicable and no later than ten (10) Business Days following the date hereof, (i) file with the United States Federal Trade Commission and the United States

Department of Justice, any necessary notification and report form required pursuant to the HSR Act for the Transactions, which form will request early termination of the waiting period prescribed by the HSR Act, and (ii) make all notifications, filings, registrations or other materials required or necessary under the Foreign Competition Laws set forth on Schedule 7.1(a). Each Seller and Purchaser shall (and shall cause their respective Affiliates to) furnish to each other's counsel such necessary information and reasonable assistance as the other may request in connection with its preparation of any filing or submission that is necessary under the HSR Act or such Foreign Competition Laws, and will respond to any requests made for any supplemental information by any Governmental Body as promptly as practicable. Sellers and Purchaser shall not extend any waiting period or enter into any agreement or understanding with any Governmental Body without the prior written consent of the other; provided that such consent shall not be unreasonably withheld, conditioned, or delayed. Purchaser will use all reasonable best efforts to comply as promptly as practicable with any requests made for additional information in connection with such filings. Purchaser will be solely responsible for payment of all filing fees payable in connection with such filings.

(b) Subject to the immediately following sentence, Sellers and Purchaser will use their reasonable best efforts to as promptly as practicable (and in any event prior to the Outside Date) obtain any clearances, Consents, approvals, waivers, actions, waiting period expirations or terminations, non-actions or other authorizations required under the HSR Act or such Foreign Competition Laws for the consummation of this Agreement and the Transactions and will keep each other apprised of the status of any communications with, and any inquiries or requests for additional information from, any Governmental Body and will comply promptly with any such inquiry or request. With the Sellers' cooperation, each Purchaser will take, and will cause its Affiliates to take, any and all steps necessary to avoid or eliminate each and every impediment under any Law that may be asserted by any Governmental Body or any other Person so as to enable the Parties to expeditiously close the Transactions, including (i) opposing any motion or action for a temporary, preliminary or permanent Order against, or preventing or delaying, the consummation of the Transactions, and exhausting all avenues of appeal, including appealing properly any adverse decision or Order by any Governmental Body, (ii) entering into a consent decree, consent agreement, settlement or other agreement or arrangement (including any customary ancillary agreements) containing Purchaser's agreement to hold separate, license, sell, transfer, dispose or divest (pursuant to such terms as may be required by any Governmental Body) such assets (whether tangible or intangible), rights, properties, products or businesses related to the Acquired Assets, (iii) agreeing to the termination, modification, or assignment of existing relationships, joint ventures, Contracts or obligations related to the Acquired Assets and (iv) agreeing to such limitations on conduct or actions of members of Purchaser and its Affiliates after the Closing as may be required in order to obtain satisfaction of the conditions set forth in Section 7.1(a) prior to the Outside Date, in each case, so as to allow the consummation of this Agreement and the Transactions as soon as practicable and, in any event, prior to the Outside Date.

(c) The Parties commit to instruct their respective counsel to cooperate with each other and use reasonable best efforts to facilitate and expedite obtaining any clearances, Consents, approvals, waivers, actions, waiting period expirations or terminations, non-actions or other authorizations under the HSR Act or Foreign Competition Laws or state transaction notification Laws at the earliest practicable dates and, in any event, prior to the Outside Date. Such reasonable best efforts and cooperation shall include each Party and its respective counsel undertaking to (i) promptly notify the other Party or its counsel of, and, if in writing, furnish such other Party or its counsel with copies of (or, in the case of oral communications, advise such other Party or its counsel of the contents of), any communication received by such Person from a Governmental Body in connection with the filings made pursuant to this Section 6.5 and (ii) keep the other Party or its counsel informed with respect to the status of any applicable submissions and filings to any Governmental Body in connection with this Agreement and the Transactions and any developments, meetings or discussions with any Governmental Body in respect thereof, including with respect to (A) the receipt of any non-action, action, clearance, Consent, approval, waiver, or other authorizations, (B) the expiration or termination of any waiting period, (C) the commencement or proposed or threatened commencement of any investigation, litigation or administrative or judicial Action or proceeding under applicable Laws, including any proceeding initiated by a private party, and (D) the nature and status of any objections raised or proposed or threatened to be raised by any Governmental Body with respect to this Agreement and the Transactions. Neither Sellers nor Purchaser will participate in any substantive meeting or discussion with any Governmental Body with respect of any such filings, applications, investigation or other inquiry relating to the Transaction without giving the other Party reasonable prior notice of the meeting or discussion and, to the extent permitted by the relevant Governmental Body, the opportunity to attend and participate in such meeting or discussion, unless prohibited by such Governmental Body. Sellers will have the right to review and provide comments on any draft notifications, formal notifications, filing, submission or other written substantive communication (and any analyses, memoranda, presentations, white papers, correspondence or other written materials submitted therewith) to be submitted to any Governmental Body in advance of any such submission. Each Party acknowledges that, with respect to any non-public information provided by a Party to the other under this Section 6.5, each Party may (1) designate such material as restricted to "outside counsel only" and any such material shall not be shared with employees, officers or directors or their equivalents of the receiving Party without approval of the disclosing Party and (2) make appropriately limited redactions necessary to satisfy contractual confidentiality obligations, preserve attorney-client privilege or protect material relating to the valuation of the Acquired Assets.

(d) Purchaser will not, and will not permit any member of the Purchaser Group or their respective Affiliates to, engage in any action or enter into any transaction or permit any action to be taken or transaction to be entered into that could reasonably be expected to (i) impose any material delay in the obtaining of, or increase the risk of not obtaining, any clearances, Consents, approvals, waivers, actions, waiting period expirations or terminations, non-actions or other authorizations under the HSR Act or Foreign Competition Laws from any Governmental Body necessary to consummate the Transactions, (ii) increase the risk of any Governmental Body entering an Order preventing, delaying or prohibiting the consummation of the Transactions or (iii) delay the consummation of the Transactions.

(e) Notwithstanding the foregoing or anything in this Agreement to the contrary, in no event shall Purchaser or any member of the Purchaser Group be required to, nor shall Seller or any of its Affiliates, without Purchaser's prior written consent (i) propose, negotiate, or agree to, the sale, divestiture, license, or other disposition of assets of any member of the Purchaser Group or any assets, operations, divisions, businesses, product lines, Contracts, or customers of the Business or (ii) accept any conditions or take any other actions that would limit Purchaser's freedom with respect to any assets, operations, divisions, businesses, product lines, Contracts, or customers of any member of the Purchaser Group or any assets, operations, divisions, businesses, product lines, Contracts, or customers of the Business.

Section 6.6 Notification of Certain Matters. From the date hereof and through earlier of the Closing Date and the date on which this Agreement is terminated pursuant to Article VIII, the Sellers shall give prompt written notice to Purchaser of: (a) a breach of any representation or warranty of the Sellers contained in this Agreement, (b) the occurrence, or failure to occur, of any event that would be reasonably likely to cause any representation or warranty of the Sellers contained in this Agreement to be untrue or inaccurate at any time prior to the Closing determined as if such representation or warranty were made at such time, in each case of (a) and (b), such that the condition set forth in Section 7.2(a) would not be satisfied, (c) the occurrence of any event which has resulted or could reasonably be expected to result in a Material Adverse Effect, (d) any notice or other written communication from any Person alleging that the consent of such Person is or may be required in connection with the consummation of the Transactions, (e) any material written communication from any Governmental Entity in connection with or relating to the Transactions, and (f) the commencement of any actions, suits, investigations or proceedings relating to the Sellers, any of the Acquired Entities, Acquired Assets, Assumed Liabilities or the Business that, if pending on the date hereof, would have been required to have been disclosed pursuant to Section 3.8.

Section 6.7 Reasonable Efforts; Cooperation.

(a) Subject to the other terms of this Agreement, including any provisions with an express different standard regarding actions to be taken hereunder, each Party shall, and shall cause its Advisors to, use its reasonable best efforts to perform its obligations hereunder and to take, or cause to be taken, and do, or cause to be done, all things necessary, proper or advisable to cause the Transactions to be effected as soon as practicable, but in any event on or prior to the Outside Date, in accordance with the terms hereof and to cooperate with each other Party and its Advisors in connection with any step required to be taken as a part of its obligations hereunder. The “reasonable best efforts” of Sellers will not require any Seller or any of its Affiliates or Advisors to expend any money to remedy any breach of any representation or warranty, to commence any Action, to waive or surrender any right, to modify any Contract or to waive or forego any right, remedy or condition hereunder.

(b) The obligations of Sellers pursuant to this Agreement, including this Section 6.7, shall be subject to any Orders entered, or approvals or authorizations granted or required, by or under the Bankruptcy Court or the Bankruptcy Code (including in connection with the Bankruptcy Cases), Sellers’ debtor-in-possession financing, and Sellers’ obligations as debtors in possession to comply with any Order of the Bankruptcy Court (including the Bidding Procedures Order and the Sale Order), and Sellers’ duty to seek and obtain the highest or otherwise best price for the Acquired Assets as required by the Bankruptcy Code.

(c) The Sellers shall, or shall cause the Acquired Entities to, give promptly such notice to third parties and use commercially reasonable efforts to obtain such third party consents as Purchaser may in its reasonable discretion deem necessary or desirable in connection with the transactions contemplated by this Agreement.

Section 6.8 Further Assurances. From time to time, as and when requested by any Party and at such requesting Party's expense, any other Party will execute and deliver, or cause to be executed and delivered, all such documents and instruments and will take, or cause to be taken, all such further or other actions as such requesting Party may reasonably deem necessary or desirable to evidence and effectuate the Transactions.

Section 6.9 Insurance Matters. Purchaser acknowledges that, upon Closing, all nontransferable insurance coverage provided in relation to any Seller and the Acquired Assets that is maintained by such Seller or its Affiliates (whether such policies are maintained with third party insurers or with any Seller or its Affiliates) shall cease to provide any coverage to Purchaser and the Acquired Assets and no further coverage shall be available to Purchaser or the Acquired Assets under any such policies. From and after the Closing, Purchaser shall have the right to make claims and any right to any proceeds with respect to any matter solely to the extent related to the Business, the Acquired Assets or the Assumed Liabilities inuring to the benefit of Sellers for periods prior to the Closing, and Sellers shall use reasonable best efforts to seek recovery or allow Purchaser to seek recovery under insurance policies of Sellers related to the Business, and Sellers shall cooperate with Purchaser's reasonable requests if it seeks recovery, with respect to such matters and shall remit (or, at Purchaser's request, direct any such insurer to pay directly to Purchaser) any insurance proceeds actually obtained therefrom (net of Sellers' reasonable and documented out-of-pocket costs and expenses of seeking recovery, to the extent not otherwise paid or reimbursed by Purchaser) to Purchaser or its designee.

Section 6.10 Receipt of Misdirected Assets; Liabilities.

(a) From and after the Closing, if any Seller or any of its respective Affiliates receives or becomes aware that it holds any right, property or asset that is an Acquired Asset, the applicable Seller shall promptly transfer or cause such of its Affiliates to transfer such right, property or asset (and shall promptly endorse and deliver any such asset that is received in the form of cash, checks or other documents) to Purchaser, and such asset will be deemed the property of Purchaser held in trust by such Seller for Purchaser until so transferred. From and after the Closing, if Purchaser or any of its Affiliates receives or becomes aware that it holds any right, property or asset that is an Excluded Asset, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such asset (and shall promptly endorse and deliver any such right, property or asset that is received in the form of cash, checks, or other documents) to the applicable Seller, and such asset will be deemed the property of such Seller held in trust by Purchaser for such Seller until so transferred.

(b) From and after the Closing, if any Seller or any of such Seller's Affiliates is subject to a Liability that should belong to Purchaser or its Affiliates pursuant to the terms of this Agreement, such Seller shall promptly transfer or cause such of its Affiliates to transfer such Liability to Purchaser, and Purchaser shall assume and accept such Liability. From and after the Closing, if Purchaser or any of its Affiliates is subject to a Liability that should belong to a Seller or its Affiliates pursuant to the terms of this Agreement, Purchaser shall promptly transfer or cause such of its Affiliates to transfer such Liability to the applicable Seller or its Affiliates, and such Seller or its Affiliates shall assume and accept such Liability.

Section 6.11 Acknowledgment by Purchaser.

(a) Purchaser acknowledges and agrees, that it has conducted to its full satisfaction an independent investigation and verification of the Business (including its financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental, health or safety conditions and compliance, employee matters, regulatory compliance, business risks and prospects), and the Acquired Assets and the Assumed Liabilities, and, in making its determination to proceed with the Transactions, Purchaser is relying, will rely and has relied solely on the Express Representations and the results of the Purchaser's own independent investigation and verification and has not relied on, is not relying on, and will not rely on, any information, statements, disclosures, documents, projections, forecasts or other material made available to Purchaser or any of its Affiliates or Advisors in the Dataroom, the Information Presentation, or the Projections or any other information, statements, disclosures or materials, in each case, whether written or oral, made or provided by or on behalf of any Seller or any other Seller Party, or any failure of any of the foregoing to disclose or contain any information, except for the Express Representations (it being understood that Purchaser has relied only on the Express Representations). Purchaser acknowledges and agrees, that (i) the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser and on which Purchaser may rely in connection with the Transactions and (ii) all other representations, warranties and statements of any kind or nature expressed or implied, whether in written, electronic or oral form, including (A) the completeness or accuracy of, or any omission to state or to disclose, any information (other than solely to the extent expressly set forth in the Express Representations) including in the Dataroom, Information Presentation, Projections, meetings, calls or correspondence with management of any Seller, any of the Seller Parties or any other Person on behalf of any Seller or any of the Seller Parties or any of their respective Affiliates or Advisors and (B) any other statement relating to the historical, current or future business, financial condition, results of operations, assets, Liabilities, properties, Contracts, environmental, health or safety conditions and compliance, employee matters, regulatory compliance, business risks and prospects of the Business, or the quality, quantity or condition of any of the Acquired Assets (including, for the avoidance of doubt, any assets of the Acquired Entities), are, in each case, specifically disclaimed by each Seller, on its behalf and on behalf of the Seller Parties. Purchaser: (1) disclaims reliance on the items in clause (ii) in the immediately preceding sentence; and (2) acknowledges and agrees that it has relied on, is relying on and will rely on only the items in clause (i) in the immediately preceding sentence. Without limiting the generality of the foregoing, Purchaser acknowledges and agrees, that neither Sellers, nor any other Person (including the Seller Parties), has made, is making or is authorized to make, and Purchaser, hereby waives, all rights and claims it or they may have against any Seller Party with respect to the accuracy of, any omission or concealment of, or any misstatement with respect to, (x) any potentially material information regarding any Seller or any Acquired Entity or any of their respective assets (including the Acquired Assets), Liabilities (including the Assumed Liabilities) or operations and (y) any warranty or representation (whether in written, electronic or oral form), express or implied, as to the quality, merchantability, fitness for a particular purpose, or condition of any Seller's or Acquired Entity's business (including the Business), operations, assets, Liabilities, Contracts, environmental, health or safety conditions and compliance, employee matters, regulatory compliance, business risks and prospects or any portion thereof, except, in each case, solely to the extent expressly set forth in the Express Representations.

(b) Without limiting the generality of the foregoing, in connection with the investigation by the Purchaser of the Business, Purchaser and its Advisors have received or may receive, from or on behalf of any Seller or other Seller Parties, certain projections, forward-looking statements and other forecasts (whether in written, electronic, or oral form, and including in the Information Presentation, Dataroom, management meetings, etc.) (collectively, "Projections"). Purchaser acknowledges and agrees that (i) such Projections are being provided solely for the convenience of Purchaser to facilitate its own independent investigation of Sellers, (ii) there are uncertainties inherent in attempting to make such Projections, (iii) Purchaser is familiar with such uncertainties, and (iv) Purchaser is taking full responsibility for making its own evaluation of the adequacy and accuracy of all Projections (including the reasonableness of the assumptions underlying such Projections).

(c) Purchaser acknowledges and agrees that it will not assert, institute, or maintain, and will cause each member of the Purchaser Group not to assert, institute or maintain, any Action that makes any claim contrary to the agreements and covenants set forth in this Section 6.11, including any such Action with respect to the distribution to Purchaser, or any member of the Purchaser Group, or Purchaser's or any member of the Purchaser Group's use, of the information, statements, disclosures or materials in the Information Presentation, the Dataroom or Projections or any other information, statements, disclosures, or materials, in each case whether written or oral, provided by them or any other Seller Party or any failure of any of the foregoing to disclose any information.

(d) Purchaser acknowledges and agrees, that the covenants and agreements contained in this Section 6.11 (i) require performance after the Closing to the maximum extent permitted by applicable Law and (ii) are an integral part of the Transactions and that, without these agreements set forth in this Section 6.11, Seller would not enter into this Agreement.

(e) Nothing herein shall limit Purchaser's remedies for Fraud.

Section 6.12 Directors and Officers. Following the Closing until the third (3rd) anniversary thereof, Purchaser shall not and shall cause the Acquired Entities not to cancel or otherwise reduce coverage under any "tail" insurance policies purchased by the Acquired Entities prior to the Closing; provided that (a) Purchaser has approved such policies, such approval not to be unreasonably withheld, conditioned or delayed, and (b) no payments shall be required of the Acquired Entities or the Purchaser with respect to such policies after the Closing.

Section 6.13 Vyaire Guarantees. Purchaser acknowledges that in the course of conduct of the Business, Vyaire and its Affiliates have entered into the arrangements as set forth on Schedule 6.13 to support or facilitate the Business (hereinafter referred to as the "Seller Credit Support Obligations"). It is understood that the Seller Credit Support Obligations are not intended to continue after the Closing. Purchaser agrees that it shall use its commercially reasonable efforts to obtain replacements for the Seller Credit Support Obligations (which shall include the full and unconditional release of Vyaire and its applicable Affiliates for Liability under the Seller Credit Support Obligations to the extent Related to the Business and arising after the Closing through no wrongful act or omission of Sellers, applicable Affiliates and each of their respective officers, directors, employees and agents) that will be in effect at the Closing or, if Purchaser does not replace any of the Seller Credit Support Obligations at the Closing, the Purchaser will use its commercially reasonable efforts to arrange for itself or one of its Subsidiaries to be substituted as the primary obligor thereon as of the Closing through an assumption, accession, acknowledgment or similar agreement (which shall include the full and unconditional release of Vyaire and its applicable Affiliates under the applicable Seller Credit Support Obligations to the extent Related to the Business and arising after the Closing through no wrongful act or omission of the Sellers, their applicable Affiliates, and each of their respective officers, directors, employees, and agents) with the beneficiary of the applicable Seller Credit Support Obligation. Whether or not Purchaser is able to satisfy the terms of the immediately preceding sentence, Purchaser shall indemnify the Sellers and their respective Affiliates and each of their respective officers, directors, employees, and agents from and against any and all Liabilities incurred by any of them relating to the Seller Credit Support Obligations arising after the Closing through no wrongful act or omission of any such Sellers, Affiliates, officers, directors, employees, or agents. Purchaser agrees that, with respect to any Seller Credit Support Obligation, its commercially reasonable efforts pursuant to this Section 6.13 shall include, if requested, the execution and delivery by Purchaser, or by an Affiliate of Purchaser acceptable to the beneficiary of such Seller Credit Support Obligation, of a replacement guarantee that is substantially in the form of such Seller Credit Support Obligation. All costs and expenses incurred in connection with providing the release or substitution of the Seller Credit Support Obligations shall be borne by Purchaser.

Section 6.14 Covenant Not to Sue. Each Seller, on behalf of itself, its successors and assigns, and its controlled Affiliates and their successors and assigns, hereby grants to Purchaser, and its Affiliates, successors and assigns, a perpetual non-transferable, royalty-free, and fully paid up covenant not to sue for infringement, misappropriation, or violation of any Intellectual Property owned, as of the Closing, by such Seller or Affiliate (as applicable), that, individually or in the aggregate, is material to the operation of the Business and Purchaser’s exploitation of the Acquired Assets.

Section 6.15 Seller Names. Purchaser, for itself and its Affiliates (including, after the Closing, each Acquired Entity), acknowledges and agrees that, as between the Parties, Sellers (or their Affiliates) are the exclusive owners of the Seller Names and that Purchaser is not, directly or indirectly, purchasing, acquiring or otherwise obtaining any right, title or interest in or to the Seller Names, and except as set forth herein (a) neither Purchaser nor any of its Affiliates (including, after the Closing, each Acquired Entity) shall have any rights in or to the Seller Names, (b) within 270 days after the Closing Date, Purchaser shall (and shall cause its Affiliates, including each Acquired Entity, to) cease use of (and thereafter not use) the Seller Names (including in the respective corporate or other legal names of each Acquired Entity), and (c) Purchaser shall not, and Purchaser shall cause its Affiliates (and after the Closing, each Acquired Entity) not to (1) use, register or seek to use or register in any jurisdiction any of the Seller Names or any other names, trademarks, service marks, trade names, logos, monograms, trade dress, social media names and handles, domain names or other source identifiers confusingly similar thereto or (2) contest the use, ownership, validity or enforceability of any rights of Sellers or any of their Affiliates in or to any of the Seller Names. After the Closing, Purchaser shall not (and shall cause its Affiliates, including, after the Closing, each Acquired Entity, not to) represent that it has authority to bind Sellers or any of their Affiliates. Sellers hereby grant Purchaser a fully paid-up, royalty-free, non-exclusive license to use the Seller Names and any other trademarks, domain names and social media accounts, including content therein, of Sellers and their Affiliates (i) for 270 days after the Closing Date, solely in connection with the Business and solely to the extent consistent with past practice in the twelve (12) months prior to the Closing, and (ii) solely to the extent such Seller Names are affixed to Inventory included in the Acquired Assets or required to be affixed to Inventory contemplated by purchase orders with customers that are existing as of the Closing, and in compliance with applicable Laws, on such Inventory as it is sold or otherwise commercialized by Purchaser, until such Inventory is depleted or destroyed; provided that Purchaser shall indemnify the Sellers and their respective Affiliates and each of their respective officers, directors, employees, agents and representatives (and any of their successors or assigns) from and against any and all Liabilities incurred by any of them relating to or arising from such Inventory and the sale or commercialization thereof. All goodwill associated with or arising from Purchaser's or any of its Affiliate's use of any Seller Names shall inure to the benefit of Sellers. Notwithstanding the foregoing, nothing in this Agreement prohibits Purchaser or its Affiliates from using the Seller Names at all times after the Closing Date (A) as required by applicable Law, (B) as may be required to perform any contractual obligations Purchaser and its Affiliates owe to (1) Sellers or their Affiliates or (2) solely for such 270 day period, any party to any Assigned Contract; provided that Purchaser shall fully indemnify Sellers and their Subsidiaries for such use; (C) on internal-only archival business and legal documents and items; (D) in a neutral, non-trademark manner to describe the history thereof or as otherwise permitted by "fair use" principles, and (E) as may be required in furtherance of transitioning any Permits, approvals, or compliance matters or updating any approved labels for finished products with respect to the Business or the Acquired Assets that include Seller Names.

Section 6.16 Transition Services Agreement. From the date hereof until the Closing, the Parties shall cooperate diligently and in good faith to (a) negotiate and finalize the transition services to be performed by the Sellers and Purchaser, as applicable, to be set forth on the schedules to the Transition Services Agreement, which may include the scope of such services, reducing the scope of such services and identifying incremental services that Purchaser may reasonably determine are necessary to operate the Business immediately following the Closing, the proportional usage and apportioned costs in relation to services shared with the Ventilator Purchaser (as defined in the Transition Services Agreement), and a detailed cost breakdown for each underlying function, element, activity, or process performed in connection with a service that is included within Purchaser's apportioned costs in the Transition Services Agreement and (b) initiate discussions related to separation, stand-up, and integration planning, in each case, as promptly as reasonably possible; provided, however, that in no event shall (i) the costs of any service be more or less than Sellers' actual incurred and documented costs for such service or (ii) any term create unreimbursed costs or expenses for Sellers. Notwithstanding the foregoing, if Sellers and Purchaser do not agree to the final schedules to the Transition Services Agreement as of the Closing, the Transition Services Agreement in the form attached hereto as Exhibit D, together with such schedules as have been agreed by the Parties as of the Closing, shall be effective as of the Closing and shall be legally binding upon both Sellers and Purchaser. However, the Parties will continue in accordance with this Section 6.16 to finalize the schedules to the Transition Services Agreement as promptly as possible following the Closing.

Section 6.17 Restructuring Transactions.

(a) Prior to the Closing, Seller shall complete the restructuring transactions described on Schedule 6.17(a) (the "Interco Restructuring Transactions"). The Interco Restructuring Transactions shall include causing all intercompany Liabilities between any

Acquired Entity, on the one hand, and any Seller or Non-Debtor, on the other hand, to be terminated. The Interco Restructuring Transactions shall be effected in a manner that does not result in any Liability to Purchaser for Taxes at any Acquired Entity or any other Assumed Liability and does not result in any net increase in Liabilities of any Acquired Entity.

(b) Prior to the Closing, Sellers shall and shall cause each applicable Acquired Entity to sell, spin-off, carve-out, divest, distribute, transfer or otherwise remove from the Acquired Entities all assets, Liabilities and employees, in each case, that are not Related to the Business (such transactions, the "Acquired Entity Restructuring Transactions" and, together with the Interco Restructuring Transactions, the "Restructuring Transactions"). The Acquired Entity Restructuring Transactions shall be more specifically described on Schedule 6.17(b) (which schedule shall be agreed upon by the Parties as promptly as practicable and in any event prior to the Closing Date). The Acquired Entity Restructuring Transactions shall be effected in a manner that does not result in any net increase in the Liabilities of any Acquired Entity.

ARTICLE VII
CONDITIONS TO CLOSING

Section 7.1 Conditions Precedent to the Obligations of Purchaser and Sellers. The respective obligations of each Party to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Sellers and Purchaser) at the Closing, of each of the following conditions:

(a) the expiration or termination of any required waiting period under the HSR Act or under the Foreign Competition Laws set forth in Schedule 7.1(a) related to the Transactions, and receipt of any necessary approval related to the Closing under the Foreign Competition Laws or other Governmental Authorizations, Permits or regulations set forth in Schedule 7.1(a);

(b) no court of competent jurisdiction shall have issued, enacted, entered, promulgated or enforced any Order (including any temporary restraining Order or preliminary or permanent injunction) restraining, enjoining or otherwise prohibiting the Closing that is still in effect; and

(c) the Bankruptcy Court shall have entered the Sale Order on or before September 23, 2024, with terms consistent with the terms provided for in Article V and otherwise reasonably satisfactory to each of Sellers and Purchaser, and the Sale Order shall have become a Final Order and this Agreement shall become effective in accordance with its terms.

Section 7.2 Conditions Precedent to the Obligations of Purchaser. The obligations of Purchaser to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Purchaser in its sole discretion), at the Closing, of each of the following conditions:

(a) (i) the representations and warranties made by Sellers in Article III (in each case, other than the Fundamental Representations) shall be true and correct in all respects as of the Closing Date as though made on and as of the Closing Date, except (A) that representations and warranties that are made as of a specified date need be true and correct as of such date and (B) to the extent the failure of such representations and warranties to be true and correct as of such dates has not had a Material Adverse Effect (in each case, disregarding any exception or qualification in such representations and warranties relating to "material", "materiality" or "Material Adverse Effect") and (ii) the representations and warranties set forth in Section 3.1, Section 3.2, Section 3.4, Section 3.6(a), Section 3.11, Section 3.13, Section 3.18 and Section 3.20 (collectively, the "Fundamental Representations") shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except that such Fundamental Representations that are made as of a specified date need be true and correct in all material respects only as of such date;

(b) Sellers shall not have breached in a manner that is material with respect to the Business, Acquired Assets, Acquired Entities, or the Transactions, the covenants required to be performed or complied with by it under this Agreement on or prior to the Closing Date;

(c) Sellers shall not have sold or otherwise transferred or disposed of, any Equity Interests in any of the Acquired Entities to any Person;

(d) Sellers shall have delivered to Purchaser a counterpart of the Transition Services Agreement, duly executed by the applicable Seller Parties;

(e) There shall be no pending or, to the Knowledge of Sellers threatened, litigation or proceeding, in law or in equity, or proceedings or governmental or other investigations before any commission or other administrative authority or Governmental Body (or determinations by any Governmental Body) that would reasonably be expected to materially and adversely affect the Acquired Assets, Assumed Liabilities and the Business;

(f) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.5;

(g) The Sellers shall have caused Vyaire Medical S.r.l. to duly revoke all powers of attorney (in case of powers of attorney issued via a notarial deed the revocation shall also be made via a notarial deed) including those granted to Rosita Graziani, Nicholas Throp, Matthew Lee, Claudio Partis, Maria Rizza, June Johnson, Kira Brown, Nicole Williams;

(h) Schedule 1.6 shall be in form and substance reasonable acceptable to Purchaser;

(i) Sellers shall have completed the Restructuring Transactions in accordance with Section 6.17;

(j) Purchaser shall have obtained sufficient replacements for the nontransferable Permits required to operate the Business immediately after the Closing in all material respects as the Business is currently conducted, which Permits are listed on Schedule 7.2(j);

(k) The Sellers shall have caused the sole administrator of Vyaire Medical S.r.l. to resign or otherwise cease from office, without cost to Vyaire Medical S.r.l. for loss of office or otherwise, pursuant to a resignation letter in customary form; provided that Purchaser shall use commercially reasonable efforts to appoint a replacement effective as of the Closing;

(l) Purchaser or the applicable Acquired Entity shall have obtained an insurance policy related to those topics previously discussed between the Parties on terms that shall be acceptable to Purchaser, in Purchaser's sole and absolute discretion which Purchaser may exercise for any reason; and

(m) The Acquired Entities shall have no outstanding Indebtedness.

Section 7.3 Conditions Precedent to the Obligations of Sellers. The obligations of Sellers to consummate the Closing are subject to the satisfaction (or to the extent permitted by Law, written waiver by Sellers in their sole discretion), at the Closing, of each of the following conditions:

(a) the representations and warranties made by Purchaser in Article IV shall be true and correct in all material respects as of the Closing Date as though made on and as of the Closing Date, except that representations and warranties that are made as of a specified date need be true and correct in all material respects only as of such date (in each case, disregarding any exception or qualification in such representations and warranties relating to "material", "materiality" or "Material Adverse Effect");

(b) Purchaser shall not have breached in a manner that is material with respect to the Transactions, taken as a whole, the covenants required to be performed or complied with by it under this Agreement on or prior to the Closing Date;

(c) Purchaser shall have delivered to Sellers a counterpart of the Transition Services Agreement, duly executed by Purchaser; and

(d) Purchaser shall have delivered, or caused to be delivered, to Sellers all of the items set forth in Section 2.6.

Section 7.4 Waiver of Conditions. Upon the occurrence of the Closing, any condition set forth in this Article VII that was not satisfied as of the Closing will be deemed to have been waived for all purposes by the Party having the benefit of such condition as of and after the Closing. None of Purchaser or Sellers may rely on the failure of any condition set forth in this Article VII, as applicable, to be satisfied if such failure was caused by such Party's failure to perform any of its obligations under this Agreement, including its obligation to use its reasonable best efforts to consummate the Transactions as required under this Agreement.

ARTICLE VIII
TERMINATION

Section 8.1 Termination of Agreement. This Agreement may be terminated at any time prior to the Closing only in accordance with this Section 8.1:

(a) by the mutual written consent of Sellers and Purchaser;

(b) by written notice of either Purchaser or Sellers, upon the issuance of an Order by a court of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Closing or declaring unlawful the Transactions, and such Order having become final, binding and non-appealable; provided that no Party may terminate this Agreement under this Section 8.1(b) if the issuance of such Order was caused by such Party's failure to perform any of its obligations under this Agreement;

(c) by written notice of either Purchaser or Sellers, if the Closing shall not have occurred on or before December 2, 2024 (the "Outside Date") (or such later date as provided in Section 5.1(f)); provided that a Party shall not be permitted to terminate this Agreement pursuant to this Section 8.1(c) if the failure of the Closing to have occurred by the Outside Date was caused by such Party's failure to perform any of its obligations under this Agreement; provided further that Sellers may extend the Outside Date up to an additional ten (10) Business Days to the extent necessary to satisfy the conditions set forth in Section 7.1 so long as the other conditions in Article VII (other than conditions that by their nature are to be satisfied at the Closing) have been satisfied or waived;

(d) by written notice from Sellers to Purchaser, upon a breach of any covenant or agreement on the part of Purchaser, or if any representation or warranty of Purchaser will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied, including a breach of Purchaser's obligation to consummate the Closing; provided that (i) if such breach is curable by Purchaser, then Sellers may not terminate this Agreement under this Section 8.1(d) unless such breach has not been cured by the date which that the earlier of (A) two Business Days prior to the Outside Date and (B) 30 days after Sellers notify Purchaser of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(d) will not be available to Sellers at any time that Sellers are in material breach of, any covenant, representation or warranty hereunder;

(e) by written notice from Purchaser to Sellers, upon a breach of any covenant or agreement on the part of Sellers, or if any representation or warranty of the Sellers will have become untrue, in each case, such that the conditions set forth in Section 7.3(a) or 7.3(b) would not be satisfied; provided that (i) if such breach is curable by Sellers then Purchaser may not terminate this Agreement under this Section 8.1(e) unless such breach has not been cured by the date which is the earlier of (A) two Business Days prior to the Outside Date and (B) 30 days after Purchaser notifies Sellers of such breach and (ii) the right to terminate this Agreement pursuant to this Section 8.1(e) will not be available to Purchaser at any time that Purchaser is in material breach of, any covenant, representation or warranty hereunder;

(f) by written notice from Sellers to Purchaser, if all of the conditions set forth in Section 7.1 and Section 7.2 have been satisfied (other than conditions that by their nature are to be satisfied at the Closing, but subject to the satisfaction or waiver of such conditions at the Closing) or waived and Purchaser fails to complete the Closing at the time required by Section 2.4;

(g) by written notice from Sellers to Purchaser, if any Seller or the board of directors (or similar governing body) of any Seller determines that proceeding with the Transactions or failing to terminate this Agreement would be inconsistent with its or such Person's or body's fiduciary duties;

(h) by written notice of either Purchaser or Sellers, if (i) any Seller enters into one or more Alternative Transactions with one or more Persons other than Purchaser or the

Successful Bidder or the Backup Bidder at the RDx Auction (ii) the Bankruptcy Court approves an Alternative Transaction other than with the Successful Bidder or the Backup Bidder, or (iii) Sellers consummate an Alternative Transaction with the Successful Bidder; or

(i) by written notice from Purchaser to Sellers, if Purchaser is not the Successful Bidder or the Backup Bidder at the RDx Auction.

Section 8.2 Effect of Termination.

(a) In the event of termination of this Agreement pursuant to Section 8.1, this Agreement shall forthwith become null and void and no Party or any of its partners, officers, directors, managers or equityholders will have any Liability under this Agreement; provided that Section 2.2, Section 6.2(b), this Section 8.2 and Article X shall survive any such termination; provided further that no termination will relieve Purchaser from any Liability for damages, losses, costs or expenses (which the Parties acknowledge and agree shall not be limited to reimbursement of expenses or out-of-pocket costs, and would include the benefits of the Transactions lost by Sellers (taking into consideration all relevant matters, including other combination opportunities and the time value of money), which shall be deemed in such event to be damages of Sellers) resulting from any Willful Breach of this Agreement prior to the date of such termination (which, for the avoidance of doubt, will be deemed to include any failure by Purchaser to consummate the Closing if and when it is obligated to do so hereunder). Subject to Section 10.12, nothing in this Section 8.2 will be deemed to impair the right of any Party to be entitled to specific performance or other equitable remedies to enforce specifically the terms and provisions of this Agreement.

ARTICLE IX
TAXES

Section 9.1 Transfer Taxes. Any sales, use, purchase, transfer (including real estate transfer Taxes), franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges ("Transfer Taxes") payable by reason of the sale of the Acquired Assets or the assumption of the Assumed Liabilities under this Agreement or the Transactions (but excluding for the avoidance of doubt, any Transfer Taxes arising from or attributable to the Restructuring Transactions) shall be borne and timely paid by Purchaser, and Purchaser shall timely file all Tax Returns related to any such Transfer Taxes. Any Transfer Taxes arising from or attributable to the Restructuring Transactions shall be borne and timely paid by Sellers, and Sellers shall timely file all Tax Returns related to such Transfer Taxes.

Section 9.2 Allocation of Closing Consideration. Purchaser, Sellers, and their respective Affiliates shall allocate the Closing Consideration (including any other amounts treated as additional purchase price under applicable Law) (i) among the Acquired Entities (and among each Acquired Entity, to the extent required) and the Acquired Assets, (ii) for U.S. federal and applicable state and local income Tax purposes, including and any Assumed Liabilities or other amounts treated as part of the purchase price for U.S. federal income Tax purposes, among the Acquired Assets in accordance with Section 1060 of the Code and with the methodology set forth in Schedule 9.2, and (iii) among any of the other Acquired Assets or as between different Sellers (for which an allocation was not made pursuant to clause (ii) of this Section 9.2) as required by applicable Law (together, clauses (i), (ii), and (iii) the "Allocation Methodology"). As soon as commercially practicable, but no later than forty-five (45) days following the determination of the final Closing Consideration, Purchaser shall provide a proposed allocation to Sellers setting forth the allocation of the Closing Consideration (including any other applicable amounts) among the Acquired Assets in accordance with the Allocation Methodology (the "Allocation") for Sellers' review, comment and consent (such consent not to be unreasonably withheld, conditioned or delayed). If Sellers deliver a written objection within 30 days after receipt of the draft Allocation proposed by Purchaser, then Purchaser and Sellers shall negotiate in good faith to resolve any such objection, and, if Sellers and Purchaser cannot resolve such dispute within thirty (30) days of Purchaser's receipt of Sellers' objection, then a nationally recognized accounting firm mutually acceptable to Purchaser and Sellers shall resolve such dispute, with the costs of such resolution to be allocated by such accounting firm between Purchaser and Sellers based upon the percentage of the aggregate contested amount submitted to such accounting firm that is ultimately awarded to Purchaser, on the one hand, or Sellers on the other hand, such that Purchaser bears a percentage of such costs and expenses equal to the percentage of the contested amount awarded to Sellers and Sellers bear a percentage of such costs and expenses equal to the percentage of the contested amount awarded to Purchaser, and the resolution of such dispute shall be final and binding on the Parties. The Parties and their respective Affiliates shall file all Tax Returns in accordance with such Allocation (as finally determined under this Section 9.2) and not take any Tax-related action inconsistent with the Allocation, in each case, unless otherwise required by a "determination" within the meaning of Section 1313(a) of the Tax Code (or any similar provision of state, local or foreign Law). To the extent of any adjustment to the Closing Consideration, Purchaser shall revise the Allocation in accordance with this Section 9.2, including the methodology set forth in Schedule 9.2.

Section 9.3 Cooperation. Purchaser and Sellers shall reasonably cooperate, as and to the extent reasonably requested by the other Party, including providing the other Party any Tax forms or certificates reasonably related to the Transactions (including for withholding Tax purposes), and in connection with the filing of Tax Returns and any Action, audit, litigation, or other proceeding with respect to Taxes; provided that in providing such information, assistance and access, each Party shall be entitled to redact information that is not related to the Acquired Assets, the Business or the Acquired Entities and the Sellers shall not be obligated to provide or disclose any Excluded Tax Returns.

Section 9.4 Preparation of Tax Returns and Payment of Taxes.

(a) Purchaser shall prepare and timely file all Tax Returns with respect to the Acquired Assets or any Acquired Entity (other than any income Tax Returns of Sellers) that are due after the Closing (taking into account any validly obtained applicable extensions obtained in the ordinary course of business). With respect to any such income Tax Returns that relate to a Pre-Closing Tax Period or a Straddle Period and that could reasonably be expected to adversely impact the liability of the Sellers and their Affiliates for Taxes (including by increasing any liability under this Agreement), Purchaser shall prepare such Tax Returns consistent with past practices, jurisdictions and methodologies, and shall provide Sellers or their successors in rights, as applicable, with a draft of such Tax Returns as soon as reasonably practicable prior to the filing or due date of any such Tax Return (such period to not exceed thirty (30) days prior to the filing or due date in the case of any income Tax Return) for Sellers' review and consent. Purchaser shall consider in good faith any changes reasonably requested by Sellers with respect to such Tax

Returns. To the extent there is any dispute between the Parties over such Tax Returns that cannot be resolved prior to when such Tax Returns are due, such dispute shall be submitted to an independent national accounting firm or law firm mutually acceptable to the Purchaser and Sellers for resolution, with the costs of such resolution to be split in the same manner as described in Section 9.2. The determination of such independent national accounting firm or law firm shall be binding on all Parties and any Tax Return shall be filed consistently with such resolution. Purchaser shall be responsible for paying any Taxes reflected on any Tax Return that Purchaser is obligated to prepare and file under this Section 9.4(a).

(b) With respect to any Pre-Closing Tax Period, Purchaser shall not file an amendment to any previously-filed Tax Return, take or initiate any voluntary discussion, examination or contract with a taxing authority (including any voluntary disclosure agreement or similar process), or otherwise take any Tax position different from that taken by Sellers, in each case, if such action is reasonably expected to materially increase any Tax that is payable or otherwise borne by Sellers or their Affiliates, unless Purchaser receives an opinion from a nationally recognized accounting firm or law firm that the "reporting position" with respect to any previously-asserted position with respect to Taxes is likely not supportable applying a "more likely than not" standard for review. Upon such determination, Purchaser shall provide no less than 45 days' notice of such position before filing any such Tax Return. In the event Sellers disagree with such Tax position, and the dispute cannot be resolved between the Parties, such dispute shall be submitted to an independent national accounting firm or law firm mutually acceptable to the Purchaser and Sellers for resolution, with the costs of such resolution to be evenly split by Purchaser, on the one hand, and Sellers, on the other hand. The determination of such independent national accounting firm or law firm shall be binding on all Parties and any Tax Return shall be filed consistently with such resolution. Notwithstanding anything to the contrary, Purchaser shall not, and shall cause its Affiliates not to, make any election under Sections 338 or 336 of the Tax Code with respect to the Transactions.

Section 9.5 Straddle Period. In the case of any Straddle Period, the amount of any Taxes based on or measured by gross or net income, gross or net sales, payroll or payment or receipts of the Acquired Entities or with respect to the Acquired Assets for the Pre-Closing Tax Period shall be determined based on an interim closing of the books as of the close of business on the Closing Date (and the taxable period of each partnership or "controlled foreign corporation" within the meaning of the Tax Code in which any Acquired Entities owns an interest shall be deemed to end on the Closing Date), and the amount of other Taxes of the Acquired Entities or with respect to the Acquired Assets for a Straddle Period which relate to the Pre-Closing Tax Period shall be deemed to be the amount of such Tax for the entire taxable period multiplied by a fraction the numerator of which is the number of days in the taxable period ending on the Closing Date and the denominator of which is the number of days in such Straddle Period.

Section 9.6 Intended Tax Treatment. The Parties intend that, for U.S. federal, and applicable state and local, income Tax purposes, the purchase of Acquired Assets is to be treated as a taxable purchase under Section 1001 of the Tax Code by the Purchaser from the Sellers (the "Intended Tax Treatment"). The Parties shall prepare and file all Tax Returns on a basis consistent with the Intended Tax Treatment and, unless otherwise required by applicable Law or pursuant to a "closing agreement" as described in Section 7121 of the Tax Code (or any similar provision of state, local or foreign Law), shall not (and will not permit any of their respective Affiliates to) take any inconsistent position on any Tax Return, in any Tax audit, or similar proceeding before any Tax authority.

Section 9.7 Transferred Employees. Purchaser and Sellers agree to utilize, or cause their respective Affiliates to utilize, the alternate procedure set forth in Revenue Procedure 2004-53, 2004-2 C.B. 320, with respect to wage reporting in respect of Transferred Employees, unless otherwise required by applicable Law.

ARTICLE X
MISCELLANEOUS

Section 10.1 Non-Survival of Representations and Warranties and Certain Covenants; Certain Waivers. Each of the representations and warranties and the covenants and agreements (to the extent such covenant or agreement contemplates or requires performance by such Party prior to the Closing) of the Parties set forth in this Agreement or in any other Transaction Agreement, will terminate effective immediately as of the Closing such that no claim for breach of any such representation, warranty, covenant or agreement, detrimental reliance or other right or remedy (whether in contract, in tort or at law or in equity) may be brought with respect thereto after the Closing. Each covenant and agreement that explicitly contemplates performance after the Closing, will, in each case and to such extent, expressly survive the Closing in accordance with its terms, and if no term is specified, then for five years following the Closing Date, and nothing in this Section 10.1 will be deemed to limit any rights or remedies of any Person for breach of any such surviving covenant or agreement. Purchaser and Sellers acknowledge and agree, on their own behalf and on behalf of the Purchaser Group or the Seller Parties, as the case may be, that the agreements contained in this Section 10.1 (a) require performance after the Closing to the maximum extent permitted by applicable Law and will survive the Closing for five years and (b) are an integral part of the Transactions and that, without the agreements set forth in this Section 10.1, none of the Parties would enter into this Agreement. Purchaser on behalf of itself and the Purchaser Group hereby waives all rights and remedies with respect to any environmental, health or safety matters, including those arising under the Comprehensive Environmental Response, Compensation and Liability Act of 1980, or any other Environmental Laws, relating to this Agreement or the Transactions.

Section 10.2 Expenses. Whether or not the Closing takes place, except as otherwise provided herein, all fees, costs and expenses (including fees, costs and expenses of Advisors) incurred in connection with the negotiation of this Agreement and the other Transaction Agreements, the performance of this Agreement and the other Transaction Agreements and the consummation of the Transactions will be paid by the Party incurring such fees, costs and expenses; it being acknowledged and agreed that (a) all fees and expenses in connection with any filing or submission that is necessary under the HSR Act and any Foreign Competition Laws will be allocated pursuant to Section 6.4, (b) all Transfer Taxes will be allocated pursuant to Section 9.1 and (c) all Cure Costs will be allocated pursuant to Section 5.2.

Section 10.3 Notices. Except as otherwise expressly provided herein, all notices, demands and other communications to be given or delivered under or by reason of the provisions of this Agreement will be in writing and will be deemed to have been given (a) when personally delivered, (b) when transmitted by electronic mail (having obtained electronic delivery confirmation thereof), if delivered by 5:00 P.M. local time of the recipient on a Business Day and otherwise on the following Business Day, (c) the day following the day on which the same has been delivered prepaid to a reputable national overnight air courier service or (d) the third Business Day following the day on which the same is sent by certified or registered mail, postage prepaid, in each case, to the respective Party at the number, electronic mail address or street address, as applicable, set forth below, or at such other number, electronic mail address or street address as such Party may specify by written notice to the other Party.

Notices to Purchaser:

Trudell Medical Limited
725 Baransway Dr.
London, Ontario, Canada
N5V 5G4
Attention: Chief Executive Officer
Email: gslemko@tmlcorp.com

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

Trudell Medical Limited
Attention: General Counsel
Email: GC@tmlcorp.com

and

Crowell & Moring LLP
1001 Pennsylvania Avenue, NW
Washington, DC 20004
Attention: Samuel Feigin
Frederick Hyman
Email: sfeigin@crowell.com
fhyman@crowell.com

Notices to Sellers:

Vyaire Medical
26125 North Riverwoods Blvd
Mettawa, IL 60045
Attention: Legal Department
Email: legalresources@vyaire.com

with copies to (which shall not constitute notice):

Kirkland & Ellis LLP
333 West Wolf Point Plaza
Chicago, IL 60654
Attention: Spencer A. Winters, P.C.
Adam T. Clifford, P.C.
Steve Toth
Yusuf Salloum
Email: spencer.winters@kirkland.com
adam.clifford@kirkland.com
steve.toth@kirkland.com
yusuf.salloum@kirkland.com

Section 10.4 Binding Effect; Assignment; Designated Purchaser.

(a) This Agreement shall be binding upon Purchaser and, subject to the terms of the Bidding Procedures Order (with respect to the matters covered thereby) and the entry of the Sale Order, Sellers, and shall inure to the benefit of and be so binding on the Parties and their respective successors and permitted assigns, including any trustee or estate representative appointed in the Bankruptcy Cases or any successor Chapter 7 cases; provided that neither this Agreement nor any of the rights or obligations hereunder may be assigned or delegated without the prior written consent of Purchaser and Sellers, and any attempted assignment or delegation without such prior written consent shall be null and void.

(b) Prior to the Closing, Purchaser shall be entitled to designate, by written notice to Sellers no later than five (5) Business Days prior to the Closing Date, one or more Affiliates to (i) purchase the Acquired Assets and Transferred Subsidiaries and pay the corresponding Closing Consideration amount, (ii) assume Assumed Liabilities, or (iii) take title directly to any Acquired Asset or Equity Interest in any Transferred Subsidiary (any such Affiliate that shall be designated in accordance with this clause, a "Designated Purchaser"), and, to the extent of any such designation, this Agreement shall be binding upon each of such Affiliates, their successors and permitted assigns, which shall be treated as Purchaser to such extent hereunder; provided that Purchaser shall remain primarily liable until the transfer to any such Designated Purchaser and the satisfaction by such Designated Purchaser of any related obligations or other Liabilities hereunder.

Section 10.5 Amendment and Waiver. Any provision of this Agreement or the Schedules or exhibits hereto may be (a) amended only in a writing signed by Purchaser and Sellers or (b) waived only in a writing executed by the Party against which enforcement of such waiver is sought. No waiver of any provision hereunder or any breach or default thereof will extend to or affect in any way any other provision or prior or subsequent breach or default.

Section 10.6 Third Party Beneficiaries. Except as otherwise expressly provided herein, nothing expressed or referred to in this Agreement will be construed to give any Person other than (i) for purposes of Section 10.7 the Non-Recourse Persons, and (ii) the Parties hereto and such permitted assigns, any legal or equitable right, remedy, or claim under or with respect to this Agreement or any provision of this Agreement.

Section 10.7 Non-Recourse. This Agreement may only be enforced against, and any Action based upon, arising out of or related to this Agreement may only be brought against, the Persons that are expressly named as Parties to this Agreement. Except to the extent named as a Party to this Agreement, and then only to the extent of the specific obligations of such Parties set forth in this Agreement, (i) no past, present or future shareholder, member, partner, manager, director, officer, employee, independent contractor, consultant, Affiliate, agent or Advisor of any Party (or any spouse or dependent of any such Person) (each, a "Non-Recourse Person") will have any Liability (whether in contract, tort, equity or otherwise) for any of the representations, warranties, covenants, agreements or other obligations or Liabilities of any of the Parties to this Agreement or for any Agreement Dispute and (ii) in no event shall any Party have any shared or vicarious liability, or otherwise be the subject of legal or equitable claims, for the actions or omissions (including through equitable claims (such as unjust enrichment) not requiring proof of wrongdoing committed by the subject of such claims) of any other Person, and each of such Persons are intended third party beneficiaries of this Section 10.7 and shall be entitled to enforce this Section 10.7 as if a Party directly hereto.

Section 10.8 Severability. Whenever possible, each provision of this Agreement will be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Agreement is held to be prohibited by or invalid under applicable Law in any jurisdiction, such provision will be ineffective only to the extent of such prohibition or invalidity in such jurisdiction, without invalidating the remainder of such provision or the remaining provisions of this Agreement or in any other jurisdiction.

Section 10.9 Construction. The language used in this Agreement will be deemed to be the language chosen by the Parties to express their mutual intent, and no rule of strict construction will be applied against any Person. The headings of the sections and paragraphs of this Agreement have been inserted for convenience of reference only and will in no way restrict or otherwise modify any of the terms or provisions hereof.

Section 10.10 Schedules. The Schedules have been arranged for purposes of convenience in separately numbered sections corresponding to the sections of this Agreement; provided that each section of the Schedules will be deemed to incorporate by reference all information disclosed in any other section of the Schedules, and any disclosure in the Schedules will be deemed a disclosure against any representation or warranty set forth in this Agreement. Capitalized terms used in the Schedules and not otherwise defined therein have the meanings given to them in this Agreement. The specification of any dollar amount or the inclusion of any item in the representations and warranties contained in this Agreement, the Schedules or the attached exhibits is not intended to imply that the amounts, or higher or lower amounts, or the items so included, or other items, are or are not required to be disclosed (including whether such amounts or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course, and no Party will use the fact of the setting of the amounts or the fact of the inclusion of any item in this Agreement, the Schedules or exhibits in any dispute or controversy between the Parties as to whether any obligation, item or matter not set forth or included in this Agreement, the Schedules or exhibits is or is not required to be disclosed (including whether the amount or items are required to be disclosed as material or threatened) or are within or outside of the Ordinary Course. In addition, matters reflected in the Schedules are not necessarily limited to matters required by this Agreement to be reflected in the Schedules. Such additional matters are set forth for informational purposes only and do not necessarily include other matters of a similar nature. No information set forth in the Schedules will be deemed to broaden in any way the scope of the Parties' representations and warranties. Any description of any agreement, document, instrument, plan, arrangement or other item set forth on any Schedule is qualified in its entirety by the terms of such agreement, document, instrument, plan, arrangement, or item which terms will be deemed disclosed for all purposes of this Agreement. The information contained in this Agreement, in the Schedules and exhibits hereto is disclosed solely for purposes of this Agreement, and no information contained herein or therein will be deemed to be an admission by any Party to any third party of any matter whatsoever, including any violation of Law or breach of Contract.

Section 10.11 Complete Agreement. This Agreement, together with the Confidentiality Agreement and any other agreements expressly referred to herein or therein, contains the entire agreement of the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions and supersedes all prior agreements among the Parties respecting the sale and purchase of the Acquired Assets and the Assumed Liabilities and the Transactions. In the event an ambiguity or question of intent or interpretation arises with respect to this Agreement, the terms and provisions of the execution version of this Agreement will control and prior drafts of this Agreement and the documents referenced herein will not be considered or analyzed for any purpose (including in support of parol evidence proffered by any Person in connection with this Agreement), will be deemed not to provide any evidence as to the meaning of the provisions hereof or the intent of the Parties with respect hereto and will be deemed joint work product of the Parties.

Section 10.12 Specific Performance. The Parties agree that irreparable damage, for which monetary relief, even if available, would not be an adequate remedy, would occur in the event that any provision of this Agreement is not performed in accordance with its specific terms or is otherwise breached, including if any of the Parties fails to take any action required of it hereunder to consummate the Transactions. It is accordingly agreed that (a) the Parties will be entitled to an injunction or injunctions, specific performance or other equitable relief to prevent breaches of this Agreement and to enforce specifically the terms and provisions hereof in the courts described in Section 10.13 without proof of damages or otherwise, this being in addition to any other remedy to which they are entitled under this Agreement, and (b) the right of specific performance and other equitable relief is an integral part of the Transactions and without that right, neither Sellers nor Purchaser would have entered into this Agreement. The Parties acknowledge and agree that any Party pursuing an injunction or injunctions or other Order to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement in accordance with this Section 10.12 will not be required to provide any bond or other security in connection with any such Order. The remedies available to Sellers pursuant to this Section 10.12 will be in addition to any other remedy to which they were entitled at law or in equity, and the election to pursue an injunction or specific performance will not restrict, impair or otherwise limit any Seller from seeking to collect or collecting damages. If, prior to the Outside Date, any Party brings any Action, in each case in accordance with Section 10.13, to enforce specifically the performance of the terms and provisions hereof by any other Party, the Outside Date will automatically be extended (i) for the period during which such Action is pending, plus ten Business Days or (ii) by such other time period established by the court presiding over such Action, as the case may be. In no event will this Section 10.12 be used, alone or together with any other provision of this Agreement, to require any Seller to remedy any breach of any representation or warranty made by any Seller herein.

Section 10.13 Jurisdiction and Exclusive Venue. Each of the Parties irrevocably agrees that any Action of any kind whatsoever, including a counterclaim, cross-claim, or defense, regardless of the legal theory under which any Liability or obligation may be sought to be imposed, whether sounding in contract or in tort or under statute, or whether at law or in equity, or otherwise under any legal or equitable theory, that may be based upon, arising out of, or related to this Agreement or the negotiation, execution, or performance of this Agreement or the Transactions and any questions concerning the construction, interpretation, validity and enforceability of this Agreement (each, an "Agreement Dispute") brought by any other Party or its successors or assigns will be brought and determined only in (a) the Bankruptcy Court and any federal court to which an appeal from the Bankruptcy Court may be validly taken or (b) if the Bankruptcy Court is unwilling or unable to hear such Action, in the Court of Chancery of the State of Delaware (or if such court lacks jurisdiction, any other state or federal court sitting in the State of Delaware) (the "Chosen Courts"), and each of the Parties hereby irrevocably submits to the exclusive jurisdiction of the Chosen Courts for itself and with respect to its property, generally and unconditionally, with regard to any Agreement Dispute. Each of the Parties agrees not to commence any Agreement Dispute except in the Chosen Courts, other than Actions in any court of competent jurisdiction to enforce any Order, decree or award rendered by any Chosen Courts, and no Party will file a motion to dismiss any Agreement Dispute filed in a Chosen Court on any jurisdictional or venue-related grounds, including the doctrine of *forum non-conveniens*. The Parties irrevocably agree that venue would be proper in any of the Chosen Court, and hereby irrevocably waive any objection that any such court is an improper or inconvenient forum for the resolution of any Agreement Dispute. Each of the Parties further irrevocably and unconditionally consents to service of process in the manner provided for notices in Section 10.3. Nothing in this Agreement will affect the right of any Party to serve process in any other manner permitted by Law.

Section 10.14 Governing Law; Waiver of Jury Trial.

(a) Except to the extent the mandatory provisions of the Bankruptcy Code apply, this Agreement and any Agreement Dispute will be governed by and construed in accordance with the internal Laws of the State of Delaware applicable to agreements executed and performed entirely within such State without regards to conflicts of law principles of the State of Delaware or any other jurisdiction that would cause the Laws of any jurisdiction other than the State of Delaware to apply.

(b) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY AGREEMENT DISPUTE IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES AND THEREFORE HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY AGREEMENT DISPUTE. EACH OF THE PARTIES AGREES AND CONSENTS THAT ANY SUCH AGREEMENT DISPUTE WILL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT THE PARTIES MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES TO THE IRREVOCABLE WAIVER OF THEIR RIGHT TO TRIAL BY JURY. EACH PARTY (I) CERTIFIES THAT NO ADVISOR OF ANY OTHER PARTY HAS

REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF ANY AGREEMENT DISPUTE, SEEK TO ENFORCE THE FOREGOING WAIVER AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.14(b).

Section 10.15 No Right of Set-Off. Purchaser, on its own behalf and on behalf the Purchaser Group and its and their respective successors and permitted assigns, hereby waives any rights of set-off, netting, offset, recoupment or similar rights that Purchaser, any member of the Purchaser Group or any of its or their respective successors and permitted assigns has or may have with respect to the payment of the Closing Consideration or any other payments to be made by Purchaser pursuant to this Agreement or any other document or instrument delivered by Purchaser in connection herewith.

Section 10.16 Counterparts and PDF. This Agreement and any other agreements referred to herein or therein, and any amendments hereto or thereto, may be executed in multiple counterparts, any one of which need not contain the signature of more than one party hereto or thereto, but all such counterparts taken together will constitute one and the same instrument. Any counterpart, to the extent signed and delivered by means of a .PDF or other electronic transmission, will be treated in all manner and respects as an original Contract and will be considered to have the same binding legal effects as if it were the original signed version thereof delivered in person. Minor variations in the form of the signature page to this Agreement or any agreement or instrument contemplated hereby, including footers from earlier versions of this Agreement or any such other document, will be disregarded in determining the effectiveness of such signature. At the request of any party or pursuant to any such Contract, each other party hereto or thereto will re-execute original forms thereof and deliver them to all other parties. No party hereto or to any such Contract will raise the use of a .PDF or other electronic transmission to deliver a signature or the fact that any signature or Contract was transmitted or communicated through the use of PDF or other electronic transmission as a defense to the formation of a Contract and each such party forever waives any such defense.

Section 10.17 Publicity. Neither Sellers nor Purchaser shall issue any press release or public announcement concerning this Agreement or the Transactions without obtaining the prior written approval of the other Party, which approval will not be unreasonably conditioned, withheld or delayed, unless, in the reasonable judgment of Purchaser or Sellers, disclosure is otherwise required by applicable Law or by the Bankruptcy Court with respect to filings to be made with the Bankruptcy Court in connection with this Agreement or by the applicable rules of any stock exchange on which Purchaser or Sellers (or their respective Affiliates) lists securities; provided that the Party intending to make such release shall use its reasonable efforts consistent with such applicable Law or Bankruptcy Court requirement to consult with the other Party with respect to the text thereof.

Section 10.18 Bulk Sales Laws. The Parties intend that pursuant to Section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any Encumbrances in the Acquired Assets including any liens or claims arising out of the bulk transfer laws except Permitted Encumbrances, and the Parties shall take such steps as may be necessary or appropriate to so provide in the Sale Order. In furtherance of the foregoing, each Party hereby waives compliance by the Parties with the "bulk sales," "bulk transfers" or similar Laws and all other similar Laws in all applicable jurisdictions in respect of the Transactions.

Section 10.19 Fiduciary Obligations. Nothing in this Agreement, or any document related to the Transactions, will require any Seller or any of their respective managers, officers or members, in each case, in their capacity as such, to take any action, or to refrain from taking any action, to the extent inconsistent with their fiduciary obligations or applicable Law. For the avoidance of doubt, Sellers retain the right to pursue any transaction or restructuring strategy that, in Sellers' business judgment, will maximize the value of their estates.

Section 10.20 Sellers' Representative. Each Party agrees that Vyaire has the power and authority to unilaterally act on behalf of all or any of the Sellers for the purposes specified under this Agreement. Such power will include the power to make all decisions, actions, Consents and determinations on behalf of the Sellers, including to make any waiver of any Closing condition or agree to any amendment to this Agreement. No Seller shall have any right to object, dissent, protest or otherwise contest the same. Purchaser shall be entitled to rely on any action or omission taken by Vyaire on behalf of the Sellers.

ARTICLE XI
ADDITIONAL DEFINITIONS AND INTERPRETIVE MATTERS

Section 11.1 Certain Definitions.

(a) "Accrued Taxes" means all Taxes, including Taxes that are accruing but not yet due and payable, with respect to the Acquired Assets, the Business, and the Acquired Entities for (x) the taxable period (or portion thereof) ending on the Closing Date (as calculated in accordance with Section 9.5) and (y) the two immediately preceding taxable years ending prior to the beginning of the taxable period described in clause (x), (collectively, the "Pre-Close Tax Periods") that, in each case, remain unpaid as of the Closing and are payable by operation of Law by the Purchaser and/or an Acquired Entity following the Closing, including, for the avoidance of doubt, any penalties, interest and additions to Tax as a result of late Tax Return filings or Tax payments; provided that the amount of Taxes included in the calculation of Accrued Taxes (i) shall not (A) include the amount of any Tax refunds or Tax assets (except that Tax assets shall (1) only be available to reduce Taxes for the taxable period described in (x) of this definition, (2) only be included to the extent supportable by a "more likely than not" level of comfort, (3) shall be computed on a jurisdiction-by-jurisdiction and by type of Tax basis, and (4) only be available to reduce Taxes in (x) of this definition to the extent that the Tax assets are not subject to change of control limitations with the result that Taxes are ultimately not reduced for the taxable period ending on the Closing Date (as calculated in accordance with Section 9.5), but (5) shall exclude any amount attributable to any German interest carry-forward amount), or (B) be less than zero (0) either (I) overall, (II) within each applicable jurisdiction, or (III) by type of Tax, (ii) shall, for the avoidance of doubt, be calculated including all amounts of deferred payroll Taxes or similar Taxes for the Pre-Closing Tax Period, (iii) shall, for the avoidance of doubt, be calculated to include all Taxes due after the Closing as a result of any prepaid amount received or deferred revenue accrued on or prior to the Closing Date, (iv) shall be calculated consistently with this Agreement and with the past practices (including with respect to elections, accounting methods, and jurisdictions) used by the Sellers and their Affiliates (including the Acquired Entities) in preparing their Tax Returns, provided such practices are in accordance with applicable Law and supportable by a "more likely than not" level of comfort or by reason of a change of control limitation as described in this definition, (v) shall exclude any liabilities for accruals or reserves established or required to be established under accounting methodologies with respect to contingent Taxes or with respect to uncertain Tax positions, and (vi) shall include any payments or prepayments of estimated Taxes or overpayments of estimated Taxes from a prior taxable period to the taxable period described in (x) of this definition (for the avoidance of doubt, solely to the extent reducing Taxes in a Pre-Close Tax Period) and in any event shall not reduce Taxes below zero in any jurisdiction with such reduction on a jurisdiction-by-jurisdiction basis and by type of tax. In addition, without duplication of amounts paid pursuant to Section 9.1, Accrued Taxes shall include any unpaid Transfer Taxes arising from or attributable to the Restructuring Transactions that are the responsibility of Sellers pursuant to Section 9.1. In connection with the delivery of the Closing Liabilities Statement and the Dispute Notice, Purchaser (to the extent Purchaser has sufficient information to do so) and Sellers, respectively, will provide to the opposite Party, respectively, detail supporting the calculation of the Accrued Taxes on a jurisdiction-by-jurisdiction basis and by type of Tax, including, for the avoidance of doubt, but not limited to workpapers, trial balances, and prepayment assessment notices.

(b) "Acquired Cash Amount" means the aggregate amount of (x) all cash and Cash and Cash Equivalents of the Acquired Entities determined as of the Calculation Time, less (y) the amount of the premium for the insurance policy referenced in Section 7.2(l) that remains payable by any Acquired Entity as of the Calculation Time. If the Acquired Cash Amount is a negative number, then the Acquired Cash Amount will reduce the Closing Date Payment.

(c) "Action" means any action, suit, litigation, arbitration, charge, claim (including any counterclaim), complaint, demand, hearing, inquiry, investigation, petition, mediation, request for information, notice or other assertion of legal liability, audit, proceeding (including any civil, criminal, administrative, investigative or appellate proceeding) or prosecution, of any kind whatsoever, whether sounding in contract or tort, or whether at law or in equity, or otherwise under any legal or equitable theory, commenced, brought, conducted or heard by or before any Governmental Body.

(d) "Advisors" means, with respect to any Person as of any relevant time, any directors, officers, employees, investment bankers, financial advisors, accountants, agents, attorneys, consultants, or other representatives of such Person.

(e) "Affiliate" means, (a) with respect to any Person, such Person's spouse and lineal descendants (whether natural or adopted) and any trust, family limited partnership or family limited liability company formed and maintained for the benefit of such Person, such Person's spouse or such Person's lineal descendants, and (b) with respect to any Person that is not an individual, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term "control" (including the terms "controlled by" and "under common control with") means the possession, directly or indirectly, of the power to direct or cause the direction of the management, affairs and policies of such Person, whether through ownership of voting securities, by Contract or otherwise. For the avoidance of doubt, the Acquired Entities will be Affiliates of Sellers until Closing and Affiliates of Purchaser after Closing.

(f) "Alternative Transaction" means any transaction (or series of transactions), whether direct or indirect, whereby any Person or group of Persons (other than Sellers and their Affiliates or Purchaser and its Affiliates) acquires (i) ownership of a majority of the Equity Interests of Sellers (ii) ownership of any Equity Interests of Acquired Entities or (iii) any Acquired Assets material to the Business, in each case whether by merger, sale of assets or equity, recapitalization, plan of reorganization or otherwise. Notwithstanding the foregoing, a liquidation or wind-down of Sellers' estates shall not be an Alternative Transaction, to the extent such liquidation or wind-down is approved, authorized or required, by or under the Bankruptcy Court or the Bankruptcy Code.

(g) "Auction" shall have the meaning ascribed to such term in the Bidding Procedures Order.

(h) "Bidding Procedures Order" shall have the meaning ascribed to such term in the Recitals.

(i) "Business" means the development, manufacturing, marketing, leasing, and sale of medical devices for pulmonary function testing, cardiopulmonary exercise testing, spirometry and associated software, services and consumables directly or indirectly conducted by Sellers or any Acquired Entities, or in which Sellers or any Acquired Entities are directly or indirectly engaged.

(j) "Business Day" means any day other than a Saturday, Sunday or other day on which banks in New York City, New York or Toronto, Canada are authorized or required by Law to be closed.

(k) "Business Employee" means each employee of any of the Sellers or Acquired Entities set forth on Schedule 3.15(a).

(l) "Calculation Time" means immediately prior to the Closing.

(m) "Cash and Cash Equivalents" means all cash (including checks and deposits in transit, demand deposits, money markets or similar accounts), checking account balances, marketable securities, certificates of deposits, time deposits, bankers' acceptances, commercial paper, security entitlements, securities accounts, commodity Contracts, commodity accounts, government securities, and any other cash equivalents whether on hand, in transit, in banks or other financial institutions, or otherwise held.

(n) "COBRA" means the continuation coverage requirements set forth in the Consolidated Omnibus Budget Reconciliation Act of 1985, as set forth in Section 601, et seq. of ERISA, Section 4980B of the Tax Code, or any similar state Law.

(o) "Confidentiality Agreement" means that certain letter agreement, dated as of May 2, 2024, by and between Trudell Medical Limited and Vyaire Medical, Inc.

(p) "Consent" means any approval, consent, ratification, permission, waiver or authorization, or an Order of the Bankruptcy Court that deems or renders unnecessary the same.

(q) "Contract" means any contract, indenture, note, bond, lease, sublease, mortgage, agreement, license, guarantee, other instrument or other legally binding commitment or undertaking of any nature, whether written or oral, that is binding upon a Person or its property under applicable Law, in each case, other than a purchase order, service order or sales order.

(r) "Documents" means all files, documents, instruments, papers, books, reports, records, tapes, microfilms, photographs, letters, budgets, forecasts, plans, operating records, safety and environmental reports, data, studies, and documents, Tax Returns, ledgers, journals, title policies, customer lists, regulatory filings, regulatory applications, operating data and plans, research material, invention records or disclosures (whether such invention is patentable or not), clinical data, technical documentation (design specifications, engineering information, test results, logic manuals, processes, flow charts, etc.), user documentation (installation guides, user manuals, training materials, release notes, working papers, etc.), marketing documentation (sales brochures, flyers, pamphlets, web pages, etc.), and other similar information or materials, in each case whether in written, electronic or other form and whether or not stored on the computer systems, data networks or servers of any Seller or any of the Seller's Affiliates.

(s) "Employee Benefit Plan" means each material (i) employee welfare benefit plan within the meaning of Section 3(1) of ERISA (whether or not subject to ERISA), (ii) employee pension benefit plan within the meaning of Section 3(2) of ERISA (whether or not subject to ERISA), (iii) stock option, stock purchase, stock appreciation right or other equity or equity-based agreement, program or plan, (iv) employment, individual consulting, severance, termination pay or retention agreement or (v) bonus, incentive, stay, deferred compensation, profit-sharing, retirement, post-termination health or welfare, vacation, fringe or any other compensation or benefit plan, program, policy, Contract, agreement or other arrangement, in each case that is sponsored, maintained or contributed to by Sellers or the Acquired Entities or to which any Seller or Acquired Entity is obligated to contribute or with respect to which any Seller or Acquired Entity has any Liability.

(t) "Encumbrance" means any lien (as defined in Section 101(37) of the Bankruptcy Code), encumbrance, claim (as defined in Section 101(5) of the Bankruptcy Code), charge, mortgage, deed of trust, option, pledge, security interest or similar interests, title defects, hypothecations, easements, rights of way, encroachments, Orders, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use.

(u) "Environmental Laws" means all applicable Laws concerning pollution or protection of the environment.

(v) "Equipment" means any and all equipment, tools, machinery, devices, computers, networking hardware, appliances, information technology infrastructure, furniture, furnishings, fixtures, office supplies, vehicles and all other fixed assets and any warranty rights or claims associated therewith.

(w) "Equity Interests" means, with respect to a Person, any membership interests, partnership interests, profits interests, capital stock or other equity securities (including profit participation features or equity appreciation rights, phantom stock rights or other similar rights) or ownership interests of such Person, or any securities (including debt securities or other indebtedness) exercisable or exchangeable for or convertible into, or other rights to acquire, membership interests, partnership interests, capital stock or other equity securities or ownership interests of such Person (or otherwise constituting an investment in such Person).

(x) "ERISA" means the Employee Retirement Income Security Act of 1974.

(y) "Excluded Tax Returns" means Tax Returns (or any portion of any Tax Return) and other books and records related to (i) Taxes that are not related to an Acquired Entity or any Acquired Asset or the Business or (ii) any consolidated, combined, affiliated or unitary group for Tax purposes that includes Seller or any of its Affiliates that is not an Acquired Entity.

(z) "Final Order" means an Order (i) as to which no appeal, leave to appeal, notice of appeal, motion to amend or make additional findings of fact, motion to alter or amend judgment, motion for rehearing, or motion for new trial has been timely filed, (ii) in respect of which the time period for instituting or filing an appeal, leave to appeal, motion for rehearing or motion for a new trial shall have expired, and (iii) as to which no stay is in effect.

(aa) "Fraud" means an act committed by Sellers, in the making to Purchaser the representations and warranties in Article III or in the certificate delivered pursuant to Section 2.5(g), in each case, with intent to deceive another Party, or to induce such other Party to enter into this Agreement and requires (i) a false representation of fact made in such representation; (ii) with knowledge that such representation is false; (iii) with an intention to induce the Party to whom such representation is made to act or refrain from acting in reliance upon it; (iv) causing that Party, in justifiable reliance upon such false representation, to take or refrain from taking action; and (v) causing such Party to suffer damage by reason of such reliance, which together constitutes common law fraud under Delaware Law (and does not include any fraud claim based on constructive knowledge, unjust enrichment, negligent misrepresentation, recklessness or a similar theory).

(bb) "GAAP" means United States generally accepted accounting principles as in effect from time to time.

(cc) "Governmental Authorization" means any permit, license, certificate, approval, consent, permission, clearance, designation, qualification or authorization issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law.

(dd) "Governmental Body" means any government, quasi-governmental entity, or other governmental or regulatory body, agency or political subdivision thereof of any nature, whether foreign, federal, state or local, or any agency, branch, department, official, entity, instrumentality or authority thereof, or any court or arbitrator of applicable jurisdiction.

(ee) "Hazardous Substance" means any toxic or hazardous material, substance or waste regulated under any Environmental Laws due to its dangerous or deleterious properties or characteristics.

(ff) "HSR Act" means the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, and the rules and regulations promulgated thereunder.

(gg) "Intellectual Property" means any and all worldwide intellectual property and all worldwide intellectual property rights and other similar proprietary rights arising under the Laws of any and all jurisdictions, whether registered or unregistered, including all of the following: (i) patents, patent applications and patent disclosures; (ii) trademarks, service marks, trade dress, corporate names and Internet domain names, and other indications of origin, the goodwill associated with each of the foregoing; (iii) copyrights and works of authorship (including copyrights in software programs and any derivative works), moral rights, database and design rights, and mask works; (iv) registrations and applications for any of the foregoing; (v) know-how; (vi) trade secrets; (vii) computer software, including source code and object code; (viii) drawings, specifications, methods, processes, schematics and other technical plans; (ix) inventions, discoveries, improvements, and ideas, whether patentable or not in any jurisdiction; (x) domain names and social media accounts; (xi) rights in or relating to applications for, registrations of, rights of priority in, and divisionals, continuations, continuations-in-part, reissuances, renewals, extensions, restorations and reversions of the any of the foregoing; (xii) licenses to any of the foregoing; and (xiii) any other Documents.

(hh) "Inventory" means all inventory, including semi-finished and finished goods, supplies, raw materials, work in progress, spare, replacement and component parts, samples (including samples held by sales representatives), components, and packaging materials maintained or held by, stored by or on behalf of, or in transit to, any of Sellers or the Acquired Entities.

(ii) "Knowledge of Sellers", "Sellers' Knowledge," or words of like import, means the actual knowledge, after reasonable due inquiry of direct reports in the applicable subject matter, of John Bibb, Vikram Bajaj, Will Throp, Tom Ernst, Simon Gilderson, Martin Kastner, and Cally Kothmann (or any successor to such Person's role and responsibilities, if such Person is no longer serving in his current role on behalf of the Sellers at the relevant time), or such knowledge as a prudent individual would reasonably be expected to obtain in the course of conducting the duties and responsibilities of the position of the foregoing individuals, none of whom, for the sake of clarity and avoidance of doubt, shall have any personal Liability or obligations regarding such knowledge.

(jj) "Law" means any federal, state, provincial, local, municipal, foreign or international, multinational or other law, statute, legislation, constitution, principle of common law, ordinance, code, decree, treaty, convention, rule, regulation or Order issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body, including any law applicable to the healthcare business of the Sellers, including: (a) all laws related to a federal health program as defined in 42 U.S.C. § 1320a-7b(f), including Medicare, Medicaid, TRICARE, CHAMPVA, and state healthcare programs (as defined therein); (b) all laws related to fraud and abuse, false claims and kickbacks, including the federal Anti-Kickback Statute (42 U.S.C. § 1320a-7b), the federal Stark Law (42 U.S.C. § 1395nn), the federal False Claims Act (31 U.S.C. §§ 3729, et seq.), the federal Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a), the federal Program Fraud Civil Remedies Act (31 U.S.C. § 3801 et seq.) and the federal Health Care Fraud Law (18 U.S.C. § 1347); (c) the Exclusion Laws (42 U.S.C. §

1320a-7); (d) Health Insurance Portability and Accountability Act of 1996, 42 U.S.C. §§ 1320d 1329d 8, as amended and supplemented by the Health Information Technology for Economic and Clinical Health Act, enacted as Title XIII of the American Recovery and Reinvestment Act of 2009, (Pub. L. 111-5); (e) the Patient Protection and Affordable Care Act and the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-148) as amended by the Health Care and Education Reconciliation Act of 2010 (Pub. L. 111-152), including the Physician Payments Sunshine Act; (f) the Medicare Prescription Drug, Improvement, and Modernization Act of 2003 (Pub. L 108-173); (g) the Medicare Improvements for Patients and Providers Act of 2008 (Pub. L. 110-275); (h) the Federal Food, Drug & Cosmetics Act (21 U.S.C. § 301 et seq.); (i) the Prescription Drug Marketing Act of 1987 (21 U.S.C. §§ 353 et seq.); (j) the Controlled Substances Act (21 U.S.C. Section 801 et seq.); (k) the Clinical Laboratory Improvement Amendments (42 USC 263a); and (i) any similar state and local Laws applicable to the provision of health care items and services; (j) state anti-kickback, fee-splitting, and self-referral laws; (k) workers' compensation laws applicable to the provision of health care items and services; (l) all CMS manuals, call letters, memorandums, transmittals and other sub regulatory guidance, in each case that are legally binding on Sellers; and (m) all licensing, certificate of need, corporate practice of medicine, regulatory and reimbursement Laws applicable to health care service providers providing the items and services that the Sellers provide (including with respect to billing, coding, fee-splitting, patient or program charges, claims submissions, or any other aspect of billing third-party payors for healthcare).

(kk) "Lease" means all leases, subleases, licenses, concessions and other agreements (written or oral) pursuant to which any Seller or any Acquired Entity holds any Leased Real Property.

(ll) "Leasehold Improvements" means all buildings, structures, improvements and fixtures which are owned by a Seller or an Acquired Entity and located on any Leased Real Property, regardless of whether title to such buildings, structures, improvements or fixtures are subject to reversion to the landlord or other third party upon the expiration or termination of the Lease for such Leased Real Property.

(mm) "Liability" means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, deficiency, guaranty, loss, expenditure, charge, fee, penalty, fine, contribution, or premium or other charge (including reasonable and documented attorneys' and experts' fees and disbursements, whether incurred in connection with a first-party claim or Action (including a claim or Action for indemnity hereunder)), debt, assessment, judgment, duty or responsibility of any kind and description or endorsement of any kind or nature whatsoever, whether known or unknown, asserted or unasserted, absolute or contingent, direct or indirect, accrued or unaccrued, liquidated or unliquidated, monetary or non-monetary, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(nn) "Material Adverse Effect" means any matter, event, change, development, occurrence, circumstance or effect (each, an "Effect") that, individually or in the aggregate, has or would be reasonably expected to have, a material adverse effect on (1) the business, assets, properties, financial condition, or results of operations of the Business, the Acquired Assets and Assumed Liabilities, taken as a whole, or (2) the ability of Sellers to consummate the Transactions;

provided that none of the following (or consequences thereof), shall constitute a Material Adverse Effect: (i) any Effect in, arising from or relating to general business or economic conditions affecting the industry in which Sellers operate; (ii) Effects in, arising from or directly relating to changes in national or international political or social conditions, including tariffs, riots, protests, the engagement by the United States or other country in hostilities or the escalation thereof, whether or not pursuant to the declaration of a national emergency or war, or the occurrence or the escalation of any military, cyber or terrorist (whether or not state-sponsored) attack upon the United States or any other country, or any of its territories, possessions, or diplomatic or consular offices or upon any military installation, asset, Equipment or personnel of the United States or of any other country; (iii) Effects in, arising from or relating to any fire, flood, hurricane, earthquake, tornado, windstorm, other calamity or act of God, global or national health concern, epidemic, pandemic (whether or not declared as such by any Governmental Body), viral outbreak (including "Coronavirus" or "COVID-19" or the worsening thereof) or any quarantine or trade restrictions related thereto or any other *force majeure*; (iv) Effects in, arising from or relating to the decline or rise in price of any currency or any Equipment or supplies necessary to or used in the provision of services by any Seller or their Subsidiaries; (v) Effects in, arising from, or relating to financial, banking, or securities markets (including (A) any disruption of any of the foregoing markets, (B) any change in currency exchange rates, (C) any decline or rise in the price of any security, commodity, Contract, or index, and (D) any increased cost, or decreased availability, of capital or pricing or terms related to any financing for the Transactions); (vi) Effects in, arising from or relating to changes in, GAAP or the interpretation thereof; (vii) Effects in, arising from or relating to changes in, Laws or other binding directives or determinations issued or made by any Governmental Body (including, for the avoidance of doubt, any such items related to Section 6.5) and any increase (or decrease) in the terms or enforcement of (or negotiations or disputes with respect to) any of the foregoing to the extent any such Effect is not solely related to the Business; (viii) Effects in, arising from or relating to (A) the taking of any action permitted or contemplated by this Agreement or at the request of Purchaser or its Affiliates, (B) the failure to take any action if such action is prohibited by this Agreement, (C) Purchaser's failure to consent to any of the actions restricted in Section 6.1 or (D) the negotiation, announcement, or pendency of this Agreement or the Transactions, the identity, nature, or ownership of Purchaser or Purchaser's plans with respect to the Acquired Assets and Assumed Liabilities, including the impact thereof on the relationships, contractual or otherwise, of the business of Sellers or their Affiliates (including the Business) with employees, customers, lessors, suppliers, vendors, or other commercial partners or litigation arising from or relating to this Agreement or the Transactions; (ix) Effects in, arising from, or relating to any existing event, occurrence or circumstance that is publicly known or with respect to which Purchaser has actual knowledge as of the date hereof; (x) Effects in, arising from or relating to any action required to be taken under any existing Contract that is not a Material Contract, to which Sellers or their Subsidiaries (or any of their assets or properties) is bound; (xi) Effects that arise from any seasonal fluctuations in the Business in the Ordinary Course; (xii) any failure, in and of itself, to achieve any budgets, projections, forecasts, estimates, plans, predictions, performance metrics or operating statistics or the inputs into such items (whether or not shared with Purchaser or its Affiliates or Advisors) and any other failure to win or maintain customers or business; (xiii) the Effect of any action taken by Purchaser or its Affiliates with respect to the Transactions or the financing thereof or any breach by Purchaser of this Agreement; (xiv) the matters set forth on the Schedules and any changes or developments in, or Effects or results arising from or relating to, matters set forth on the Schedules; or (xv) (A) the commencement or pendency of the Bankruptcy Cases; (B) any objections in the Bankruptcy Court to (1) this Agreement or any of the Transactions, (2) the Sale Order or the reorganization or liquidation of Sellers or their Affiliates, (3) the Bidding Procedures Order, or (4) the assumption or rejection of any Assigned Contract; or (C) any Order of the Bankruptcy Court or any actions or omissions of Sellers or their Affiliates in compliance therewith; provided that any adverse Effect resulting or arising from any matter or combination of matters described in clauses (i) through (vii) may be taken into account in determining whether there has been a Material Adverse Effect to the extent that such Effect has had a materially disproportionate adverse effect on the Sellers relative to similarly situated participants in the industries or geographic areas in which the Sellers operate (in which case only such incremental materially disproportionate adverse effect may be taken into account in determining whether there has been a Material Adverse Effect).

(oo) "Mixed-Use Contract" means any Contract that includes both terms and conditions that are Related to the Business and terms and conditions that relate to other businesses of Vyaire or its Affiliates between (i) Vyaire or one of its Affiliates, on the one hand and (ii) a supplier, vendor, distributor, reseller or customer of the Business, on the other hand.

(pp) "Order" means any order, injunction, judgment, decision, decree, ruling, stipulation, Governmental Authorization, writ, arbitration award or other similar determination of any a Governmental Body (in each case whether preliminary or final), including any order entered by the Bankruptcy Court in the Bankruptcy Cases (including the Sale Order).

(qq) "Ordinary Course" means the ordinary and usual course of operations of the Business, consistent with past custom and practice and taking into account the contemplation, commencement and pendency of the Bankruptcy Cases; provided that in no event shall "Ordinary Course" include any breach of Contract, or violation of any Law or Permit.

(rr) "Permitted Encumbrances" means (i) Encumbrances for utilities and Taxes not yet due and payable, or that are being contested in good faith, or, in the case of Sellers only, the nonpayment of which is permitted or required by the Bankruptcy Code, (ii) easements, rights of way, restrictive covenants, encroachments and similar non-monetary Encumbrances or non-monetary impediments against any of the Acquired Assets which do not, individually or in the aggregate, adversely affect the operation of the Business, Acquired Assets, or Acquired Entities and, in the case of the Leased Real Property, which do not, individually or in the aggregate, adversely affect the use or occupancy of such Leased Real Property as it relates to the operation of the Business, Acquired Assets, or Acquired Entities (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law which are not violated by the current use or occupancy of such Leased Real Property, as applicable, (iv) materialmans', mechanics', artisans', shippers', warehousemans' or other similar common law or statutory liens incurred in the Ordinary Course for amounts not yet due and payable, (v) licenses to Intellectual Property granted on a non-exclusive basis in the Ordinary Course, (vi) such other Encumbrances or title exceptions which do not, individually or in the aggregate, materially and adversely affect the operation of the Acquired Assets, (vii) any Encumbrances set forth on Schedule 11.1(rr), and (viii) solely prior to Closing, any Encumbrances that will be removed or released by operation of the Sale Order.

(ss) "Person" means an individual, corporation, partnership, limited liability company, joint venture, association, trust, unincorporated organization, labor union, organization, estate, Governmental Body or other entity or group.

(tt) "Personal Information" means any data or information (i) that identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household or (ii) that is otherwise subject to a Law relating to privacy or security of data or information (including if it constitutes "personal information" or "personal data" or other equivalent term under any such Law).

(uu) "Pre-Closing Tax Period" means a taxable period ending on or prior to the Closing Date and, with respect to any Straddle Period, the portion of such Straddle Period ending on and including the Closing Date.

(vv) "Purchaser Group" means Purchaser (including any Designated Purchaser), any Affiliate of Purchaser (including, following the Closing, the Acquired Entities) and each of their respective Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(ww) "Related to the Business" means primarily used or primarily held for use in or primarily arising out of the operation or conduct of the Business conducted by Sellers and their controlled Affiliates as of the date of this Agreement and up to and including the Closing Date.

(xx) "Sale Order" means the sale Order or Orders (i) approving this Agreement and the terms and conditions hereof, including pursuant to sections 363 and 365 of the Bankruptcy Code and (ii) approving and authorizing Sellers to consummate the Transactions, substantially in the form attached hereto as Exhibit C.

(yy) "Securities Act" means the Securities Act of 1933 and the rules and regulations promulgated thereunder.

(zz) "Seller Names" means any marks that include or are comprised of "Vyaire", any translations, transliterations, adaptations, derivations, acronyms, variations, insignias, designations, or combinations of any the foregoing, or any other mark that is reasonably likely to cause confusion with any of the foregoing; provided that the Seller Names shall not include any marks transferred to Purchaser pursuant to this Agreement.

(aaa) "Seller Parties" means each Seller and its former, current, or future Affiliates, officers, directors, employees, partners, members, equityholders, controlling or controlled Persons, managers, agents, Advisors, successors or permitted assigns.

(bbb) "Straddle Period" means any taxable period that includes but does not end on the Closing Date.

(ccc) "Subsidiary" or "Subsidiaries" means, with respect to any Person, any corporation, limited liability company or other entity of which a majority of the total voting power of shares of stock or other Equity Interests entitled (without regard to the occurrence of any contingency) to vote in the election of directors, managers or trustees or other governing body or

Person thereof is at the time owned or controlled, directly or indirectly, by such Person or one or more of the other Subsidiaries of such Person or a combination thereof or any partnership, association or other business entity of which a majority of the partnership or other similar ownership interest is at the time owned or controlled, directly or indirectly, by such Person or one or more Subsidiaries of such Person or a combination thereof.

(ddd) "Tax" or "Taxes" means any federal, state, local, non-U.S. or other income, gross receipts, capital stock, franchise, profits, withholding, social security, unemployment, disability, real property, ad valorem/personal property, stamp, excise, occupation, sales, use, transfer, value added, import, export, alternative minimum or estimated tax, or any other charge, fee, or assessment in the nature of a Tax, including any interest, penalty or addition thereto.

(eee) "Tax Code" means the United States Internal Revenue Code of 1986, as amended.

(fff) "Tax Return" means any return, claim for refund, report, statement or information return relating to Taxes required to be filed with a Governmental Body, including any schedule or attachment thereto, and including any amendments thereof.

(ggg) "Transaction Agreements" means this Agreement and any other agreements, instruments or documents entered into pursuant to this Agreement.

(hhh) "Transactions" means the transactions contemplated by this Agreement and the other Transaction Agreements.

(iii) "Transferred Employee Records" means physical or electronic copies of all personnel records (including those as required by applicable Law and those pertaining to performance, training history, job experience and history, and for the three-year period immediately preceding the Closing, compensation history) for the Transferred Employees, except where (i) the transfer or disclosure of such records is prohibited by applicable Law or would include medical records, or (ii) consent of the relevant employee is required by applicable Law but not given.

(jjj) "Willful Breach" means a deliberate act or a deliberate failure to act, in each case, regardless of whether breaching was the conscious object of the act or failure to act.

Section 11.2 Index of Defined Terms.

Section 11.4 Rules of Interpretation. Unless otherwise expressly provided in this Agreement, the following will apply to this Agreement, the Schedules and any other certificate, instrument, agreement or other document contemplated hereby or delivered hereunder.

(a) The terms "hereof," "herein" and "hereunder" and terms of similar import are references to this Agreement as a whole and not to any particular provision of this Agreement. section, clause, schedule and exhibit references contained in this Agreement are references to sections, clauses, schedules and exhibits in or to this Agreement, unless otherwise specified. All Exhibits and Schedules annexed hereto or referred to herein are hereby incorporated in and made a part of this Agreement as if set forth in full herein. Any capitalized terms used in any Schedule or Exhibit but not otherwise defined therein shall be defined as set forth in this Agreement.

(b) Whenever the words “include,” “includes” or “including” are used in this Agreement, they will be deemed to be followed by the words “without limitation.” Where the context permits, the use of the term “or” will be equivalent to the use of the term “and/or.”

(c) The words “to the extent” shall mean “the degree by which” and not simply “if.”

(d) When calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period will be excluded. If the last day of such period is a day other than a Business Day, the period in question will end on the next succeeding Business Day.

(e) Words denoting any gender will include all genders, including the neutral gender. Where a word is defined herein, references to the singular will include references to the plural and vice versa.

(f) The word “will” will be construed to have the same meaning and effect as the word “shall”. The words “shall,” “will,” or “agree(s)” are mandatory, and “may” is permissive.

(g) All references to “$” and dollars will be deemed to refer to United States currency unless otherwise specifically provided.

(h) All references to a day or days will be deemed to refer to a calendar day or calendar days, as applicable, unless otherwise specifically provided.

(i) Any document or item will be deemed “delivered,” “provided” or “made available” by Sellers, within the meaning of this Agreement if such document or item is (i) included in the Dataroom, (ii) actually delivered or provided to Purchaser or any of Purchaser’s Advisors or (iii) made available upon request, including at Sellers’ offices.

(j) Any reference to any agreement or Contract will be a reference to such agreement or Contract, as amended, modified, supplemented or waived.

(k) Any reference to any particular Bankruptcy Code or Tax Code section or any Law will be interpreted to include any amendment to, revision of or successor to that section or Law regardless of how it is numbered or classified; provided that, for the purposes of the representations and warranties set forth herein, with respect to any violation of or non-compliance with, or alleged violation of or non-compliance, with any Bankruptcy Code or Tax Code section or Law, the reference to such Bankruptcy Code or Tax Code section or Law means such Bankruptcy Code or Tax Code section or Law as in effect at the time of such violation or non-compliance or alleged violation or non-compliance.

(l) A reference to any Party to this Agreement or any other agreement or document shall include such Party’s successors and assigns, but only if such successors and assigns are not prohibited by this Agreement.

(m) A reference to a Person in a particular capacity excludes such Person in any other capacity or individually.

[*Signature pages follow.*]

Exhibit B

Proposed Sale Order

[*To Be* Filed Separately]