IN 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' VENTILATION 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 on **August 12-14, 2024,** in accordance with the terms of the Bidding Procedures Order, the Debtors conducted an auction virtually through an online platform.

PLEASE TAKE FURTHER NOTICE that, upon the conclusion of the Auction, the Debtors, in the exercise of their reasonable and good-faith business judgment, have selected

[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.

(a) Zoll Medical Corp. ("Zoll") as a Successful Bidder (the "Purchaser"), and (b) Vent Portfolio, LLC (and React Health Holdings, LLC as guarantor), as a Back-Up Bidder, in connection with the sale of certain of the Debtors' Ventilation Assets.

PLEASE TAKE FURTHER NOTICE that, as set forth more fully in that certain asset purchase agreement, attached hereto as **Exhibit A** (the "Zoll Asset Purchase Agreement"), entered into with Zoll in connection with the sale of such Ventilation 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 Zoll Asset Purchase Agreement, cash consideration in the amount of $37.00 million and the assumption of certain liabilities in exchange for the Acquired Assets. Further, the Back-Up Bid submitted by the Back-Up Bidder provides for, among other things, cash consideration in the amount of $24.24 million and the assumption of certain liabilities in exchange for certain of the Ventilation Assets.

PLEASE TAKE FURTHER NOTICE that the Debtors have determined to effectuate the Sale Transaction as reflected in the Zoll 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 Zoll 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 19, 2024, at 11:00 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 Auction, but solely as to (i) the conduct of the Auction, (ii) the particular terms of any proposed Sale Transaction of a Successful Bid, or (iii) the identify of a Successful Bidder or Back-Up Bidder are due on or before **August 16, 2024, at 4:00 p.m. (prevailing Eastern Time)** (the "Post-Auction 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 Post-Auction 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 the applicable Successful Bidder or Back-Up 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 16, 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 applicable closing date of the 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 15, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

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Co-Counsel to the Debtors
and Debtors in Possession

<u>Exhibit A</u>

Zoll Asset Purchase Agreement

DRAFT

ASSET PURCHASE AGREEMENT

DATED AS OF [●], 2024

BY AND AMONG

ZOLL MEDICAL CORPORATION, AS 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 [●], 2024, is made by and among ZOLL Medical Corporation, a Massachusetts corporation ("Purchaser" or, subject to Section 10.4(b), "Guarantor"), and Vyaire Holding Company, a Delaware corporation (as in existence on the date hereof, as a debtor-in-possession, and as a 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 herein shall have the meanings set forth herein including Article XI.

WHEREAS, on June 9, 2024, Sellers, together with certain of Sellers' Subsidiaries and Affiliates, 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 (collectively, the "Bankruptcy Cases"); and

WHEREAS, Purchaser desires to purchase the Acquired Assets and assume the Assumed Liabilities from Sellers, and Sellers desire to 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;

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"); and

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 Sellers, all of Sellers' 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 (i) Related to the Acquired Business, including each of the assets as are identified below and (ii) otherwise Related to the Entire Business and specifically identified below, in each case, held by a Seller as of the Closing, 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 Acquired Business, but excluding in all cases the Excluded Assets:

(a) (i) all Contracts Related to the Acquired Business or related to the Acquired Intellectual Property (as defined below), in each case, that are listed on Schedule 1.1(a), which Schedule 1.1(a) may be updated by Purchaser pursuant to Section 1.5, including all purchase orders or similar instruments entered into under such Contracts, but, in all cases, excluding Leases (which are addressed in Section 1.1(e)) and (ii) all Contracts that are Related to the Acquired Business and entered into after the date hereof in accordance with Section 6.1(b) that either (a) are previously approved by Purchaser or (b) do not include obligations in excess of $500,000 in the aggregate (collectively, the "Assigned Contracts") and all rights and interests of Seller (but not its respective obligations) in, to and under any confidentiality, non-solicitation, or non-competition or invention assignment agreements for Acquired Intellectual Property (but not employment agreements) solely to the extent Related to the Entire Business and signed by former or current employees of any Seller and other parties in favor of any Seller or its predecessors;

(b) the benefit of and all rights to enforce any covenants, warranties, representations or guarantees under the Assigned Contracts;

(c) all accounts receivable, notes receivable, negotiable instruments and chattel paper owing from Persons other than Sellers and their Affiliates in each case to the extent Related to the Acquired Business, together with any unpaid interest or fees accrued thereon or other amounts due with respect thereto;

(d) copies of all Documents that are Related to the Entire Business (including 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;

(e) the Leased Real Property listed on Schedule 1.1(e) (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;

(f) all tangible assets (including Equipment) of Sellers that are Related to the Acquired Business, including the tangible assets of Sellers located at any Acquired 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;

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

(h) all rights against third parties (including customers, suppliers, vendors, merchants, manufacturers and counterparties to any Assigned Contract) that are Related to the Acquired Business or related to the Acquired Intellectual Property, including causes of action, claims, counterclaims, defenses, credits, rebates (including any vendor or supplier rebates), demands, allowances, refunds (other than Tax refunds or Tax attributes), 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;

(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 Acquired Business, and all pending applications therefor;

(j) all Intellectual Property owned by the Sellers that is Related to the Entire 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 identified as being owned by Sellers and the Acquired Entities and set forth on Schedule 3.11(a) (collectively, the "Acquired Intellectual Property");

(k) all Inventory and supplies of the Sellers that are Related to the Acquired Business (other than any iX5 Inventory);

(l) all Inventory and supplies of the Sellers that relate specifically to the following product lines of Sellers: Avea, Enve, ReVel, SiPap, and Vela;

(m) Product Names;

(n) all medical devices Related to the Acquired Business, including all FDA premarket approvals and 510(k) clearances related thereto;

(o) (i) 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 to the extent related to any other Acquired Assets; and (ii) 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, licenses or any Contract, arising out of or relating to events occurring on or prior to the Closing Date to the extent related to any Acquired Assets (collectively, the "Transferred Claims"); and

(p) all goodwill, payment intangibles and general intangible assets and rights of Sellers that are Related to the Acquired 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 (x) all properties, rights, interests and other assets of Sellers that are not Related to the Acquired Business or the Acquired Intellectual Property (unless expressly Scheduled as an Acquired Asset under Section 1.1) and (y) (without duplication) the following properties, rights, interests and other assets of Sellers (including those that are Related to the Entire Business) (collectively, the "Excluded Assets"):

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

(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 in the Bankruptcy Cases;

(c) subject to Section 1.5, all Contracts that are not Assigned Contracts, including the Contracts of Sellers listed on Schedule 1.2(c) (collectively, the "Excluded Contracts"), which Schedule 1.2(c) may be updated by Purchaser pursuant to Section 1.5;

(d) except (solely in the cases of clauses (i) and (ii) below) with respect to any Acquired Entity, all Documents (including information stored on the computer systems, data networks or servers of any Seller) (i) to the extent they relate to any of the Excluded Assets or Excluded Liabilities, (ii) that are Sellers' financial accounting Documents, all minute books, Organizational Documents, stock certificates or other Equity Interests instrument, stock registers and such other books and records of any Seller, in each case, pertaining to the ownership, organization or existence of such Seller, Tax Returns and records (and any related work papers), corporate seal, checkbooks, and canceled checks, (iii) that any Seller is required by Law to retain or (iv) that are governed under applicable Information Privacy and Security Laws that prohibit the transfer or sale of Personal Information; provided that Purchaser shall have the right to make copies of any reasonably relevant portions of such Documents (other than for Excluded Tax Returns) to the extent not prohibited by applicable Law;

(e) all documents prepared or received by any Seller or any of its Affiliates 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 and all documents that are subject to attorney client privilege and the transfer of which to Purchaser would result in the waiver of any such privilege;

(f) all Employee Benefit Plans of Seller and its Affiliates, and all rights, interests, policies, and assets associated with all Employee Benefit Plans, including for the avoidance of doubt all director and officer insurance policies (the "Excluded 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 any of the foregoing issued by any Acquired Entity;

(h) all Leased Real Property that is not Acquired Leased Real Property (the "Excluded Leased Real Property"), including any Leasehold Improvements and all permanent fixtures, improvements, and appurtenances thereto and all of the Leases underlying such Excluded Leased Real Property (each such Lease, an "Excluded Lease");

(i) (i) all preference or avoidance claims or actions arising under the Bankruptcy Code or applicable Law, (ii) all other rights, claims, causes of action, rights of recovery, rights of set-off, and rights of recoupment related to Excluded Assets as of the Closing of any Seller or its Affiliates, 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 or any of its Affiliates may have against any Person with respect to any other Excluded Assets or any Excluded Liabilities;

(j) Sellers' claims, causes of action or other rights under this Agreement, including the Purchase Price 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;

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

(l) 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) as inventory in the Ordinary Course, (ii) as authorized by the Bankruptcy Court, and with the express consent of Purchaser, or (iii) as permitted by Section 6.1 of this Agreement;

(m) solely with respect to Excluded Contracts, and except as set forth in Section 1.1(k) and other than the Transferred Claims, 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, licenses or any Contract, arising out of or relating to events occurring on or prior to the Closing Date;

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

(o) Seller Names;

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

(q) all iX5 Inventory; and

(r) Internet domain names that include or incorporate Seller Names.

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 (or with respect to Taxes, if applicable, from such Seller's applicable Affiliate) (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 prior to the Closing (collectively, the "Assumed Liabilities"):

(a) all Liabilities and obligations of any Seller under the Assigned Contracts that become due from and after the Closing;

(b) all cure costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assignment and assumption of the Assigned Contracts (the "Cure Costs") up to an amount not to exceed $5,000,000 (the "Cure Cost Cap"), with Seller to pay any necessary Cure Costs in excess of the Cure Cost Cap;

(c) all Liabilities (including all government charges or fees) arising out of the ownership or operation of the Acquired Assets or the Business, from and after the Closing Date;

(d) all Liabilities relating to amounts required to be paid, or actions required to be taken or not to be taken, by Purchaser under this Agreement and all Transfer Taxes allocated to Purchaser under Section 9.1;

(e) one hundred percent (100%) of all current Liabilities set forth on Schedule 1.3(e), but in no event exceeding an aggregate sum of $8,000,000, such payments to be made after consultation with Purchaser;

(f) without duplication: (i) all Liabilities for Taxes of or with respect to the Acquired Assets, the Assumed Liabilities, or the Business for any Post-Closing Tax Period; and (ii) all accrued but not yet paid employee wage withholding, payroll Tax, and other ordinary course operational Liabilities in respect of Taxes relating to or arising in respect of the Transferred Employees solely to the extent such wages relate to any Post-Closing Tax Period (such Taxes described in prongs (i) through (ii), "Assumed Taxes");

(g) all Liabilities under Environmental Law that are Related to the Acquired Business or otherwise related to the Acquired Assets and that arise or occur on or after the Closing Date;

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

(i) all Liabilities relating to the Transferred Employees arising following the Closing, as well as all pre-Closing accrued unused vacation, sick days and personal days of such Transferred Employees and all final payroll amounts accrued since the preceding regular payroll period date and owed as of the Closing for such Transferred Employees together with the employer portion of any payroll or other employment Tax in respect of such amounts;

(j) all Liabilities relating to the Inventory in-transit to Vyaire B.V. to the extent set forth on Schedule 1.3(j);

(k) all Liabilities relating to the non-Tax related accounts payable outside of the United States to the extent set forth on Schedule 1.3(k); and

(l) all Liabilities agreed to be assumed by Purchaser or for which Purchaser has agreed to be responsible, in each case, pursuant to the express terms of this Agreement.

Section 1.4 Excluded Liabilities. Notwithstanding any other provision of this Agreement to the contrary, Purchaser is only assuming the Assumed Liabilities and is not assuming any other claim against or Liability or other obligation of Sellers or any predecessor of any Seller of whatever nature, whether presently in existence or arising hereafter. 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, or circumstances 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 following the Restructuring Transactions shall be an Excluded Liability and that all Liabilities of any Acquired Entity following the Restructuring Transactions as of the Closing shall continue to be the Liabilities of such Acquired Entity following the Closing. Without limiting the generality of the foregoing, the Excluded Liabilities shall include the following Liabilities of Sellers:

(a) all Liabilities related to any Excluded Assets;

(b) (i) all Liabilities for Taxes of or with respect to the Acquired Assets, the Assumed Liabilities, or the Business for any Pre-Closing Tax Periods; (ii) all Taxes of or with respect to the Excluded Assets or Excluded Liabilities for any taxable period (for the avoidance of doubt, including without duplication (A) any Taxes of any Seller relating to a Pre-Closing Tax Period (for the avoidance of doubt, calculated in accordance with Section 9.6 and including any such Taxes the payment of which has been deferred until a Post-Closing Tax Period), and (B) Taxes of any Seller that becomes a Liability of Purchaser under any common law doctrine of de facto merger or transferee or successor liability, by operation of Contract or Law or otherwise, and (iii) all accrued but not yet paid employee wage withholding, payroll Tax, and other ordinary course operational Liabilities in respect of Taxes relating to or arising in respect of the Transferred Employees for any Pre-Closing Tax Periods;

(c) all Liabilities relating to the Transferred Employees other than the Liabilities provided for in Section 1.3(i) and (except to the extent attributable to an Acquired Entity) all other employees of Sellers and their Subsidiaries arising prior to Closing, including Liabilities relating to such Transferred Employees employment with any Seller or otherwise arising under Employee Benefit Plans, all Liabilities arising prior to Closing that could transfer to Purchaser under the Transfer Regulations and Liabilities arising under Seller's failure to comply with information and consultation obligations under the Transfer Regulations;

(d) all Liabilities relating to any Person currently or formerly engaged or employed by Sellers other than the Liabilities provided for in Section 1.3(i), including all such Liabilities of Sellers with respect to Employee Benefit Plans (exclusive of Acquired Entity Benefit Plan) and all Liabilities thereunder, accrued and unpaid wages, accrued and unused vacation, sick days, and personal days, any severance pay or benefits arising with respect to such Person(s), other payments earned but not paid under any incentive or bonus plan or arrangement of Sellers, and any such Person (other than a Transferred Employee or an employee of an Acquired Entity) alleging that their employment or engagement has or should have transferred to Purchaser or an Affiliate of Purchaser;

(e) all obligations under COBRA with respect to each current or former Business Employee (or their eligible spouses or dependents) other than solely to the extent required by 26 C.F.R. § 54.4980B-9, any M&A qualified beneficiaries in respect of the Transactions within the meaning of 26 C.F.R. § 54.4980B-9;

(f) all Liabilities under Environmental Law that are Related to the Entire Business to the extent first arising or existing prior to the Closing Date;

(g) all Liabilities relating to any claims for infringement, dilution, misappropriation, unfair or deceptive trade practices or any other violation of or by Sellers' or the operation of the Business or any international businesses and Intellectual Property rights arising from Sellers' operation of the Business, or ownership or use of the Acquired Assets or Excluded Assets, prior to the Closing Date, including all causes of actions or claims against Sellers in respect of any violation, infringement or misappropriation of any Intellectual Property rights, whether arising under a Contract or otherwise

(h) except with respect to Cure Costs up to the Cure Cost Cap, all Liabilities arising as a result of any claim initiated at any time, to the extent Related to the Acquired Business or the Acquired Assets on or prior to the Closing Date, including any stockholder or shareholder Actions, Actions for breach of contract, or any tort Actions;

(i) all Liabilities with respect to any costs and expenses (including all legal, accounting, financial advisory, valuation, investment banking and other third-party advisory or consulting fees and expenses) incurred by or on behalf of each Seller or its Affiliates in connection with the Bankruptcy Cases or the Transactions;

(j) all Liabilities incurred in the businesses of Sellers prior to the Closing and all Liabilities under, arising out of or relating to the Acquired Assets on or prior to the Closing, or the use, ownership, operation, or lease of the Acquired Assets on or prior to the Closing, in each case, other than the Cure Costs up to the Cure Cost Cap (whether or not set forth on any disclosure schedule to this Agreement or otherwise), including any Liabilities related to items disclosed on Schedule 3.6(c), Schedule 3.7(a), Schedule 3.7(b), Schedule 3.8, Schedule 3.9(j), and Schedule 3.16;

(k) all Liabilities of Sellers for any funded indebtedness or indebtedness for borrowed money;

(l) all Liabilities of Sellers based on successor liability theories, including product liability claims;

(m) all Liabilities of Sellers related to, or arising out of, any Excluded Contracts and Excluded Leases;

(n) all Liabilities of Sellers for Encumbrances related to utilities;

(o) all Liabilities of Sellers related to the Worker Adjustment and Retraining Notification Act of 1988 or any similar Laws ("WARN Act"), to the extent applicable, for any action resulting from separation of employment of any of the Business Employees by Sellers; and

(p) all Liabilities of Sellers based on any personal injury claims;

provided that in the event of any conflict between the terms of Section 1.3 and this Section 1.4, the terms of Section 1.3 shall control.

Section 1.5 Assumption/Rejection of Certain Contracts.

(a) Assumption and Assignment of Executory Contracts. Schedule 1.5(a) sets forth a list of all executory Contracts (including all Leases with respect to Leased Real Property) to which, to the Knowledge of Sellers, one or more Sellers are party or to which any of their assets are bound and which are Related to the Acquired Business. From time to time as requested by Purchaser, Sellers shall update Schedule 1.5(a) no later than three (3) Business Days prior to Closing. Sellers shall provide timely and proper written notice of a proposed Sale Order to all parties to any executory Contracts or unexpired Leases to which any Seller is a party and take all other actions reasonably necessary or otherwise required 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, including (x) serving on all non-Seller counterparties to all of their Contracts a notice specifically stating that Sellers are or may be seeking the assumption and assignment of such Contracts and of the deadline for objecting to the Cure Costs or any other aspect of the proposed assumption and assignment of their Contracts to Purchaser and (y) taking, as promptly as practicable, all other actions reasonably requested by Purchaser to facilitate any negotiations with the counterparties to such Assigned Contracts and to obtain an Order (in accordance with the terms of the Bidding Procedures and Sale Order), resulting in the satisfaction of all applicable requirements of section 365 of the Bankruptcy Code. 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 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 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 Purchase Price), 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(b). At the Closing, Purchaser shall, subject to Section 1.3(b), (i) pay all Cure Costs up to the Cure Cost Cap 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) In the event Sellers become aware of any unexpired Contract that has not been rejected or otherwise assumed and assigned to another party, and that was not previously disclosed to Purchaser as required under this Agreement, at any time prior to or following Closing, Sellers shall provide prompt notice to Purchaser of such Contract and Purchaser shall notify Sellers in writing (email to counsel being sufficient) within ten (10) Business Days whether it intends to designate such Contract an Assigned Contract. Seller shall take all steps necessary pursuant to the terms of this Agreement and Sale Order for such Contract that Seller received timely notice from Purchaser to be assumed by Seller and assigned to Purchaser, subject to the provisions of the Bankruptcy Code and any applicable plan related to the Seller's Bankruptcy Case.

(c) Between the date of the entry of the Sale Order and the Closing (or earlier termination of this Agreement), Sellers shall use reasonable efforts to facilitate introductions for Purchaser to the relevant contact persons at the counterparties to the Assigned Contracts to the extent reasonably requested by Purchaser.

(d) Mixed-Use Contracts. The Parties acknowledge that Sellers or their respective Subsidiaries are parties to certain Contracts listed on Schedule 1.5(a) and designated with an asterisk are Mixed-Use Contracts. Sellers and Purchaser shall cooperate and use their respective commercially reasonable efforts to obtain from the unaffiliated counterparty to any Mixed-Use Contract, on terms that are reasonably acceptable to Sellers, Purchaser, and, to the extent applicable, the purchaser of any Excluded Assets, an amendment (with assignment) or consent to separate such Mixed-Use Contract into two separate Contracts, (i) one of which (any such arrangement, a "Purchaser Separated Contract") would be for the benefit of Purchaser containing the respective rights and obligations of the Business under such Mixed-Use Contract, such that, at or after the Closing, Purchaser will be the beneficiary of such rights and will be responsible for such obligations under such Mixed-Use Contract and (ii) the other one of which would be unrelated to the Acquired Business, the Acquired Assets, or the Assumed Liabilities and would be an Excluded Contract; provided that obtaining Purchaser Separated Contracts is not a condition to the Closing. From and after the time in which any such Purchaser Separated Contract is put in place (either before or after the Closing) with such unaffiliated third party, such Purchaser Separated Contract shall be deemed an Assigned Contract. Sellers shall not be required to enter into any Purchaser Separated Contract, or any other Contract related to a Mixed-Use Contract that would have the effect of increasing administrative claims in the Bankruptcy Cases. This Section 1.5(d) (and not Section 6.5 or Section 6.6) sets forth Sellers' sole obligations with respect to Mixed-Use Contracts and potential Purchaser Separated Contracts, and the condition set forth in Section 7.2(b), as it applies to Sellers' obligations with respect to Mixed-Use Contracts and potential Purchaser Separated Agreements or under this Section 1.5(d), shall be deemed satisfied unless the failure to obtain a material number of Purchaser Separated Contracts is a direct result of Section 1.5(d) uncured breach of their obligations under this Section 1.5(d).

(e) Excluding or Adding Assigned Contracts Prior to Closing. Purchaser shall have the right to notify Sellers in writing of any Assigned Contract (other than purchase orders entered into following the date of this Agreement in accordance with Section 6.1(b)(xiv)) that it does not wish to assume or a Contract that is Related to the Entire Business (other than any Mixed-Use Contract) to which any Seller is a party that Purchaser wishes to add as an Assigned Contract at any time up to two (2) Business Days prior to the Closing (as defined in the Bidding Procedures Order), and (i) any such previously considered Assigned Contract that Purchaser no longer wishes 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 Purchase Price, and (ii) any such previously considered Excluded Contract that is Related to the Entire Business (other than any Mixed-Use Contract) that 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 Purchaser, in each case, without any adjustment to the Purchase Price. 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.

(f) 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 is terminated by a Seller or its Affiliates in accordance with the provisions of Section 6.1(b), or any other party thereto, or 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 at the Closing. 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(f) shall not apply to any Consent or approval required under any Foreign Competition Laws, if applicable, 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.

(iii) Upon objection by the non-debtor Contract counterparty to the proposed Cure Costs asserted by Sellers with regard to any Assigned Contract (such Contract, a "Disputed Contract") Sellers shall use commercially reasonable efforts to consensually resolve the objection of such party or litigate such objection (at Purchaser's expense if after Closing). In no event shall any Seller settle a Cure Costs objection with regard to any Disputed Contract without the express written consent of Purchaser, which shall not be unreasonably withheld (with an email consent being sufficient), provided that Sellers shall attempt to settle Disputed Contracts in the order in which is requested by Purchaser. Notwithstanding the foregoing, in the event that Cure Costs exceed the Cure Cost Cap, in no event shall any Seller settle any such excess Cure Costs without first consulting with the Purchaser (but Purchaser may not direct such Cure Costs and no Purchaser consent shall be required to settle such Cure Costs). 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.

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 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) To the extent the Parties determine after the date hereof that there are additional assets Related to the Business that may be held by one or more Non-Debtors that are not set forth on Schedule 1.6, the Parties agree to work collaboratively to include those assets as Acquired Assets, structure such transfer of assets in a tax efficient manner and amend Schedule 1.6 to include such assets.

ARTICLE II
CONSIDERATION; PAYMENT; CLOSING

Section 2.1 **Consideration; Payment**.

(a) The aggregate consideration (collectively, the "Purchase Price") to be paid by Purchaser for the purchase of the Acquired Assets shall be: (i) the assumption of Assumed Liabilities including the Cure Cost Cap of $5,000,000 and (ii) a cash payment of $37,000,000 (the "Cash Payment").

(b) At the Closing, Purchaser shall deliver, or cause to be delivered, to Sellers an aggregate amount equal to (i) the Cash Payment, plus (ii) the Acquired Cash Amount, less (iii) the Deposit (collectively, 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 two (2) Business Days prior to the date such payment is to be made.

Section 2.2 Deposit.

(a) Purchaser has, on or prior to the date hereof, made an earnest money deposit with Acquiom Clearinghouse LLC (the "Escrow Agent") in the amount equal to 10% of the Cash Payment (the "Deposit"), by wire transfer of immediately available funds for deposit into a separate, segregated, interest bearing escrow account maintained by the Escrow Agent as contemplated under 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 and shall be applied against payment of the Purchase Price on the Closing Date.

(b) 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, and Sellers shall deliver written 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.

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

(d) The Parties agree that Sellers' right to retain the Deposit, as set forth in Section 2.2(b), 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. Notwithstanding any other provision of this Agreement to the contrary, in the event that this Agreement is terminated by Sellers pursuant to Section 8.1(d) or Section 8.1(f) (or by Purchaser pursuant to Section 8.1(b) or Section 8.1(c), in each case in circumstances where Sellers would be entitled to terminate this Agreement pursuant to Section 8.1(d) or Section 8.1(f)), the payment of the Deposit and all interest and earnings thereon pursuant to this Section 1.3(h), shall be Sellers' sole and exclusive remedy for damages of any nature or kind that Sellers may suffer under this Agreement, and Sellers shall have no further remedy against Purchaser for any claim or damages arising out of, relating to or in connection with this Agreement or the Transactions, except in the case of Willful Breach.

(e) If the Closing occurs, at the Closing Sellers shall deliver written 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 Closing. The closing of the purchase and sale of the Acquired Assets, the delivery of the Purchase Price 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 later of (i) the third 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 (ii) August 28, 2024, 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 2.4 Closing Deliveries by Sellers. At or prior to the Closing, Sellers shall deliver 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) instruments of transfer of the Equity Interests of the Transferred Subsidiaries, in customary form, duly executed by the applicable Sellers;

(d) a transition services agreement in form and substance substantially similar to Exhibit D, together with (A) such changes as the Parties may reasonably agree and (B) 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;

(e) an IRS Form W-9, or appropriate IRS Form W-8, as applicable, executed by each Seller or each Seller's regarded owner for U.S. federal income Tax purposes and any other Tax form reasonably requested by Purchaser to provide an exemption from or reduction to withholding under applicable Law; provided that the failure to deliver such form 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 the Tax Code (or other applicable Tax Law) from the consideration otherwise payable to Sellers hereunder in accordance with Section 2.6;

(f) 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 Sections 7.2(a) and 7.2(b) have been satisfied;

(g) 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;

(h) 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; 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 2.5 **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 Transition Services Agreement, duly executed by Purchaser;

(d) the IP Assignment 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 2.6 **Withholding**. Purchaser shall be entitled to deduct and withhold any Taxes from any amounts otherwise payable pursuant to this Agreement, to the extent required by applicable Law; provided that so long as each Seller provides the applicable form described in Section 2.4(e) properly certifying that such Seller is not subject to any withholding Tax, the Parties acknowledge that they are not aware as of the date hereof that any withholding Tax is required;

provided further that in the event any Purchaser intends to withhold any Taxes from the Purchase Price, 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 work together in good faith with such Seller to determine if an exemption from or reduced rate of withholding is available. To the extent such amounts are so deducted or withheld and timely remitted to the proper Governmental Body, such amounts shall be treated for all purposes under this Agreement as having been paid to the Person to which such amounts would otherwise have been paid. 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.

ARTICLE III
REPRESENTATIONS AND WARRANTIES OF SELLERS

Except as (i) disclosed in any forms, statements or other documents filed with the Bankruptcy Court or (ii) set forth in the Schedules delivered by Sellers concurrently herewith and subject to Section 10.10, Sellers represent and warrant to Purchaser as of the date hereof as follows. Notwithstanding anything to the contrary in this Agreement, the statements contained in this Article III are only made with respect to the Acquired Business, the Acquired Assets, the Acquired Entities and the Assumed Liabilities, as applicable, and nothing in this Article III shall be construed to pertain to any assets, Liabilities, entities or businesses other than (1) the Acquired Business, the Acquired Assets, the Acquired Entities, or the Assumed Liabilities, or (2) to the extent related to the Acquired Business, the Acquired Assets, the Acquired Entities, or the Assumed Liabilities, as applicable.

Section 3.1 Organization and Qualification. Each Seller 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, except where the failure to be so incorporated, organized, existing or in good standing does not adversely impact such Seller's ability to consummate the Transactions, and has the requisite power and authority to own, lease and operate its properties and assets, including the Acquired Assets, and to carry on the Business as now being conducted. Each Acquired Entity is duly licensed or qualified to do business under the Laws of each jurisdiction in which the nature of the business conducted by it makes such licensing or qualification necessary, except where the failure to be so licensed or qualified would not reasonably be expected to be material to such Acquired Entity.

Section 3.2 Authorization of Agreement. 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 being granted, have been duly authorized by all requisite corporate action, limited liability company action or limited partnership action on the part of such Seller, as applicable, and no other 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 and the consummation by it of the Transactions. Subject to requisite Bankruptcy Court approvals, this Agreement and the other Transaction Agreements to which each 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. Assuming that (a) requisite Bankruptcy Court approvals are obtained, (b) the notices, authorizations, approvals, Orders, Permits or consents set forth on Schedule 3.3 are made, given or obtained (as applicable), and (c) the requirements of any applicable antitrust, competition, foreign direct investment or "FDI", or merger control Laws promulgated by any Governmental Body ("Foreign Competition Laws") are complied with and (d) any filings required by any applicable federal or state securities or "blue sky" Laws are made, the execution and delivery by Sellers of this Agreement or 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 certificate of incorporation or bylaws, certificate of formation or limited liability company agreement, certificate of limited partnership, partnership agreement or other governing documents, as applicable (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, any of the terms or provisions of any Material Contract or accelerate any Seller's obligations under any such Material Contract, (iii) violate any Law or Order applicable to Sellers or any of the Acquired Assets, or by which any Seller or any of the Acquired Assets may be bound, or (iv) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any Acquired Assets; except, in the case of clauses (ii) and (iii), as would not, individually or in the aggregate, reasonably be expected to be material to 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). 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. Except as set forth on Schedule 3.4(a), the Sellers own all of the outstanding capital stock or 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(a) is a statement of income for the Business, for each month of the six-month period ended June 30, 2024 (collectively, the "Financial Statements").

(b) Attached to Schedule 3.5(b) are the trial balances by entity of each of the Sellers and the Acquired Entities as of June 30, 2024 (the "Trial Balances").

(c) Except as set forth on Schedule 3.5(c), each Acquired Entity does not have any Liabilities of the type required to be accrued on or reserved against in a consolidated balance sheet prepared in accordance with GAAP, except (i) Liabilities accrued on or reserved against in its most recent Trial Balance or disclosed in the notes thereto or in the notes to the other Financial Statements, (ii) Liabilities arising after the date of this Agreement in connection with the Transactions, (iii) Liabilities disclosed in another section of the Schedules to the extent the existence of such Liability is readily apparent on the face of such disclosure, and (iv) other Liabilities which do not to exceed $250,000 in the aggregate.

Section 3.6 Title to Properties.

(a) Sellers have good and valid title to all of the Acquired Assets, free and clear of any and all free and clear of all Encumbrances (other than Permitted Encumbrances).

(b) One or more of the Sellers or Acquired Entities has a good and valid leasehold interest to all real property leased by Sellers or the Acquired Entities that is Related to the Entire Business (the "Leased Real Property"), free and clear of all Encumbrances (other than Permitted Encumbrances).

(c) Schedule 3.6(c) sets forth the address of each Leased Real Property. The Sellers have made available to Purchaser or Purchaser's Advisors true and complete copies of each Acquired Lease. 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 two (2) 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, taken as a whole; (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) Schedule 3.6(d) sets forth all liens on the rights, title or interest of the Acquired Entities on the assets owned or held for use by them (other than Permitted Encumbrances and the interest of any counterparty to any Contract (e.g. a personal or real property lease or intellectual property license)).

(e) [Vyaire Medical, Inc. has entered into] that certain Binding Term Sheet with Kilmainham Vyaire, LLC ("Palm Springs Landlord") in the form and on the terms provided to Purchaser (the "Palm Springs Term Sheet") to amend and restate that certain Lease Agreement dated as of August 31, 2022. The Palm Springs Term Sheet has not been rescinded and remains in full force and effect and, to Sellers Knowledge, the Palm Springs Landlord in good faith intends to negotiate the Lease Agreement consistent with the Palm Springs Term Sheet.

Section 3.7 Contracts.

(a) Schedule 3.7(a) sets forth a 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 Acquired Business or the Acquired Intellectual Property, in all cases other than any purchase orders on Sellers' standard form (a true and correct copy of which has been made available to Purchaser) and any Employee Benefit Plan, that:

(i) relates to the formation, creation, governance, economics, or control of any joint venture, partnership or other similar arrangement with a third party (in each case, other than Contracts entered into in the Ordinary Course and Organizational Documents of any Seller or Acquired Entity);

(ii) (A) provides for indebtedness for borrowed money of Sellers having an outstanding or committed amount in excess of $500,000 or the Acquired Entities having an outstanding or committed amount in excess of $100,000, in each case, other than letters of credit, credit terms extended to customers in the Ordinary Course, advancement of expenses made to employees and independent contractors in the Ordinary Course, and indebtedness as solely among any Sellers, the Acquired Entities and their Subsidiaries or (B) under which any Seller or Acquired Entity has permitted any Acquired Asset to become subject to any Encumbrances (other than Permitted Encumbrances);

(iii) relates to the acquisition or disposition of any business (whether by merger, sale of stock, sale of assets or otherwise) that has outstanding obligations remaining thereunder (in each case, excluding for the avoidance of doubt, acquisitions or dispositions supplies, merchandise, Inventory, products, Equipment, properties or other assets in the Ordinary Course, or of supplies, Inventory, merchandise, products, Equipment, properties or other assets that are obsolete, worn out, surplus or no longer used or useful in the conduct of the Business);

(iv) pursuant to which any Seller or Acquired Entity (or another Person on behalf of Seller or any Acquired Entity) (A) has sold or assigned any Intellectual Property to another Person or currently licenses of otherwise conveys or provides any Intellectual Property to another Person (collectively, "Outbound IP Contracts") (except that Schedule 3.7(a)(iv) does not identify any Outbound IP Contract with only a non-exclusive license granted on behalf of Seller or Acquired Entity in the Ordinary Course to customers or service providers and (B) has been sold or assigned any Intellectual Property by another Person or currently licenses or otherwise is conveyed or provided any Intellectual Property from another Person, including Contracts for the development of Intellectual Property for the benefit of the Seller or Acquired Entity (collectively, "Inbound IP Contracts") (except that Schedule 3.7(a)(iv) does not identify any Inbound IP Contract pertaining to the non-exclusive license or right to use commercially available, mass-market software for the Seller's or Acquired Entity's internal use that has a total replacement cost of less than $100,000 or contain only non-exclusive licenses that are ancillary to the primary purpose of such Contract);

(v) with any vendor that provides services that involve payments to or from any vendor anticipated to be in excess of $100,000 in any one (1) calendar year;

(vi) is a Contract (other than purchase orders) Related to the Entire Business pursuant to which Sellers would reasonably be expected to make or receive payments of more than $500,000 or the Acquired Entities would reasonably be expected to make or receive payments of more than $100,000, in each case during any fiscal year;

(vii) 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, 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

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

(b) True and complete copies of all Material Contracts have been made available to Purchaser or Purchaser's Advisors. 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 or 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 written 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 be material to the Business.

(c) Schedule 3.7(c) sets forth a true and complete list of purchase orders Related to the Entire Business as of [__], 2024, pursuant to which any Seller or Acquired Entity would reasonably be expected to make or receive payments of more than $[100,000].

Section 3.8 No Litigation. Except as set forth on Schedule 3.8, there are no Actions pending or, to Sellers' Knowledge, threatened against or affecting any of the Sellers or Acquired Entities that would reasonably be expected to adversely affect any Seller's or Acquired Entities' performance of its obligations under this Agreement or the consummation of the Transactions. Except as disclosed on Schedule 3.8, there is no material Action to which any Seller or Acquired Entity or any of their respective directors, officers, employees, or individual contractors, consultants or advisors (in their capacity as such), is a party (either as plaintiff or defendant) or to the Knowledge of Seller, threatened, that would reasonably be expected to (i) adversely affect the Business or the Acquired Assets or (ii) impose additional obligations upon Purchasers after Closing, in each case with respect to the Assumed Liabilities.

Section 3.9 Permits; Compliance with Laws; Regulatory Matters.

(a) The Sellers and Acquired Entities hold all licenses, franchises, permits, certificates, approvals, clearances, registrations, and authorizations granted by Governmental Bodies, or otherwise required by applicable Laws, including but not limited to CE Certificates of Conformity, EU Declarations of Conformity and related self-declarations, necessary for the lawful conduct of the Business as currently conducted, in each case, 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, taken as a whole (collectively, "Permits"). Schedule 3.9(a) sets forth the approval status in both the EU and United States of each of the product lines and related sensors of the Business. Further, the existing Permits, including any and all premarket approvals, FDA 510(k) clearances and CE Certificates of Conformities, are valid and legally adequate to permit the continuous manufacture and distribution of the applicable medical devices in the EU and the United States, taking into account all modifications to the medical devices after premarket approvals, FDA 510(k) clearances and CE Certificates of Conformity. Schedule 3.9(a) sets forth for each product of the Acquired Business in relation to both the EU and the United States, as applicable, the, identity of the legal manufacturer; identity of the physical manufacturer; the status of the (EN) ISO 13485 certification of legal manufacturer and physical manufacturer and the related date of expiry of the certification; product risk classification, including for the EU, the product risk classification in accordance with Directive 93/42/EEC on medical devices ("MDD") and the product risk classification in accordance with Regulation (EU) 2017/745 on medical devices, as amended ("MDR"); identity of the Notified Body that issued a CE Certificate of

Conformity and the date of expiry of the CE Certificate of Conformity; the status of the relevant Permit; the legal basis on the basis of which each product is placed on the market and can continue to be placed on the market in the EU; where Seller relies on the transitional provisions of the MDR, (i) confirmation that Seller has issued a self-declaration of compliance will all the conditions for benefiting from the transitional provisions of the MDR and (ii) a confirmation letter from the relevant Notified Body stating the receipt of the Seller's application for conformity assessment in accordance with the MDR and the conclusion of a written agreement; and, the status of the conformity assessment in accordance with the MDR.

(b) Each Seller and Acquired Entity (with respect to the Business) has been, at all times since January 1, 2022, in compliance, except as would not reasonably be expected to be material to the Business, the Acquired Assets and the Assumed Liabilities, taken as a whole, with all applicable Laws and Orders, including (A) the Federal Food, Drug, and Cosmetic Act, as amended (21 U.S.C. Sections 301 et seq.) (the "FDCA") and the regulations promulgated thereunder (B) the Public Health Service Act (42 U.S.C. Sections 201 et seq.) and the regulations promulgated thereunder (C) Laws relating to healthcare fraud and abuse, false claims and anti-kickback Laws, including the Federal Anti-Kickback Statute (42 U.S.C. Sections 1320a-7b(b)), the Federal False Claims Act (31 U.S.C. Section 3729 et seq.), the administrative False Claims Law (42 U.S.C. § 1320a-7b(a)), the Anti-Inducement Law (42 U.S.C. § 1320a-7a(a)(5)), the Civil Monetary Penalties Law (42 U.S.C. § 1320a-7a) the exclusion Laws (42 U.S.C, § 1320a-7), or any similar Laws; (D) Laws regarding the reporting of prices and promotional expenditures to healthcare professionals including the federal Physician Payment Sunshine Act (42 U.S.C. § 1320a-7h) and similar state gift and disclosure Laws; (E) the Health Insurance Portability and Accountability Act of 1996 as amended by the Health Information Technology for Economic and Clinical Health Act of 2009, the regulations promulgated thereunder and similar Laws pertaining to privacy, data protection and information security; and (F) state Laws relating to the manufacture, sale, and distribution of medical products; and (G) all applicable Laws of other countries or jurisdictions in which a Seller or Acquired Entity conducts business and comparable foreign Governmental Bodies that impose requirements on manufacturing, development, non-clinical, clinical testing, production, analysis, certification, labeling, advertising, marketing, promotion, interactions and relationships with healthcare professionals, healthcare organizations, or patient organizations, transfers of values to healthcare professionals, healthcare organizations, or patient organizations, transparency and reporting relating to interactions or relationships, or transfers of values to healthcare professionals, healthcare organizations, or patient organizations, distribution, importation, exportation, use, handling, quality sale, reporting, kickbacks, patient or program charges, recordkeeping, claims process, documentation requirements, medical necessity, referrals, the hiring of employees or acquisition of services or supplies from those who have been excluded from government health care programs, quality, safety, privacy, security, licensure, accreditation or any other aspect of providing health care, clinical laboratory or diagnostics devices or services including but not limited to Directive 93/42 on Medical Devices and the related national implementing legislation of EEA countries, Regulation 2017/745 on Medical Devices and the General Data Protection Regulation 2016/679 (collectively, "Health Care Laws"). Each Seller and Acquired Entity has implemented a compliance program reasonably designed to ensure compliance with applicable Health Care Laws and related industry codes and standards.

(c) Each Seller and Acquired Entity and each of its 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 has been, at all times since January 1, 2022, in compliance in all material respects with the Foreign Corrupt Practices Act of 1977 and any rules and regulations promulgated thereunder, or any similar Laws. Except as would not reasonably be expected to be material to the Business, the Acquired Assets and the Assumed Liabilities, taken as a whole, no Seller, Acquired Entity nor any Person affiliated with a Seller or Acquired Entity is debarred under 21 U.S.C. Section 335a or disqualified by the United States Food and Drug Administration ("FDA") under the FDCA or any similar Law, or is otherwise excluded from or restricted in any manner from participation in any government program related to medical devices in the United States or any other country in which a Seller or Acquired Entity conducts business and, to Knowledge of Sellers, no Person affiliated with any Seller or Acquired Entity employs or uses the services of any person who is so debarred or otherwise excluded or restricted. As of the date hereof, no Actions, claims or investigations that would reasonably be expected to result in such a debarment, exclusion or restriction are pending or threatened in writing against any Seller, Acquired Entity or any Person affiliated with a Seller or Acquired Entity. No Seller or Acquired Entity is a party to, nor does it have, any ongoing reporting obligations pursuant to or under any corporate integrity agreements, deferred prosecution agreements, monitoring agreements, consent decrees, settlement orders, plans of correction or similar agreements with or imposed by any Governmental Body.

(d) No Seller or Acquired Entity has received written notice of or is subject to any pending or, to Knowledge of Sellers, threatened investigation, Actions, hearing, enforcement, audit, inspection, arbitration or other action by the FDA or any other federal, state or foreign Governmental Body alleging that any product, operation or activity of such Seller or Acquired Entity is in violation of any applicable Law or Health Care Law, nor has any Governmental Body indicated to Seller or Acquired Entity of an intention to conduct or initiate the same.

(e) Except as would not reasonably be expected to be material to the Business, the Acquired Assets and the Assumed Liabilities, taken as a whole, since January 1, 2022, (i) no Seller or Acquired Entity has received FDA Warning or Untitled Letter (or the foreign equivalents thereof), or requests or requirements to make changes to products manufactured or sold by any Seller or Acquired Entity that if not complied with would reasonably be expected to result in a material effect on Seller or any Acquired Entity; (ii) no penalty, fine or other sanction has been assessed against any Seller or Acquired Entity by any Governmental Body; (iii) no manufacturing sites or products have been subject to a Governmental Body shutdown or suspension or import or export prohibition; and (iv) no compliance order or other compliance monitoring or enforcement activity, nor any similar correspondence, notice or any written communication from the FDA or other Governmental Body alleging or asserting noncompliance with any applicable Law, Permit or such requests or requirements of a Governmental Body, has been made in respect of any Seller or Acquired Entity by any Governmental Body, and, to Knowledge of Sellers, neither the FDA nor any Governmental Body is considering such action.

(f) The Sellers and Acquired Entities are in compliance in all material respects with all Permits, and no event, circumstance or state of facts has occurred which (with or without due notice or lapse of time or both) would reasonably be expected to result in the failure of the Sellers or Acquired Entities to be in compliance in all material respects with the terms of any such Permit. To the Knowledge of the Sellers and Acquired Entities, (i) no Governmental Body is considering limiting, suspending, varying, or revoking any Permit and (ii) each third party that is a manufacturer, contractor or agent for the Sellers and Acquired Entities is in compliance in all material respects with all Permits required by all Health Care Laws insofar as they reasonably pertain to the Sellers and Acquired Entities or the products manufactured or sold by any Seller or Acquired Entity.

(g) All products manufactured or sold by any Seller or Acquired Entity are developed, investigated, manufactured, prepared, packaged, tested, labeled and distributed in compliance in all material respects with all Health Care Laws.

(h) To the Knowledge of Sellers, components supplied to the Sellers and Acquired Entities by third parties based on specifications provided by the Sellers or Acquired Entities are manufactured by such third parties in accordance with such specifications in all material respects. All of the products manufactured or sold by any Seller or Acquired Entity, including all components, packaging, labeling and promotional materials or oral representations for such products, comply in all material respects with all Health Care Laws. To the Knowledge of Sellers, all components included in products manufactured or sold by any Seller or Acquired Entity comply in all material respects with all Health Care Laws.

(i) No Seller or Acquired Entity, nor to Knowledge of Sellers (i) any officer or employee of a Seller or Acquired Entity, (ii) any authorized agent of a Seller or Acquired Entity or (iii) any principal investigator or sub-investigator of any clinical investigation conducted by a Seller or Acquired Entity has, in the case of each of (i) through (iii) on account of actions taken for or on behalf of any Seller or Acquired Entity, been convicted of any crime under the FDCA; nor has any such principal investigator or sub-investigator been disqualified from conducting any clinical investigation that supports an application for a research or marketing permit for products regulated by the FDA, including medical devices, under 21 C.F.R. § 312.70 or 812.119 or any similar or applicable foreign Laws.

(j) Except as would not reasonably be expected to be material to the Business, the Acquired Assets and the Assumed Liabilities, taken as a whole, the clinical, pre-clinical and other studies and tests conducted by or on behalf of or sponsored by any Seller or Acquired Entity or in which any Seller or Acquired Entity or its products or product candidates have participated were and, if still pending, are being conducted in all material respects in accordance with all applicable Laws, including the FDCA and its applicable implementing regulations at 21 C.F.R. Parts 50, 54, 56, 58 and 812. No investigational device exemption filed by or on behalf of any Seller or Acquired Entity with the FDA has been terminated or suspended by the FDA, and since January 1, 2022, neither the FDA nor any applicable foreign regulatory authority or Governmental Body has commenced, or, to Knowledge of Sellers, threatened to initiate, any action to place a clinical hold order on, or otherwise terminate, delay or suspend, any proposed or ongoing clinical investigation conducted or proposed to be conducted by or on behalf of any Seller or Acquired Entity.

(k) Except as would not reasonably be expected to be material to the Business, the Acquired Assets and the Assumed Liabilities, taken as a whole, since January 1, 2022, all applications, notifications, submissions, information, claims, reports, registrations and other data and conclusions derived therefrom, utilized as the basis for or submitted in connection with any and all Permits from the FDA or other Governmental Body or otherwise required by applicable

Laws relating to any Seller or Acquired Entity, its businesses and its products, when submitted to the FDA or other Governmental Body or otherwise issued by any Seller or Acquired Entity were true, complete and correct in all material respects as of the date of submission, and all necessary or required applications, notifications, submissions, information, claims, reports, registrations, data, and updates, changes, corrections or modifications thereto have been submitted to the FDA or other Governmental Body or issued by Seller or Acquired Entity.

(l) Schedule 3.9(l) sets forth a list of (i) all recalls, field notifications, field corrections, market withdrawals or replacements, safety alerts or other notices of action or actions relating to an alleged lack of safety, efficacy, or regulatory compliance of the products manufactured or sold by any Seller or Acquired Entity ("Safety Notices") since June 1, 2022, (ii) the dates such Safety Notices, if any, were resolved or closed, (iii) to Sellers' Knowledge, any material complaints with respect to the products manufactured or sold by any Seller or Acquired Entity that are currently unresolved, and (iv) a list of all corrective actions and preventive actions that have been initiated since June 1, 2022 either voluntarily or in response to a related audit by a third party or a Governmental Body, the context and findings in relation to which the actions were initiated and the status of each action in relation to the closure and resolution of the related finding. There are no Safety Notices, or, to Sellers' Knowledge, material product complaints with respect to the products manufactured or sold by any Seller or Acquired Entity, and to Sellers' Knowledge, there are no facts or circumstances that would be reasonably likely to result in (i) a material Safety Notice with respect to the products manufactured or sold by any Seller or Acquired Entity, (ii) a material change in the marketing classification or labeling of any such products; or (iii) a termination or suspension of marketing or testing of any such product.

Section 3.10 Environmental Matters. (a) Sellers and the Acquired Entities are, and have been since January 1, 2022, in compliance with all material applicable Environmental Laws with respect to the conduct of the Business, (b) since January 1, 2022, none of Sellers or 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 material in compliance with all material 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 in writing against any Seller or Acquired Entity that is Related to the Entire 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 in the case of Sellers or Acquired Entities, that is Related to the Entire 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 Seller or any Acquired Entity, under Environmental Laws.

Section 3.11 Intellectual Property.

(a) Schedule 3.11(a) sets forth a list of the following Intellectual Property owned by the Sellers that is Related to the Entire Business and the following Intellectual Property that is owned by the Acquired Entities: (i) all patents and patent applications, (ii) all registered trademarks and pending trademark applications, (iii) all Internet domain names and (iv) all registered copyrights (items (i) through (iv) the "Seller Intellectual Property Rights").

(b) Sellers 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). Sellers and the Acquired Entities own all of the rights, title and interest in and to the Seller Intellectual Property Rights, free and clear of all Encumbrances (other than Permitted Encumbrances). All of the Seller Intellectual Property Rights are subsisting and in full force and effect, and to the Knowledge of Sellers, valid and enforceable.

(c) (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 Sellers and 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(c) 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(e).

(d) 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, 2022, 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 or Acquired Entity 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.

(e) Since January 1, 2022, (i) to the Knowledge of Sellers no Person has infringed, misappropriated or otherwise violated the rights of Sellers or the Acquired Entities with respect to any Intellectual Property that is 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.

(f) The consummation of the Transactions will not result in the grant of any right or license to any third party of any Intellectual Property that is owned by or exclusively licensed to any Seller or Acquired Entity and is material to the Acquired Assets and the Business, taken as a whole.

(g) 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, taken as a whole, (i) each Person who is or was involved in the invention, conception, creation or development of any Acquired Intellectual Property for or on behalf of Sellers or Acquired Entities (each, a "Contributor") has signed a valid and enforceable written Contract containing (A) an assignment to Sellers or Acquired Entities or one of their Affiliates of exclusive ownership of all rights, title and interest in and to all such Acquired Intellectual Property, except where such rights vested in a Seller or Acquired Entity or one of its Affiliates as a matter of law, (B) reasonably customary confidentiality provisions protecting the secrecy of Sellers' and Acquired Entities' confidential information, including trade secrets and other non-public elements of such Acquired Intellectual Property, and (C) to the extent not assignable by Law, a waiver of such Person's moral rights in and to such Intellectual Property; (ii) to the Knowledge of Sellers, no such Person has any obligation to any other person with respect to such Acquired Intellectual Property; (iii) to Sellers' Knowledge, no Contributor has breached or violated any such agreement; and (iv) no current or former Contributors, founders, members, directors, officers, employees, contractors, consultants, or agents of the Sellers or Acquired Entities, and no governmental entity, university, college, or educational or research institution, owns any rights, title, or interest (whether or not currently exercisable) in or to any Acquired Intellectual Property.

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, and the Assumed Liabilities, taken as a whole, each Seller and Acquired Entity, and the conduct of the Business, are, and since January 1, 2022, have been, in compliance with (i): all applicable data privacy Laws; (ii) the terms of all Contracts to which they are a party relating to Personal Information privacy, security, or breach notification (including provisions that impose conditions or restrictions on the receipt, collection, monitoring, maintenance, creation, transmission, processing, use, analysis, disclosure, storage, transfer or disposal and security of Personal Information); and (iii) the policies and procedures published by Sellers and Acquired Entities with respect to privacy, data protection, security and the collection, transfer and use of Personal Information gathered or accessed by Sellers or Acquired Entities in the course of the operations of the Business.

(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, taken as a whole, Sellers and the Acquired Entities have established, and, to the Knowledge of Sellers, are and have been since January 1, 2022, in compliance with an information security program that: (i) implements commercially reasonable and appropriate administrative, technical, and physical safeguards designed to protect the security, confidentiality, and integrity of all IT Assets; (ii) is designed to prevent unauthorized access, use, or disclosure of Personal Information and other data processed or stored in the IT Assets; (iii) materially complies with all applicable Information Privacy and Security Laws; and (iv) is reasonably reflected in written policies of the Sellers and Acquired Entities.

(c) 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, taken as a whole, since January 1, 2022, there have been no unauthorized intrusions into the information technology systems owned by any Seller or Acquired Entity, and no Seller or Acquired Entity has suffered or incurred a "breach," "breach of unsecured PHI," or "security breach" (or similar terms such as "breach of security of the system") as defined by applicable data privacy and security Laws, or unauthorized or unlawful acquisition, access, use, or disclosure of any Personal Information owned, used, stored, or controlled in connection with the Business.

Section 3.13 Tax Matters. 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, taken as a whole:

(a) Each Seller and Acquired Entity (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 income and other material Tax Returns with respect to the Acquired Assets, the Assumed Liabilities, the Business and the Transferred Employees required to be filed by it, and all income and other material 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 material Taxes with respect to the Acquired Assets, the Assumed Liabilities, the Business or the Transferred Employees owed by a Seller that are due, and all material Taxes required to be paid by an Acquired Entity, 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, except, solely with respect to the Acquired Assets, to the extent the nonpayment thereof is permitted or required by the Bankruptcy Code without the Purchaser or any of its Affiliates being liable for such Taxes.

(c) There are no Encumbrances for Taxes on any of the Acquired Assets or assets of the Acquired Entities other than Encumbrances for Taxes that are not yet due and payable.

(d) No Seller or Acquired Entity has received any written notice from a jurisdiction where such Seller or Acquired Entity does not currently file Tax Returns indicating that such filings may be required in such jurisdiction with respect to the Acquired Assets or the Business or the Acquired Entity, or that the Acquired Assets or Acquired Entity may otherwise be subject to taxation by the applicable taxing authority in such jurisdiction. No Acquired Entity has a permanent establishment or fixed place of business in any country other than its country of organization.

(e) None of the Sellers or the Acquired Entities has waived any statute of limitations in respect of Taxes with respect to the Acquired Assets, the Assumed Liabilities, the Business or the Transferred Employees 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 Assumed Liabilities, the Business, the Transferred Employees, or the Acquired Entities (in each case, other than pursuant to automatic extensions of time to file Tax Returns obtained in the Ordinary Course), in each case, which waiver or extension is currently in force and would have effect after the Closing Date.

(f) Except to the extent that doing so would not adversely impact the Acquired Assets or the Acquired Entities or Purchaser's ownership of the Acquired Assets or Acquired Entities, none of the Acquired Entities or Sellers has participated in any "listed transaction" within the meaning of 26 C.F.R. § 1.6011-4(b)(2).

(g) No Seller or Acquired Entity (or any applicable Affiliate of any Seller or Acquired Entity) has received any written notice of audit, procedure, proceeding or contest, and is not undergoing any audit, procedure, proceeding or contest, of Tax Returns or Taxes relating to the Business or the Acquired Assets or relating to the Acquired Entities. No Seller or Acquired Entity (or any applicable Affiliate of any Seller or Acquired Entity) has ever received any notice of deficiency or assessment from any taxing authority with respect to any Liability for Taxes relating to the Business or the Acquired Assets or relating to the Acquired Entities which has not been fully paid or finally settled. Each Seller and each Acquired Entity (and any applicable Affiliate of such Seller or Acquired Entity) has complied with all applicable Laws relating to the payment and withholding of Taxes and has withheld all amounts required by Law to be withheld from the wages or salaries of employees and independent contractors relating to the Business or the Acquired Assets or relating to the Acquired Entities (or any other amount payable to any other Person) and is not liable for any Taxes with respect to the employees and independent contractors relating to the Business or the Acquired Assets or relating to the Acquired Entities (or any such other Person) for failure to comply with such Laws, except for such Liabilities with respect to which none of Purchaser or any applicable Affiliate of Purchaser would be liable after the Closing.

(h) The current U.S. federal income Tax classification of each Acquired Entity is a C corporation. No Acquired Entity has made an election to be treated as a "domestic corporation" under Section 897(i) of the Tax Code.

(i) Except as set forth on Schedule 3.13(i), each Acquired Entity that is organized outside the United States is a controlled foreign corporation as described in Section 957 of the Tax Code.

(j) No Acquired Entity which is organized outside the United States (a) has any United States real property interests as described in Section 897 of the Tax Code, or (b) is engaged in the conduct of a trade or business in the United States.

(k) No Acquired Entity has participated in or is currently participating in a "listed transaction" within the meaning of Section 6707A(c) of the Tax Code or Treasury Regulation Section 1.6011-4(b).

(l) Each Acquired Entity has collected, remitted and reported to the appropriate Tax authority all material sales, use and value added Taxes required to be so collected, remitted or reported pursuant to all applicable Laws. Each Acquired Entity has complied in all material respects with all applicable Laws relating to record retention (including to the extent necessary to claim any exemption from sales or value added Tax collection and maintaining adequate and current resale certificates to support any such claimed exemption).

(m) (i) None of the Sellers, in each case with respect to the Business, the Acquired Assets or the Assumed Liabilities, or any Acquired Entity is a party to or bound by any written Tax allocation, Tax indemnification or Tax sharing agreement or arrangement under which it would have any past or continuing liabilities after the Closing Date (other than any such agreement entered into on customary commercial terms in the Ordinary Course the primary purpose of which does not relate to any Taxes or any such agreement solely among the Acquired Entities).

(n) Notwithstanding anything in this Agreement to the contrary, the representations and warranties in this Section 3.13 and in Section 3.14 (insofar as they relate to Taxes) shall constitute the sole representations and warranties in this Agreement with respect to Taxes and no representation or warranty set forth in this Section 3.13 or in Section 3.14 (insofar as it relates to Taxes) shall be deemed to apply directly or indirectly with respect to any Seller Combined Tax Return. No representation or warranty is made with respect to the validity of any Tax position or the availability of any Tax attribute for any Tax period (or any portion thereof) following the Closing.

Section 3.14 Employee Benefit Plans

(a) Schedule 3.14(a) sets forth a list of each Employee Benefit Plan in which (i) the Business Employees; and (ii) the Transfer Regulations Employees participate or are eligible to participate and separately identifies each that is an Acquired Entity Benefit Plan. With respect to each Acquired Entity Benefit Plan, Sellers have made available to Purchaser copies (to the extent applicable) of: (i) the current summary plan description or a written description of the material terms thereof, other than any document that any Seller is prohibited from making available to Purchaser as the result of applicable Law relating to the safeguarding of data privacy, (ii) each trust or other funding arrangement and (iii) the most recent financial statements and actuarial report.

(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. To the Knowledge of Sellers, there are no existing circumstances or any events that have occurred that would reasonably be expected to cause the loss of any such qualification status of any such Employee Benefit Plan. There are no pending, or to the Knowledge of Sellers, threatened claims (other than routine claims for benefits) by, on behalf of or against any Employee Benefit Plan, and no prohibited transaction within the meaning of Section 4975 of the Tax Code or Section 406 of ERISA has occurred with respect to any Employee Benefit Plan, which could reasonably be expected to result in any material Liability to Purchaser, no material audit or other proceeding by a Governmental Body is pending, or to the Knowledge of Sellers, threatened with respect to any Employee Benefit Plan. Each Employee Benefit Plan complies in form and in operation in all material respects with its 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. No Employee Benefit Plan provides for any form of defined benefit pension or final salary linked pension in respect of which any Transfer Regulations Employee has or would have any rights or Purchaser would incur any Liabilities.

(c) None of the Acquired Entities has any obligation to provide (or contribute toward the cost of), post-employment or post-termination benefits of any kind, including death and medical benefits, with respect to any current or former officer, employee, agent, director or independent contractor of Sellers or the Acquired Entities or any of their respective Subsidiaries, except to the extent required by COBRA and at the covered individual's sole expense.

(d) None of the Sellers or the Acquired Entities maintains, contributes to, or has any Liability (including on account of an ERISA Affiliate) with respect to any (i) pension plan that is subject to Title IV of ERISA or Section 412 of the Tax Code, (ii) “multiemployer plan” (as defined in Section 4001(a)(3) of ERISA), or (iii) “multiple employer welfare arrangement” within the meaning of Section 3(40) of ERISA, (iv) plan described in Section 413 of the Tax Code or (v) “nonqualified deferred compensation plan” within the meaning of Section 409A of the Tax Code.

(e) Neither the consummation of the Transactions nor any termination of employment or service or any other event in connection with such Transactions, will individually or together with some other event (i) entitle any Business Employee to any payment; (ii) increase the amount or value of any benefit or compensation or other obligation payable or required to be provided to any Business Employee or Transfer Regulations Employee; (iii) accelerate the time of payment or vesting of amounts due to any Business Employee or Transfer Regulations Employee or accelerate the time of any funding (whether to a trust or otherwise) of compensation or benefits in respect of any Employee Benefit Plan; or (iv) 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) Each Acquired Entity Benefit Plan (i) has, at all times since January 1, 2022, been maintained, operated and administered in compliance with its terms and in compliance in all material respects with applicable Laws; (ii) if required to be registered or approved by a non-U.S. Governmental Body, has been registered or approved and has been maintained in good standing with applicable regulatory authorities, and, to the Knowledge of Sellers, no event has occurred since the date of the most recent approval or application therefor relating to any such Acquired Entity Benefit Plan that could reasonably be expected to adversely affect any such approval or good standing; (iii) that is intended to qualify for special Tax treatment meets all requirements for such treatment; (iv) if required to be funded or insured to any extent, is funded or fully insured as required under with applicable Laws; and (v) is not subject to any pending or, to the Knowledge of Sellers, threatened claims by or on behalf of any participant in such Acquired Entity Benefit Plan, or otherwise involving such Acquired Entity Benefit Plan or the assets of such Acquired Entity Benefit Plan, other than routine claims for benefits.

Section 3.15 Employees.

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

(b) Sellers and the Acquired Entities (with respect to the Business or Business Employees and each Transferred Employee or Transfer Regulations Employee) are in compliance in all material respects with all applicable Laws respecting employment practices and labor, including those related to wages and hours, collective bargaining, unemployment insurance, workers' compensation, immigration, harassment and discrimination, disability rights and benefits, affirmative action, and employee layoffs.

(c) There is no Action pending or, to the Knowledge of Sellers, threatened in writing against any Seller (with respect to the Business or Business Employees or Transferred Employee) or any Acquired Entity alleging a violation of any applicable labor or employment Law brought by any Business Employee before any Governmental Body.

(d) Other than as set forth on Schedule 3.15(d), every Person employed or engaged by the Acquired Entities is assigned to working primarily in 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, 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 Acquired Entity since January 1, 2023, 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 (a) the exclusion of the Excluded Assets, (b) the corporate-level services provided to the Business by Vyaire and its Affiliates, (c) the matters set forth in Schedule 3.17 and (d) arrangements on an arms-length basis, no Affiliate of any Seller or Acquired Entity (other than any of the Sellers, the Non-Debtors, and the Acquired Entities themselves) (i) owns any material property or right, tangible or intangible, that is Related to the Entire 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 enterprise-wide services and benefits provided to the Business by Seller and its Subsidiaries described in Schedule 3.18, the Acquired Assets (A) constitute all of the material assets, properties and rights owned, leased or licensed by Seller, Acquired Entities or its Subsidiaries that are Related to the Entire 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 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 the Transactions based upon arrangements made by or on behalf of Sellers.

Section 3.20 Critical Technology. Sellers and the Acquired Entities do not produce, design, test, manufacture, fabricate, or develop, and the Acquired Assets do not constitute, one or more "critical technologies" within the meaning of the Defense Production Act of 1950, as amended, including all implementing regulations thereof.

Section 3.21 Absence of Certain Changes. Except as set forth on Schedule 3.21, since January 1, 2022, (a) Sellers and the Acquired Entities have conducted their business in the Ordinary Course in all material respects (other than the marketing of the Business and processes and negotiations with Advisors and third parties in connection therewith, and preparation and commencement or pendency of the Bankruptcy Cases and actions related thereto), (b) there has not been any Material Adverse Effect and (c) there has been business interruption at any of the facilities, plants, offices, laboratories, warehouses, distribution centers and other properties (including at any Acquired Leased Real Property), in each case, of the Business that would reasonably be expected to be material to the Business.

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 to be delivered pursuant to Section 2.4(f) (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, Acquired Entity nor any other Person on behalf of any Seller or any Acquired Entity 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 Acquired Entity or any of their Affiliates or Advisors. Without limiting the foregoing, no Seller or Acquired Entity 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 the foregoing, nothing contained in this Section 3.22 shall limit or otherwise impair in any manner Purchaser's right to make a claim 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 Commonwealth of Massachusetts 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. Purchaser 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 on Purchaser's ability to consummate the Transactions.

Section 4.2 **Authorization of Agreement**. 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 its part are necessary to authorize the execution, delivery and performance by 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 Purchaser and, assuming due authorization, execution and delivery hereof by the other Parties, constitutes a legal, valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with its terms, except that such enforceability may be limited by the Enforceability Exceptions.

Section 4.3 **Conflicts; Consents**.

(a) Assuming that (i) the Sale Order, and all other requisite Bankruptcy Court approvals are obtained and (ii) the notices, authorizations, approvals, Orders, permits or consents set forth on Schedule 4.3(a) are made, given or obtained (as applicable), 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 (A) conflict with or violate any provision of Purchaser's Organizational Documents, (B) violate any Law or Order applicable to Purchaser, (C) 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 Purchaser is a party or accelerate Purchaser's obligations under any such Contract, or (D) result in the creation of any Encumbrance (other than a Permitted Encumbrance) on any properties or assets of Purchaser or any of its Subsidiaries, except, in the case of clauses (A) through (D), 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) Except as set forth on Schedule 1.1(a), 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 Purchaser of this Agreement or the consummation by Purchaser of the Transactions, except 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.

Section 4.4 **Financing**. Purchaser has, and will have at the Closing, sufficient funds in an aggregate amount necessary to pay the Purchase Price, 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 Purchase Price and all fees, expenses of, and other amounts required to be paid by, Purchaser in connection with Transactions and does not know of any circumstance or condition that would reasonably be expected to prevent or substantially delay the availability of such funds or otherwise impair such capability at the Closing and such other dates that such obligations and transactions are required to be satisfied pursuant to the terms hereof. Purchaser affirms that it is not a condition to Closing or to any of its obligations under this Agreement that Purchaser obtains financing for the 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**. 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.

Section 4.6 **No Litigation**. There are no Actions pending or, to Purchaser's knowledge, 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 been afforded full access to the books and records, facilities and personnel of the Acquired Entities for purposes of conducting a due diligence investigation and has conducted a full due diligence investigation of the Acquired Entities and is satisfied with the access and materials made available to it in connection with such investigation and the scope and results of such investigation.

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 such transactions.

Section 4.9 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 Acquired Entity. 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 4.10 WARN Act and Mass Layoffs. Purchaser does not currently plan or contemplate any plant closings, reduction in force, terminations of Transferred Employees, or similar personnel actions impacting Transferred Employees that would trigger obligations under the WARN Act or similar Laws within one year after the Closing Date.

Section 4.11 No Additional Representations or Warranties. Except for the representations and warranties contained in this Article IV or the certificate to be delivered pursuant to Section 2.5(e), 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. Sellers acknowledge and agree that they (i) have been afforded the opportunity to ask questions of and receive answers from officers and other key employees of Purchaser and (ii) have conducted their own independent investigation of Purchaser, and have not relied on any representation, warranty or other statement by any Person on behalf of Purchaser, other than the representations and warranties of Purchaser expressly contained in Article IV or the certificate to be delivered pursuant to Section 2.5(e), and that all other representations and warranties are specifically disclaimed.

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. Sellers may modify the Sale Order pursuant to discussions with the United States Trustee assigned to the Bankruptcy Case, the Bankruptcy Court, any creditor or committee representing a group of creditors in the Bankruptcy Case, or any other party in interest, with such modifications being acceptable to Purchaser in its sole discretion (not to be unreasonably withheld).

(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) 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 Vents Auction is conducted, and Purchaser is not the prevailing party at the conclusion of such Vents Auction (such prevailing party, the "Successful Bidder") but is the next highest bidder at the Vents 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 Vents 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 Vents 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. Subject to entry of the Sale Order, Purchaser shall, on or prior to 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 up to the Cure Cost Cap so that such Contracts may be assumed by the applicable Seller and assigned to Purchaser in accordance with the provisions of Section 365 of the Bankruptcy Code and this Agreement. Subject to entry of the Sale Order, Seller shall pay at the Closing or reasonably promptly thereafter in accordance with the Bankruptcy Code all Cure Costs in excess of the Cure Cost Cap.

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.

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 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 in connection with the Restructuring Transactions), (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, Sellers shall use their commercially reasonable efforts to carry on the Business in the Ordinary Course and to cause the Acquired Entities to carry on the Business in the Ordinary Course; provided that no action by any Seller 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 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 in connection with the Restructuring Transactions), (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, Sellers and the Acquired Entities shall not take any of the following actions with respect to the Business:

(i) (A) other than transactions among the Sellers and the Acquired Entities, 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, 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, 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 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), other than Excluded Liabilities, (B) enter into any swap or hedging transaction or other derivative agreements other than in the Ordinary Course 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; provided that any such actions in the immediately foregoing clauses (A), (B) or (C) do not give rise to an Assumed Liability;

(iii) sell or lease to any Person, in a single transaction or series of related transactions, any of the Acquired Assets, except (A) Ordinary Course dispositions of Inventory and dispositions of obsolete, surplus or worn out assets or assets that are no longer used or useful in the conduct of the Business, (B) transfers among the Sellers and the Acquired Entities, (C) leases or subleases of real property under which a Seller or Acquired Entity is a tenant or a subtenant and voluntary terminations or surrenders of such leases or subleases, in each case following prior good faith consultation with Purchaser, and (D) other sales and leases in the Ordinary Course;

(iv) make or authorize capital expenditures, including for property, plant and Equipment, except for those (A) in connection with the repair or replacement of facilities, properties or assets destroyed or damaged due to casualty or accident (whether or not covered by insurance), or (B) in accordance with the business plan or capital expenditure budget made available to Purchaser;

(v) except as permitted under Section 6.1(b)(v), and except for acquisitions made with Purchaser's prior written consent, make any acquisition of, or investment in, any properties, assets, securities or business (including by merger), except in the Ordinary Course (which for the avoidance of doubt and without limitation of the foregoing shall be deemed to include acquisitions of Inventory 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 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, amend or terminate any material 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, and does not cover any, 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 or 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) grant any Encumbrance (other than Permitted Encumbrances) on any of its 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); provided any such Encumbrance would be extinguished in connection with the Closing;

(ix) settle any pending or threatened Action against any Seller or Acquired Entity that is Related to the Acquired Business or to the extent related to the Acquired Assets or the Assumed Liabilities (other than with respect to Taxes (excluding Actions relating to Taxes of the Acquired Entities; provided that Purchaser's consent with respect to settling Actions relating to Taxes of the Acquired Entities shall not be unreasonably withheld, conditioned or delayed) or solely to the extent related to Excluded Liabilities);

(x) (A) terminate, reject amend, supplement, modify, assign or waive any provision of, or accelerate any rights, benefits or obligations under, any Material Contract, except the expiration in accordance with its term, (B) enter into any Contract that would be a Material Contract if executed prior to the date of this Agreement or which would result in an aggregate obligation of Sellers in excess of $250,000, except for (1) any renewal of any customer Contract in the Ordinary Course upon terms and conditions which are not less favorable in the aggregate to the Sellers or the Acquired Entities than those in effect as of the date of this Agreement and (2) any renewal of any other such Contract in the Ordinary Course upon terms and conditions which are no less favorable to the Sellers or the Acquired Entities, in any material respect, than those in effect as of the date of this agreement;

(xi) (A) abandon, cancel, fail to renew, or permit to lapse any Acquired Intellectual Property that is used in and material to the conduct of the Business, other than pursuant to expiration of any such Intellectual Property at the end of its maximum term, or (B) sell, transfer, license or otherwise encumber any material Acquired Intellectual Property, other than licenses of Acquired Intellectual Property in the Ordinary Course;

(xii) amend in any material respect, cancel or permit to terminate any insurance policy naming any Seller or Acquired Entity as an insured, a beneficiary or a loss payable payee without first obtaining comparable substitute insurance coverage with no lapse in coverage;

(xiii) make, revoke or change any material Tax election or any method of Tax accounting, settle or compromise or enter into any contractual arrangement in respect of any material Tax liability, file an amended Tax Return, enter into any closing agreement relating to any material Tax, enter into any voluntary disclosure or similar program with respect to any material Tax, agree to any extension of a statute of limitations with respect to any material Tax or income or other material Tax Return, or surrender any right to claim a material Tax refund, in each case, to the extent such action would reasonably be expected to adversely affect either (1) any Acquired Asset, Assumed Liability, Acquired Entity or the Business or (2) the Purchaser's (or any of Purchaser's applicable Affiliate's), ownership or assumption of the Acquired Assets, Assumed Liabilities, Acquired Entities or the Business, in each case, after the Closing;

(xiv) enter into any purchase order other than purchase orders that either (a) are previously approved by Purchaser or (b) do not include obligations in excess of $[300,000]; or

(xv) 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 Subsidiaries' 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.

(a) From the date hereof until the Closing, Sellers will provide Purchaser and its authorized Advisors with reasonable access and upon reasonable advance notice and during regular business hours (and in accordance with the reasonable procedures established by Sellers) to the books and records of Sellers and the Acquired Entities, in each case, to the extent Related to the Entire Business, in order for Purchaser and its authorized Advisors to access such information regarding the Acquired Assets and the Assumed Liabilities as is reasonably necessary in order to consummate 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 or such other Person(s) as Sellers or PJT 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 Entire Business, and (v) nothing herein will require Sellers to provide access to, or to disclose any information to, Purchaser if such access or disclosure (A) would require any Seller or Non-Debtor to disclose any financial or proprietary information of or regarding the Affiliates of any Seller (other than any Seller or Non-Debtor) or otherwise disclose information regarding the Affiliates of any Seller (other than any Seller or Non-Debtor) that such Seller deems to be commercially sensitive, (B) would waive any legal privilege or (C) would be in violation of applicable Laws (including Foreign Competition Laws) or the provisions of any agreement to which any Seller 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 any other property of Non-Debtors, 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 preparing for transition of the operation of the Acquired Assets and the Business to Purchaser at Closing 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) 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 to provide Sellers and their Advisors with reasonable access, during normal business hours, and upon reasonable advance notice, to the books and records, including work papers, schedules, memoranda, Tax Returns, Tax schedules, Tax rulings, and other documents (for the purpose of examining and copying) to the extent 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 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) including making Transferred Employees and systems included in Acquired Assets reasonably available to provide service(s) and perform functions (consistent with their duties) for assisting in connection with the foregoing (to the extent such Transferred Employees or systems are necessary in connection with the foregoing); provided that (i) such assistance does not unreasonably interfere with the normal operations of the Business, (ii) the Parties will mutually agree to a reasonable and customary hourly rate for any material time involvement by such Transferred Employees and (iii) the Parties will mutually agree to the reimbursement of Purchaser of any reasonable third party costs or expenses incurred in connection herewith.

(d) 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.

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

(a) At least five (5) calendar days prior to Closing, Purchaser shall extend to certain Business Employees employed by Sellers (as determined by Purchaser in its sole discretion and excluding the Transfer Regulation Employees) a written offer of employment 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, and contingent upon, the Closing. Business Employees who accept such Transfer Offers and begin employment with Purchaser or an Affiliate of Purchaser and Transfer Regulation Employees, shall be collectively referred to herein as "<u>Transferred Employees</u>." To allow Purchaser to prepare such offers of employment, Sellers shall, except to the extent restricted by applicable Law, (i) provide, within two (2) Business Days following the closing of the Auction, a full employee census including each Business Employee's name, salary, title, email, existing reporting structure, and other employee information reasonably requested by Purchaser and (ii) facilitate and coordinate with Purchaser to arrange interviews of such Business Employees. 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 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. For purposes of soliciting or offering employment to certain Business Employees, Sellers shall not enforce any non-solicitation restrictions of Purchaser set forth in the Confidentiality Agreement with respect to the period from the date of this Agreement until the date, if any, that this Agreement is terminated.

(b) The Parties acknowledge that the Transactions may constitute a relevant transfer for the purposes of the Transfer Regulations and, accordingly, that they will not operate to terminate the Contract of employment of any Transfer Regulation Employee where required under the Transfer Regulations. The Contracts of employment of each Transfer Regulation Employee shall be transferred to Purchaser or an Affiliate of Purchaser pursuant to and where required under the Transfer Regulations with effect from Closing. Sellers acknowledge that after Closing, Purchaser or Affiliate of Purchaser may transfer the employment contract of any Transfer Regulation Employee to or between any Affiliate of Purchaser and, until Closing, the Sellers agree to provide such reasonable assistance to Purchaser or Affiliate of Purchaser as may be necessary to prepare to effect such transfer.

(c) Without limiting the generality of any other provision of this Agreement, Purchaser shall: (i) use commercially reasonable efforts to cause each Transferred Employee and any employee of an Acquired Entity as of immediately before Closing to be immediately eligible to participate, without any waiting time, in any and all benefits plan or program maintained by Purchaser or any of its Affiliates after the Closing Date (the "<u>Purchaser Plans</u>"); and (ii) for purposes of each Purchaser Plan providing health or welfare benefits, Purchaser shall use commercially reasonable efforts to cause all pre-existing condition exclusions and actively-at-work requirements of such Purchaser Plan to be waived for such Transferred Employee or Acquired Entity employee and his or her covered dependents (unless such exclusions or requirements were applicable under comparable Employee Benefit Plans).

(d) 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 or employees of the Acquired Entities), 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.

(e) Seller shall be solely responsible for, and Purchaser shall have no obligations or Liabilities whatsoever for, or with respect to any payments, vesting or benefit accrual for any Employee Benefit Plans (exclusive of Acquired Entity Benefit Plans) or any compensation, wages, or other amounts payable to any current or former employee (other than Transferred Employees), officer, director, independent contractor or consultant of Seller, including hourly pay, commission, bonus, salary, accrued vacation or other paid time off, fringe, pension or profit sharing benefits or severance pay for any period relating to the service with Seller at any time on or prior to the Closing Date (exclusive of amounts owing by an Acquired Entity) and Seller shall pay all such amounts that are accrued and earned as of the Closing Date to all such persons when such amounts are due and payable.

(f) Seller shall remain solely responsible for the satisfaction of all claims for medical, dental, life insurance, health accident or disability benefits 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, exclusive of any claims in respect of an Acquired Entity Benefit Plan. Sellers also shall remain solely responsible for all workers' compensation claims of any current or former employees, officers, directors, independent contractors or consultants of Seller which relate to events occurring on or prior to the Closing Date.

(g) Seller 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) that occurs on and before the Closing. 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) that occurs after the Closing. For avoidance of doubt, to the extent any Business Employee or Transferred Employee employment losses caused by Seller or any of its Affiliates prior to the Closing are considered part of any "plant closing" or "mass layoff" caused by Purchaser or any of its Affiliates after the Closing, and provided that such employment loses by Seller or any of its Affiliates did not otherwise give rise to any obligations or Liabilities under the WARN Act on or before the Closing, Purchaser will, or will cause its Affiliates to, (i) provide any required notice under the WARN Act and to otherwise comply with the WARN Act as it relates to the Business Employees or Transferred Employees, [and (ii) indemnify Seller and its Affiliates for any Liabilities they incur during any such WARN Act notice period and for any other Liabilities under the WARN Act, in each case with respect to the aforementioned "plant closing" or "mass layoff" caused by Purchaser or any of its Affiliates after the Closing].

(h) Solely to the extent required by 26 C.F.R. § 54.4980B-9, Purchaser shall be solely responsible for any and all obligations and Liabilities arising under Section 4980B of the Tax Code with respect to all "M&A qualified beneficiaries" in respect of the Transactions within the meaning of 26 C.F.R. § 54.4980B-9.

Section 6.4 Regulatory Approvals.

(a) Sellers will (i) cooperate with Purchaser in exchanging such information and providing such assistance as 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) 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.

Section 6.5 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, provided; notwithstanding anything to the contrary in this Agreement the "reasonable best efforts" of (1) 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 and (2) Purchaser will not require Purchaser or any of its Affiliates to, and Purchaser shall not be under any obligation to, make proposals, execute or carry out agreements, enter into consent decrees or submit to orders providing for (A) the sale, divestiture, license or other disposition or holding separate (through the establishment of a trust or otherwise) of any assets or categories of assets of Purchaser or any of its Affiliates, (B) the imposition of any limitation or regulation on the ability of Purchaser or any of its Affiliates to freely conduct their business or own such assets, or (C) the holding separate of the Acquired Assets or regulation on the ability to exercise full rights of ownership of the Acquired Assets.

(b) The obligations of Sellers pursuant to this Agreement, including this Section 6.5, 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.

Section 6.6 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, which includes delivering the Acquired Assets from such Non-Debtors pursuant to Section 1.6(d) and the other terms and conditions of this Agreement.

Section 6.7 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 Acquired Assets or 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 the Excluded Insurance Policies, and Seller 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 6.8 Receipt of Misdirected Assets; Liabilities.

(a) From and after the Closing, if any Seller or any of its respective Affiliates receives 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 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 6.9 Acknowledgment by Purchaser.

(a) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, 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 Sellers and Acquired Assets and the Assumed Liabilities, and, in making its determination to proceed with the Transactions, Purchaser and the Purchaser Group have relied, are relying, and will rely, solely on the Express Representations and the results of the Purchaser Group's own independent investigation and verification and have not relied on, are 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 and the Purchaser Group have relied only on the Express Representations). Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, that (i) the Express Representations are the sole and exclusive representations, warranties and statements of any kind made to Purchaser or any member of the Purchaser Group and on which Purchaser or any member of the Purchaser Group 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, are, in each case, specifically disclaimed by each Seller, on its behalf and on behalf of the Seller Parties. Purchaser, on its own behalf and on behalf of the Purchaser Group: (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, on its own behalf and on behalf of the Purchaser Group, that neither Sellers, nor any other Person (including the Seller Parties), has made, is making or is authorized to make, and Purchaser, on its own behalf and on behalf of the Purchaser Group, 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, 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 any 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 Group of the Business, Purchaser and the members of the Purchaser Group, and the Advisors of each of the foregoing, 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, on its own behalf and on behalf of the Purchaser Group, 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 their own evaluation of the adequacy and accuracy of all Projections (including the reasonableness of the assumptions underlying such Projections).

(c) Purchaser acknowledges and agrees, on its own behalf and on behalf of the Purchaser Group, 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 6.9, 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, on its own behalf and on behalf of the Purchaser Group, that the covenants and agreements contained in this Section 6.9 (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 6.9, Seller would not enter into this Agreement.

(e) Nothing in this Section 6.9 will limit Purchaser's remedies for Fraud.

Section 6.10 Guaranty.

(a) In the event of any assignment pursuant to Section 10.4(b) hereof, Guarantor hereby irrevocably, absolutely and unconditionally guarantees to Sellers (i) the due and punctual performance, when and as due, of all obligations, covenants and agreements of Purchaser arising under or pursuant to this Agreement; (ii) the accuracy of Purchaser's representations and warranties set forth herein; and (iii) the punctual payment of all sums, if any, now or hereafter owed by Purchaser under and in accordance with the terms of this Agreement, including the payment obligations of Purchaser pursuant to Section 2.1 (the matters set forth in clauses (i), (ii), and (iii), collectively, "Guaranteed Obligations").

(b) If Purchaser fails to perform any of the Guaranteed Obligations, then Guarantor shall itself be jointly and severally liable for the Guaranteed Obligations and shall perform or take whatever steps as may be necessary to procure performance of the same.

(c) Notwithstanding any other provision of this Section 6.10, nothing herein shall be construed as imposing greater obligations or Liabilities on Guarantor than for which Purchaser itself would be liable under this Agreement or obliging Guarantor to indemnify and hold harmless Sellers against any losses, costs, or expenses for which Purchaser itself would not be liable under this Agreement, except as set forth in this Section 6.10, including Sections 6.10(f) and 6.10(h).

(d) The obligations of Sellers under this Agreement shall conclusively be deemed to have been created, contracted, or incurred in reliance upon this Section 6.10 and all dealings between Sellers and Purchaser shall likewise be conclusively presumed to have been consummated in reliance upon this Section 6.10.

(e) Guarantor's obligations hereunder shall not be affected by any facts or circumstances that might constitute a legal or equitable bar, discharge or defense to any Guaranteed Obligations available to Guarantor but not available to Purchaser, and Guarantor hereby expressly waives and renounces any and all such bars, discharges and defenses.

(f) The guarantee by Guarantor contained herein shall be a continuing guarantee, shall remain in full force and effect and shall continue to be enforceable by Sellers until the performance by Purchaser of all of the Guaranteed Obligations (notwithstanding any change, restructuring, bankruptcy, insolvency or termination of the corporate structure or existence of any Seller or any of its Subsidiaries) and that upon completion of all of the Guaranteed Obligations, this guarantee shall terminate automatically and Guarantor shall stand discharged of all of its obligations under this guarantee. Guarantor shall indemnify Sellers for any costs and expenses incurred by Sellers in enforcing this Section 6.10(f), including the fees and expenses of counsel and other Advisors of Sellers in the investigation and prosecution of any Action with respect hereto. Guarantor's obligations under this Section 6.10(f) shall not be terminated, modified, affected or impaired by reason of any relief or discharge of Purchaser from any of Purchaser's respective obligations in bankruptcy or similar proceedings, or by liquidation or dissolution.

(g) The liability of Guarantor under this Section 6.10 shall be unlimited and unconditional, and this Section 6.10 shall be a continuing guaranty.

(h) Guarantor hereby makes the representations and warranties set forth in Article IV as to itself, and such representations and warranties shall apply *mutatis mutandis* as if Guarantor were substituted for Purchaser therein.

Section 6.11 Releases.

(a) As of the Closing, each Seller, on behalf of itself and its Affiliates, representatives, heirs, successors, and assigns (as applicable), (a) irrevocably and unconditionally waives, releases, and forever discharges the Acquired Entities and their current, former and future Advisors, stockholders, members, directors, managers, trustees, principals, parents, Subsidiaries, joint ventures, predecessors, successors, assigns, beneficiaries, heirs or executors (collectively, the "Acquired Entity Released Parties") from any and all rights, commitments, actions, debts, claims, counterclaims, suits, causes of action, damages, demands, losses, obligations, costs, expenses, compensation and other Liabilities of every kind and nature whatsoever, whether known or unknown, matured or contingent and whether arising in law, in equity or otherwise, in each case based upon facts, circumstances or occurrences existing at or prior to Closing (collectively, the "Released Claims"), (b) irrevocably covenants to refrain from, directly or indirectly, asserting any claims or commencing, instituting or causing to be commenced, any Action of any kind against any Acquired Entity Released Party with respect to the Released Claims, and (c) represents to the other Parties that such Seller has not assigned or transferred, nor purported to assign or transfer, to any Person all or any part of, or any interest in, any Released Claim (and notwithstanding anything to the contrary in this Agreement, no such assignment or transfer shall be permitted, and any purported assignment or transfer shall be legally ineffective). Each Seller also hereby waives the benefits of, and any right that such Person may have under, any statute or common law principle of similar effect in any jurisdiction with respect to any Released Claim. Notwithstanding the generality of the foregoing, nothing herein constitutes a waiver or release by any Person of, and Released Claims shall not be deemed to include (i) any claim or right arising under this Agreement or any Transaction Agreement, including any breach of this Agreement, (ii) any claim or right such Person may have in the Ordinary Course for compensation, vacation pay, and benefits arising under such Person's employment arrangements, and (iii) any claim or right arising as a result of Fraud.

(b) As of the Closing, Purchaser, on behalf of itself and its Affiliates (including, after the Closing, the Acquired Entities), representatives, heirs, successors, and assigns (as applicable), (a) irrevocably and unconditionally waives, releases, and forever discharges Sellers and their current, former and future Advisors, stockholders, members, directors, managers, trustees, principals, parents, Subsidiaries, joint ventures, predecessors, successors, assigns, beneficiaries, heirs or executors (collectively, the "Seller Released Parties" and together with the Acquired Entity Released Parties, the "Released Parties") from any and all Released Claims, (b) irrevocably covenants to refrain from, directly or indirectly, asserting any claims or commencing, instituting or causing to be commenced, any Action of any kind against any Seller Released Party with respect to the Released Claims, and (c) represents to the other Parties that Purchaser has not assigned or transferred, nor purported to assign or transfer, to any Person all or any part of, or any interest in, any Released Claim (and notwithstanding anything to the contrary in this Agreement, no such assignment or transfer shall be permitted, and any purported assignment or transfer shall be legally ineffective). Purchaser also hereby waives the benefits of, and any right that such Person may have under, any statute or common law principle of similar effect in any jurisdiction with respect to any Released Claim. Notwithstanding the generality of the foregoing, nothing herein constitutes a waiver or release by any Person of, and Released Claims shall not be deemed to include (i) any claim or right arising under this Agreement or any Transaction Agreement, including any breach of this Agreement, (ii) any claim or right such Person may have in the Ordinary Course for compensation, vacation pay, and benefits arising under such Person's employment arrangements and (iii) any claim or right arising as a result of Fraud.

Section 6.12 Vyaire Guarantees. Purchaser acknowledges that in the course of conduct of the Business, Vyaire and its Affiliates may have entered into various arrangements (a) in which guarantees, letters of credit, sureties, bonds or similar arrangements were issued by Vyaire or its Affiliates and (b) in which Vyaire or its Affiliates are the primary obligors on other Contracts, in any such case to support or facilitate the Business. The arrangements entered into by Vyaire and its Affiliates referred to in the foregoing clauses (a) and (b), solely to the extent relating to any Acquired Assets or Assumed Liabilities consisting only of those set forth in Section 6.12, are 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 reasonable best efforts to obtain replacements for the Seller Credit Support Obligations (which shall include the full and unconditional release of Vyaire and its Affiliates) that will be in effect at the Closing or, in the case of Seller Credit Support Obligations described in the foregoing clause (b), 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, acknowledgement or similar agreement (which shall include the full and unconditional release of Vyaire and its Affiliates) 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, from and after the Closing, Purchaser shall indemnify the Sellers and their respective Affiliates and each of their respective officers, directors, employees, agents and representatives from and against any and all Liabilities incurred by any of them relating to the Seller Credit Support Obligations. Purchaser agrees that, with respect to any Seller Credit Support Obligation, its reasonable best efforts pursuant to this Section 6.12 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 6.13 Lien Releases. Following the Closing, the Seller agrees to use commercially reasonable efforts to file, or cause to be filed, or duly authorize (or the Sale Order shall duly authorize) Purchaser to file, all applicable UCC lien releases with the USPTO or equivalent foreign governing body relating to the Acquired Assets.

Section 6.14 **401(k) Plan Termination**. As permitted by the Bankruptcy Court, the Sellers shall take all steps necessary to terminate, or cause to terminate, all 401(k) plans administered by Sellers or the Acquired Entities at the termination of the Transition Services Agreement.

Section 6.15 **Acquired Intellectual Property Title**. Sellers will, from time to time following the Closing, upon reasonable request and at Purchaser's cost and expense and without being required to incur any Liability, execute and deliver any and all papers, make all rightful oaths, and do all lawful acts that may be necessary or desirable to record and perfect, in the applicable official government records, the full chain of title in the Acquired Intellectual Property into, and in the name of, the owner listed in Schedule 3.11(a), in each case, as prepared by or on behalf of Purchaser in accordance with applicable Law.

Section 6.16 **Domain Names**. Sellers shall cooperate with Purchase to cause each internet domain name related to any Acquired Asset, including any internet domain name that incorporates any Product Name, to be redirected to an internet domain name owned by Purchaser.

Section 6.17 **Acquired Cash Amount**. Sellers shall not transfer any Acquired Cash Amount after the Acquired Cash Amount has been determined as of 11:59 PM Eastern time on the date immediately preceding the Closing Date.

Section 6.18 **Mixed-Use Contracts**. Sellers shall not assign or transfer any Mixed-Use Contracts to any third party or pursuant to any other transaction.

Section 6.19 **Purchase Price Allocation**. The Parties will use commercially reasonable efforts to allocate the Purchase Price between Debtors, on one hand, and Non-Debtors, on the other hand, prior to Closing.

Section 6.20 **Restructuring Transactions**. Prior to the Closing Date, Sellers shall, and shall cause their relevant respective Subsidiaries to, effect the restructuring transactions set forth on Schedule 6.20 (which schedule may be updated from time to time by Sellers and shall be subject to the consent of the Purchaser (not unreasonably withheld, conditioned, or delayed)) (such transactions, the "Restructuring Transactions"). In addition, prior to the Closing, Seller shall cause all intercompany Liabilities between any Acquired Entity, on the one hand, and any Seller or Non-Debtor, on the other hand (each, an "Intercompany Liability"), to be settled or otherwise terminated such that there are no Intercompany Liabilities remaining as of the Closing. Any such termination shall be effected in a manner that does not reasonably result in an Assumed Liability and does not reasonably result in any net increase in Liabilities of any Acquired Entity (and, for the avoidance of doubt, the Parties agree that the Restructuring Transactions described on Schedule 6.20 as of the date hereof are not expected to result in any Assumed Liability or net increase in Liabilities for the Acquired Entities).

Section 6.21 **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 90 days after the Closing Date (except as set forth below), 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 (i) for 90 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, (ii) until such time as all applicable Permits (including the title of legal manufacturer) have been transferred to Purchaser, solely related to the use of Seller Names in connection with regulatory matters or pursuant to such Permits (iii) following the Closing Date to identify any products that are part of the Acquired Business as being formerly affiliated with Seller Names (or words of similar import) (iv) solely to the extent such Seller Names are affixed to Inventory included in the Acquired Assets, 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 or (v) in connection with the manufacturing, distribution and sale of any products, including software, that use or incorporate any Seller Names; 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 the use of Seller Names in connection with Purchaser or its Affiliates' sale or commercialization of such Inventory or from Purchaser or its Affiliates' manufacturing, distribution and sale of any such products, including software. 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 Sellers or their Affiliates; (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 regulatory 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 6.22 **Schedule 1.6**. Purchaser and Sellers agree to comply with or perform all obligations and actions set forth in Item 15 of Schedule 1.6, which the Parties agree are legally binding obligations and incorporated herein.

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) 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

(b) the Bankruptcy Court shall have entered the Sale 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 only 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 and (ii) the representations and warranties set forth in Section 3.1 (excluding the last sentence of Section 3.1), Section 3.2 and Section 3.19 (collectively, the "Fundamental Representations") shall be true and correct in all but *de minimis* 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 but *de minimis* respects only as of such date;

(b) Sellers shall have performed and complied in all material respects with the covenants required to be performed or complied with by Sellers under this Agreement on or prior to Closing;

(c) From and after the date of this Agreement, no Material Adverse Effect shall have occurred;

(d) Purchaser shall have received a Medical Device Manufacturing License from the California Department of Public Health (the "California License"); and

(e) Sellers shall have delivered, or caused to be delivered, to Purchaser all of the items set forth in Section 2.4.

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 (A) that are not qualified by materiality qualifiers shall be true and correct in all material respects and (B) that are qualified by materiality qualifiers shall be true and correct in all respects, in each case, as of the Closing Date as though made on and as of the Closing Date, except that (i) 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 and (ii) to the extent the failure of such representations and warranties to be true and correct, subject to the above standard, as of such dates has not had and would not reasonably be expected to have a material adverse effect on Purchaser's performance of its obligations under the Transaction Agreement the consummation of (or Purchaser's ability to consummate) the Transactions;

(b) Purchaser shall have performed and complied in all material respects with the covenants required to be performed or complied with by it under this Agreement on or prior to the Closing Date; and

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

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 primarily 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 October 18, 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 60 days to the extent necessary to satisfy the conditions set forth in Section 7.1 or Section 7.2(d) 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 Sections 7.1 and 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 2.3;

(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 Agreement would be inconsistent with its or such Person's or body's fiduciary duties;

(h) by written notice of either Purchaser or (prior to entry of the Sale Order) 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 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 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 1.3(h), Section 6.2(b), this Section 8.2, the last sentence of Section 6.3(a) and Article X shall survive any such termination; provided further that no termination will relieve Purchaser or Seller 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 the applicable Party (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 or Seller to consummate the Closing if and when it is obligated to do so hereunder). Subject to Section 10.14, 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.

(b) Subject in all cases to Section 10.12, prior to the Closing, in the event of any breach by Seller of this Agreement, the sole and exclusive remedy of Purchaser shall be to terminate this Agreement in accordance with Section 8.1.

ARTICLE IX
TAXES

Section 9.1 Transfer Taxes. Purchaser shall bear and timely pay any sales, use, purchase, transfer (including real estate transfer Taxes), franchise, deed, fixed asset, stamp, documentary stamp, use or other Taxes and recording charges payable by reason of the sale of the Acquired Assets (including, for the avoidance of doubt, the Acquired Entities) or the assumption of the Assumed Liabilities under this Agreement or the Transactions (the "Transfer Taxes"), and the Party required by applicable Law shall timely file all Tax Returns related to any Transfer Taxes. Purchaser and the Sellers will cooperate to minimize Transfer Taxes imposed as a result of the Transactions, including through the submission and filing of available exemption certificates.

Section 9.2 Allocation of Purchase Price. For U.S. federal and applicable state and local income Tax purposes, Purchaser, Sellers, and their respective Affiliates shall allocate the Purchase Price (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 the methodology that shall be mutually agreed by the Parties prior to the Closing (the "Allocation Methodology"). As soon as commercially practicable, but no later than 90 days following the determination of the final Purchase Price, Purchaser shall provide a proposed allocation to Sellers setting forth the allocation of the Purchase Price (and other amounts treated as part of the purchase price for U.S. federal income Tax purposes) 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 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 equally between Purchaser and Sellers, 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.

Section 9.3 Cooperation. Purchaser and Sellers shall reasonably cooperate, as and to the extent reasonably requested by the other Party, 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 Business and the Sellers shall not be obligated to provide or disclose any Excluded Tax Returns. In the event of any audit, assessment, examination, claim or other controversy or proceeding relating in whole or in part to any Pre-Closing Tax Period of an Acquired Entity, the Acquired Assets, or the Business (a "Tax Proceeding"), Purchaser shall inform the Sellers of such Tax Proceeding as soon as possible but in any event within seven (7) days after the receipt by Purchaser of notice thereof; provided that no delay or failure on the part of Purchaser in delivering any such notice shall result in any liability for Purchaser except to the extent that the a Seller is materially prejudiced by such delay or failure. The Purchaser shall control such Tax Proceeding; provided that, to the extent any such Tax Proceeding would impose a Liability on any Seller Parties (excluding, for the avoidance of doubt, the Acquired Entities), the Purchaser shall (i) keep Sellers reasonably informed with respect to such Tax Proceeding, (ii) provide Sellers with a reasonable opportunity to participate in such Tax Proceeding, including to review in advance, reasonably comment upon, and consent to any submissions made in the course of such Tax Proceeding (such consent not to be unreasonably withheld, conditioned or delayed); provided that nothing herein will require Purchaser to provide access to, or to disclose any information to, any Seller if such access or disclosure would waive any legal privilege, and (iii) not settle such Tax Proceeding without the Sellers' prior written consent (such consent not to be unreasonably withheld, conditioned or delayed).

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 (other than any income Tax Returns of Sellers) or any Acquired Entity that are due after the Closing. With respect to any such Tax Returns that include any Pre-Closing Tax Periods to the extent any such Tax Returns would impose a Liability on any Seller Parties (excluding, for the avoidance of doubt, the Acquired Entities), Purchaser shall, unless otherwise required by applicable Law, 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 for review and consent (such consent not to be unreasonably withheld, conditioned or delayed) at least thirty (30) days prior to the filing of any such Tax Return (or, if such timeframe is not reasonably practicable given the circumstances associated with such Tax Return, as promptly as is reasonably practicable prior to the filing of any such Tax Return). 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 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. 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.

(b) Solely with respect to the Acquired Entities or the Business, Purchaser shall not file any Tax Return except in accordance with the procedures set forth in this Section 9.4, file an amendment to any previously-filed Tax Return except in accordance with the procedures set forth in this Section 9.4, 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 that has the effect of increasing any Tax that is payable or otherwise borne by Sellers or their Affiliates, unless Purchaser is advised in good faith by a nationally recognized accounting firm or law firm that there is no adequate "reporting position" with respect to any previously-asserted position with respect to Taxes of such Acquired Entity or Business. Upon such determination, Purchaser shall provide no less than 45 days' notice of such position before filing any such Tax Return or otherwise taking such action. 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 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 Transactions and any Acquired Entity.

Section 9.5 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 Purchasers 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, shall (and will not permit any of their respective Affiliates to) take no inconsistent position on any Tax Return, in any Tax audit, or similar proceeding before any Tax authority.

Section 9.6 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) except that exemptions, allowances or deductions that are calculated on an annual basis (including depreciation and amortization deductions, other than with respect to property placed in service after the Closing), shall be allocated on a per diem basis, 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. Sellers shall be liable for the proportionate amount of such Taxes that is attributable to the Pre-Closing Tax Period, and Purchaser shall be liable for the proportionate amount of such Taxes that is attributable to the Post-Closing Tax Period; provided that the Parties acknowledge and agree that Sellers shall have no further liability upon paying its portion of such Taxes according to the apportionment pursuant to this Section 9.6. Such apportionment shall be made as soon as reasonably practicable on or after the Closing based on the most recent available personal property Tax bill issued by the relevant taxing jurisdiction(s).

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

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 arising solely from any actions by Sellers prior to the Closing.

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 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, 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:

ZOLL Medical Corporation
269 Mill Road
Chelmsford, MA 01824
Attention: Jennifer Landis and Christine Lynch
Email: JLandis@zoll.com and CLynch@zoll.com

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

Cooley LLP
500 Boylston Street, Floor 14
Boston, MA 02116
Attention: Miguel J. Vega
Email: mvega@cooley.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 Purchasers.

(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 and terms 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 pay the corresponding Purchase Price amount, (ii) assume Assumed Liabilities, or (iii) take title directly to any Acquired Asset (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 6.11, the Released Parties, and (ii) for purposes of Section 10.8 the Non-Recourse Persons, and (iii) 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, no past, present or future shareholder, member, partner, manager, director, officer, employee, Affiliate, agent or Advisor of any Party (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 10.8 and shall be entitled to enforce this Section 10.8 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 in each case, to the extent the relevance of such disclosure to such other section of the Schedule or such other representation or warrant set forth in this Agreement is readily apparent on the face of such disclosure. 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. 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 10.14 without proof of damages or otherwise, 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 or Purchaser 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 or Purchaser 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 10.14, 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 Purchase Price 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 **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) "Acquired Business" means the portion of the Business that relates specifically to each of the Bellavista, Fabian, 3100 HFOV and LTV product lines.

(b) "Acquired Cash Amount" means the aggregate amount of all cash and Cash and Cash Equivalents of the Acquired Entities determined as of 11:59 PM Eastern time on the date immediately preceding the Closing Date.

(c) "Acquired Entity Benefit Plan" means any Employee Benefit Plan that is maintained exclusively by one or more Acquired Entities.

(d) "Action" means any action, suit, litigation, arbitration, mediation, 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.

(e) "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.

(f) "Affiliate" means, with respect to any Person, 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.

(g) "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) beneficial ownership of a majority of the Equity Interests of Sellers or (ii) a material portion of the Acquired Assets, 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.

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

(i) "Bidding Procedures Order" means the Order (I) Approving the Auction and Bidding Procedures, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief (Docket No. 249).

(j) "Business" means the manufacturing and sale of medical ventilators and associated services and consumables for acute, nonacute and neonatal applications.

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

(l) "Business Employee" means each (i) employee of any of the Sellers whose primary function relates to the Acquired Business, and any replacement of any such employee hired in compliance with Section 6.1, (ii) employee of any Acquired Entity and (iii) Ed Manley and Terrie McDaniel.

(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 February 7, 2024, by and between Apax Partners and Purchaser.

(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 written contract, indenture, note, bond, lease, sublease, mortgage, agreement, guarantee, or other agreement that is binding upon a Person or its property, in each case, other than a purchase order, service order, or sales order.

(r) "Debtors" means, collectively, the debtors-in-possession under the Bankruptcy Cases.

(s) "Documents" means all of Sellers' and the Acquired Entities' written 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, FDA Documents, operating data and plans, research material, 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 materials, in each case whether or not in electronic form.

(t) "EEA" means the European Economic Area comprised of the 27 EU Member States, Iceland, Liechtenstein and Norway.

(u) "Employee Benefit Plan" means each (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, arrangement, program or plan, (iv) employment, individual consulting, severance or termination pay, separation or retention agreement, arrangement, program, plan, or policy, and (v) bonus, incentive, stay, deferred compensation, profit-sharing, pension, retirement, post-termination health or welfare, vacation, paid time off, severance, 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, any Acquired Entity or Sellers' Subsidiaries or to which any Seller, Acquired Entity or its Subsidiaries is obligated to contribute or with respect to which any Seller, Acquired Entity or its Subsidiaries has any Liability; provided that plans, programs or agreements required to maintained or contributed under applicable Law or that are maintained by a Governmental Body shall not be considered Employee Benefit Plans.

(v) "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.

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

(x) "Equipment" means any and all equipment, computers, furniture, furnishings, fixtures, office supplies, vehicles and all other fixed assets.

(y) "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).

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

(aa) "ERISA Affiliate" means any Person or trade or business (whether or not incorporated), that, along with any Seller, is or would be considered a single employer under Section 414 of the Tax Code.

(bb) "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 primarily 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; provided, however, Excluded Tax Returns with respect to the Acquired

Entities shall not include reasonably relevant US informational tax reporting with respect to the Acquired Entities (e.g., IRS Forms 5471, 8858, etc.).

(cc) "FDA Documents" means all books, records, documents and information related to all medical devices Related to the Acquired Business, including all FDA premarket approvals and 510(k) clearances related thereto, including all correspondence, filings, notices and other communications to or from the FDA, audit reports from audits conducted by anyone or entity other than the FDA, all device history files, device master records with all letter to file documents and all quality control documents, in all cases, related to all medical devices Related to the Acquired Business.

(dd) "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 2.4(f), 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 material 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).

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

(ff) "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.

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

(hh) "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.

(ii) "Information Privacy and Security Laws" means all applicable Laws concerning the privacy, protection, processing, transfer, or security of Personal Information, including if and where applicable, state social security number protection Laws, the EU General Data Protection Regulation ("GDPR"), the UK Data Protection Act, the Federal Trade Commission Act, the Gramm Leach Bliley Act, the Fair Credit Reporting Act, the Fair and

Accurate Credit Transaction Act, state consumer protection Laws, and Laws governing email and telephonic marketing.

(jj) "Intellectual Property" means all intellectual property and intellectual property rights and all rights associated therewith, throughout the world, including all of the following: (i) patents, patent applications, patent disclosures, reissues, divisionals, renewals, extensions, provisionals, continuations and continuations-in-part thereof, all inventions (whether patentable or not), invention disclosures, improvements; (ii) trademarks, service marks, trade dress, all trade names, logos, corporate names and Internet domain names, Internet and World Wide Web URLs or addresses, together with any and all goodwill associated with each of the foregoing; (iii) copyrights; (iv) registrations and applications for any of the foregoing, and other rights corresponding thereto; (v) know how, trade secrets and confidential or proprietary business or technical information; (vi) all computer software, including all source code, object code, firmware, development tools, files, records and data, all schematics, netlists, test methodologies, test vectors, emulation and simulation tools and reports, hardware development tools, and all rights in prototypes, breadboards and other devices, all databases and data collections and all rights therein; (vii) drawings, schematics, technical data, other technical plans, all mask works, mask work registrations and applications therefor, and any equivalent or similar rights in semiconductor masks, layouts, architectures or topology, proprietary processes and formulae, algorithms, specifications, customer lists and supplier lists, all industrial designs and any registrations and applications therefor; and (viii) all other intellectual property, including all moral and economic rights of authors and inventors, however denominated, and any similar or equivalent rights to any of the foregoing, and all tangible and intangible embodiments of the foregoing.

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

(ll) "IT Assets" means all information technology systems, computer systems, networks, communications systems, and computer software, hardware, and devices owned or controlled by or for Sellers in the conduct of the Business.

(mm) "Knowledge of Sellers", "Sellers' Knowledge" or words of like import, means the actual knowledge, as of the date of this Agreement, after reasonable inquiry of direct reports in the applicable subject matter, of John Bibb, Vikram Bajaj, Tammy Noll, Terrie McDaniel, Perry Sabo, Brett Wollen, none of whom, for the sake of clarity and avoidance of doubt, shall have any personal Liability or obligations regarding such knowledge.

(nn) "Law" means any federal, state, provincial, local, municipal, foreign or international, supranational, multinational, national or other law, statute, legislation, constitution, principle of common law, ordinance, code, decree, treaty, convention, rule, regulation, directive, standard, guidance or Order issued, enacted, adopted, promulgated, implemented or otherwise put into effect by or under the authority of any Governmental Body.

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

(pp) "Leasehold Improvements" means all buildings, structures, improvements and fixtures which are owned by a Seller or 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.

(qq) "Liability" means, as to any Person, any debt, adverse claim, liability, duty, responsibility, obligation, commitment, assessment, cost, expense, loss, expenditure, charge, fee, penalty, fine, contribution, or premium 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, or due or to become due, and regardless of when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

(rr) "Material Adverse Effect" means a material adverse effect on the Acquired Assets and Assumed Liabilities, taken as whole; provided that none of the following (or consequences thereof), either alone or in combination, shall constitute, or be taken into account in determining whether or not there has been, a Material Adverse Effect: (i) any matter, event, change, development, occurrence, circumstance or effect (each, an "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 relating to 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 or agreements with or consents of any Governmental Body and any increase (or decrease) in the terms or enforcement of (or negotiations or disputes with respect to) any of the foregoing; (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 disclosed or with respect to which Purchaser has knowledge as of the date hereof; (x) Effects that arise from any seasonal fluctuations in the Business; (xi) 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; (xii) 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; (xiii) the matters set forth on the Schedules; or (xiv) (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 described in clauses (i) through (v) may be taken into account in determining whether there has been a Material Adverse Effect to the extent, and only to the extent, that such Effect has had a materially disproportionate adverse effect on the Sellers relative to similarly situated participants in the industries and 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).

(ss) "Mixed-Use Contract" means any Contract that includes both terms and conditions that are Related to the Acquired 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.

(tt) "Notified Body" means a conformity assessment body designated by a national competent authority of a country of the EEA in accordance with the rules governing medical devices in the EEA.

(uu) "Order" means any order, injunction, judgment, decree, ruling, writ or arbitration award of a Governmental Body, including any order entered by the Bankruptcy Court in the Bankruptcy Cases (including the Sale Order).

(vv) "Ordinary Course" means the ordinary and usual course of operations of the Business, taken as a whole, taking into account the contemplation, commencement and pendency of the Bankruptcy Cases.

(ww) "Organizational Documents" means, with respect to any Person (other than an individual), the articles or certificate of incorporation, articles or certificate of formation or articles or certificate of organization, charter, bylaws, regulations, operating agreement, certificate of limited partnership, partnership agreement, and all other similar documents, instruments, or certificates executed, adopted, or filed in connection with the creation, formation, or organization of a person, including any amendments or supplements thereto.

(xx) "Permitted Encumbrances" means (i) Encumbrances for utilities or Taxes not yet due and payable, or that are being contested in good faith by appropriate proceedings, or 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 that do not, individually or in the aggregate, adversely affect the operation of the Business or the Acquired Assets and, in the case of the Leased Real Property, that 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 Acquired Assets, (iii) applicable zoning Laws, building codes, land use restrictions and other similar restrictions imposed by Law that are not violated by the current use or occupancy of such Leased Real Property, as applicable, or the operation of Business thereon, as conducted immediately prior to the Closing Date (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 or that are being contested by appropriate proceedings, (v) licenses granted on a non-exclusive basis, (vi) any Encumbrances set forth on Schedule 11.1(xx), and (vii) solely prior to Closing, any Encumbrances that will be removed or released by operation of the Sale Order.

(yy) "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.

(zz) "Personal Information" means any data or information (i) that identifies, relates to, describes, is reasonably capable of being associated with, or would 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).

(aaa) "Post-Closing Tax Period" means any taxable period beginning after the Closing Date and the portion of any Straddle Period beginning on the day immediately following the Closing Date.

(bbb) "Pre-Closing Tax Period" means any taxable period ending on or prior to the Closing Date and the portion of any Straddle Period ending on and including the Closing Date.

(ccc) "Product Names" means any marks related to any of the product lines of the Acquired Business, including 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.

(ddd) "Purchaser Group" means Purchaser (including any Designated Purchaser), any Affiliate of Purchaser and each of their respective former, current or future Affiliates, officers, directors, employees, partners, members, managers, agents, Advisors, successors or permitted assigns.

(eee) "Related to the Acquired Business" means primarily used or primarily held for use in connection to the development, marketing, distribution, operation or ownership of the Acquired Business by Sellers as of the date of this Agreement.

(fff) "Related to the Entire Business" means primarily used or primarily held for use in or arising primarily out of the operation or conduct of the Business, or any portion thereof, conducted by Sellers as of the date of this Agreement.

(ggg) "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, in form and substance reasonably acceptable to the Parties.

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

(iii) "Seller Combined Tax Return" means any combined, consolidated, affiliated, or unitary Tax Return that includes a Seller or any of its Affiliates (other than an Acquired Entity), on the one hand, and any Acquired Entity, on the other hand.

(jjj) "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.

(kkk) "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.

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

(mmm)"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.

(nnn) "Tax" or "Taxes" means any federal, state, local, or non-U.S. tax of any kind whatsoever, including any 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, payroll, national insurance, goods and services, alternative minimum or estimated tax or other similar fees, charges or levies in the nature of a tax, including any interest, penalty, fine or addition thereto.

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

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

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

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

(sss) "Transfer Regulations" means (a) the Council of the European Union Directive 2001/23/EC of March 21, 2001 on the approximation of the Laws of the member states of the European Union relating to the safeguarding of employees' rights in the event of transfers of undertakings, businesses or parts of undertakings or businesses and/or local implementing legislation both as amended from time to time; or (b) any similar or equivalent Laws applicable in jurisdictions outside of the European Union providing for an automatic transfer of employment including, in respect of Switzerland, Article 333, Federal Code of Obligations of 30 March 1911 (CO).

(ttt) "Transfer Regulations Employees" means each employee of Sellers who is employed in the Business in Germany, Italy, Switzerland or the United Kingdom who is in scope to transfer to Purchaser or an Affiliate of Purchased pursuant to the Transfer Regulations and who is identified on the census of Business Employees.

(uuu) "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.

(vvv) "Vents Auction" means that portion of the Auction with respect to the Acquired Assets or the Business.

(www) "Willful Breach" means a material breach of this Agreement that is a consequence of 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 11.3 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 at least [48 hours] prior to the execution of this Agreement, (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.*]

<u>Exhibit B</u>

Proposed Sale Order

[*To Be Filed Separately*]