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 (___)
Debtors.	)	(Joint Administration Requested)

DECLARATION OF JOHN BIBB,
GROUP CHIEF EXECUTIVE OFFICER OF VYAIRE MEDICAL, INC.,
IN SUPPORT OF DEBTORS' CHAPTER 11 PETITIONS AND FIRST DAY MOTIONS

I, John Bibb, hereby declare under penalty of perjury:

1. I am the Group Chief Executive Officer of Vyaire Medical, Inc. and its affiliated debtors and debtors in possession (collectively, with its debtor affiliates, the "Debtors" and, together with its non-debtor affiliates, "Vyaire" or the "Company").[2] Vyaire Medical, Inc. is a private company based in Mettawa, Illinois, organized under the laws of Delaware, and a debtor and debtor in possession in the above-captioned cases along with 27 of its direct and indirect subsidiaries or affiliates. The Debtors have commenced these chapter 11 cases with the support of the majority of their First Lien Lenders, certain of their Second Lien Lenders, and their sponsor (certain funds advised by Apax Partners LP ("Apax")), including through the execution of a Restructuring Support Agreement and through commitments for $45 million of new-money DIP Financing to stabilize operations and fund the sale process and administration of these chapter 11

[1] 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' proposed 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 herein but not immediately defined have the meaning ascribed to such terms later in this Declaration.

cases. The Debtors seek to use the runway afforded by the DIP Financing to continue their prepetition efforts to market their assets for a value-maximizing sale of their business units. At present, the Debtors have received multiple nonbinding indications of interest for various portions of the Company, and the Debtors continue to engage with numerous interested parties regarding the Marketing and Sale Process.

2. I joined Vyaire as Chief Legal Officer in 2021, assumed the concurrent position of Secretary, Human Resources the following year, and was eventually promoted to Group Chief Executive Officer in May 2023. Prior to joining Vyaire, I served as Executive Vice President, General Counsel at Acelity L.P., Inc. In my 15-year tenure at Acelity L.P., Inc., I held several executive positions and led various key business initiatives in legal, compliance, reimbursement, health economics, human resources, commercial partnerships, joint ventures, mergers and acquisitions, and services. Earlier in my career, I was a corporate attorney at two leading law firms. I am a graduate of Texas A&M University, where I received a bachelor's degree in economics and political science, and Baylor University School of Law. I have over 20 years of experience in the medical device industry and am well equipped to navigate the Debtors through these chapter 11 cases.

3. Vyaire Medical, Inc. and certain of its subsidiaries filed voluntary petitions for relief under chapter 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), with the United States Bankruptcy Court for the District of Delaware (the "Court") on June 9, 2024 (the "Petition Date"). To minimize the adverse effects on their businesses, and as discussed in greater detail below, the Debtors filed motions and pleadings seeking various forms of relief (collectively, the "First Day Motions"). I submit this declaration (the "Declaration") to assist the Court and the parties in interest in understanding the circumstances that compelled the

commencement of these chapter 11 cases and in support of the Debtors' chapter 11 petitions and the First Day Motions filed contemporaneously herewith.

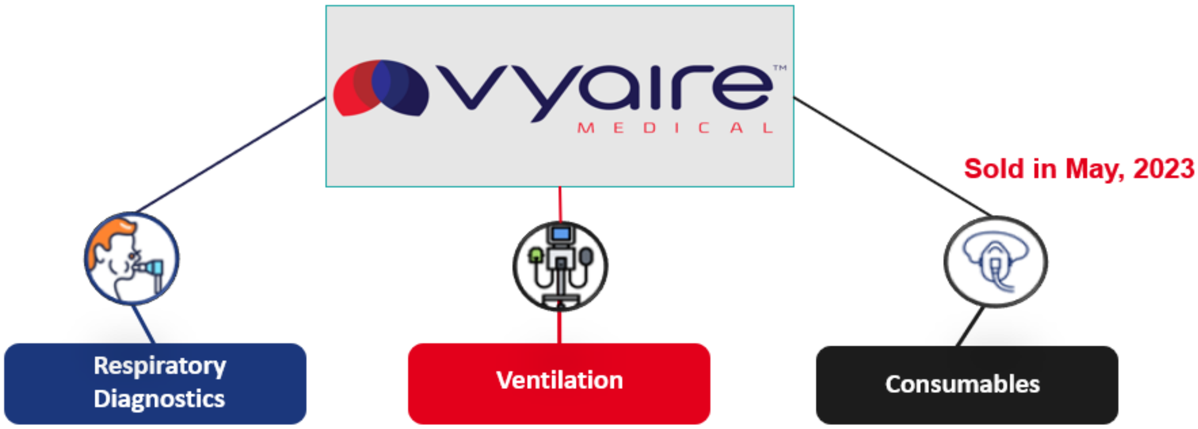
4. The First Day Motions seek relief to allow the Debtors to meet necessary obligations and fulfill their duties as debtors in possession. I am familiar with the contents of each First Day Motion and believe that the relief sought in each First Day Motion (a) is necessary to enable the Debtors to transition into, and operate efficiently and successfully in, chapter 11 with minimal disruption or loss of productivity and value, (b) constitutes a critical element in achieving a successful sale process, and (c) is in the best interest of the Debtors' estates and stakeholders.

5. As Group Chief Executive Officer of Vyaire, I am familiar with the Company's day-to-day operations, business and financial affairs, and books and records. Except as otherwise indicated, all facts set forth in this Declaration are based upon my experience and personal knowledge, my discussions with other members of the Debtors' management team and advisors, including the teams from Kirkland & Ellis, LLP ("Kirkland"), AlixPartners, LLP ("AlixPartners"), and PJT Partners LP ("PJT" and, together with Kirkland and AlixPartners, the "Advisors") who are working under my supervision, and my review of relevant documents and information concerning the Debtors' operations, financial affairs, and restructuring initiatives. I am over the age of 18 and am authorized to submit this Declaration on behalf of the Debtors. If called as a witness, I could and would testify competently to the facts set forth in this Declaration.

Introduction

6. Vyaire is a global company focused on supporting breathing through every stage of life. With a 70-year history of pioneering breathing technology, the integrated solutions offered by Vyaire help enable, enhance, and extend lives. Headquartered in Mettawa, Illinois, Vyaire operates approximately 27 offices and manufacturing facilities, and employs approximately

950 individuals around the world. The Company has a global reach, and Vyaire products are available in more than 100 countries. Its customers are the hospitals, health centers, and private-practice facilities delivering life-enhancing products and services to patients every day.



7. Vyaire operates two business segments: ventilation and respiratory diagnostics. The Debtors' ventilation business ("Ventilation") focuses on helping patients breathe by offering products, and related services, that mechanically pump air in and out of ailing lungs. The Debtors' respiratory diagnostics business ("Respiratory Diagnostics") develops, manufactures, and commercializes devices to diagnose pulmonary and cardiopulmonary diseases. The Company historically operated a third segment, its consumables business ("Consumables"), which provided leading airway management and operative care technology.

8. In May 2023, Vyaire completed the sale of its Consumables business to fund a go-forward business plan. The COVID-19 pandemic significantly increased demand for the Company's products and services, but post-pandemic macroeconomic challenges, including higher interest rates, inflationary pressure, and supply chain disruption forced the Company to

reposition itself for the long term. The Company sought to focus on the opportunities present in Ventilation and Respiratory Diagnostics, right-size overhead costs, and drive the Company to cash-flow positive operations in a new-normal state after years of heightened demand during the pandemic era. The Company's proceeds from the sale of the Consumables business totaled approximately $310 million ($133.9 million in net cash after pay-down of its then-outstanding and now-terminated revolving credit facility).

9. Accordingly, the Company initiated a financial and operational turnaround focused on product line innovation, footprint optimization, supply chain simplification, organizational cost cutting, and liquidity enhancements. Additionally, in April 2023, the Company retained PJT as investment banker to lead efforts to improve the Company's balance sheet. Beginning in the summer of 2023, the Company and its Advisors began discussions with certain key stakeholders on the terms of a comprehensive balance sheet solution to support the Company's operational initiatives and go-forward business plan. Specifically, the Company and its Advisors actively worked with an ad hoc group of lenders under that certain First Lien Credit Agreement (the "1L Ad Hoc Group") represented by Gibson, Dunn & Crutcher LLP ("Gibson Dunn") and Apax to address its over-levered balance sheet, including through a potential amend-and-extend transaction (the "Amend and Extend"). This effort included negotiating the Amend and Extend in advance of then-upcoming maturity dates with respect to its now-terminated revolving credit facility and more broadly addressing the Company's capital structure.

10. Vigorous negotiations regarding a path forward continued between the Company and its stakeholders for the duration of 2023 and into the early months of 2024. In December 2023, the Company reached a deal in principle on the Amend and Extend with the 1L Ad Hoc Group and pivoted to negotiating the Amend and Extend with the Company's other funded debt

stakeholders in early 2024. Unfortunately, during the same period, the Company's liquidity position continued to worsen, which ultimately led to the demise of the Amend and Extend. In particular, the Company faced various macro and Company-specific challenges that have complicated its go-forward plans. The post-COVID-19 drop-off in demand for the Ventilation business, a difficult pivot in the Company's go-to market strategy, and unsustainable overhead costs led to a downward spiral of liquidity. While certain segments of the business were able to perform at plan or better, ultimately the proceeds from the Consumables sale did not provide the Company sufficient runway to maintain sustainable profitability or avert a near-term restructuring transaction. The Company's operational challenges and Ventilation's negative cash flow have proved difficult to overcome. In late March 2024, the Amend and Extend became non-actionable given the Company's greater-than-expected need for additional capital and the lack of new-money contributions contemplated thereunder.

11. Recognizing the need to act quickly, on April 2, 2024, the board of directors of Vyaire Holding Company (the "Board") formed a special committee of Paul Aronzon, Ron Labrum, and Bret Wise as disinterested directors (the "Disinterested Directors" and, such committee, the "Special Committee") to pursue a potential recapitalization, reorganization, sale, or restructuring transaction (each, a "Strategic Transaction"). David Barse, a new Disinterested Director, was appointed to the Board and Special Committee on April 10, 2024.

12. As discussed in greater detail below, under advisement of the Special Committee, the Company and its Advisors continued to work to maximize the value of the Company for the benefit of all stakeholders, working to launch a sale process and to negotiate the terms of a $45 million new-money debtor in possession financing facility (the "DIP Facility" or "DIP Financing") in order to support the Company's marketing and sale efforts. I have no doubt that a

thorough Marketing and Sale Process, which commenced prior to the filing of these chapter 11 cases, and backed by the liquidity runway provided by the DIP Facility, is the Company's best path to avoiding a wholesale liquidation.

13. Beginning in April and May 2024, PJT connected with over 110 potentially interested parties, comprised of at least 47 potential strategic and 64 potential financial partners. As of the Petition Date, over 30 parties have executed non-disclosure agreements and received confidential business information, 6 have discussed sale efforts with Company management, and multiple have submitted nonbinding indications of interest. The nonbinding indications of interest received concern various portions of the Debtors' businesses, and the Debtors continue to discuss and negotiate various terms of potential deals with numerous potential financial and strategic bidders. In conjunction with these efforts, after extensive, arm's-length negotiations, the Debtors entered into that certain Restructuring Support Agreement (the "Restructuring Support Agreement" or "RSA"), attached hereto as **Exhibit C**, with certain First Lien Term Lenders holding over 90% of the First Lien Term Loan, Second Lien Lenders holding 100% of the Second Lien Term Loan, and Apax, the controlling equity holder in Vyaire Intermediate HoldCo LP (together, the "RSA Parties"), to support the sale process and ultimate resolution of the Debtors' estates.

14. Time is of the essence in consummating the prospective sales. The Debtors' businesses cannot afford an extended stay in chapter 11 and require the funding from the DIP Facility to sustain operations during these chapter 11 cases. Simply put, without access to the DIP Facility and use of prepetition cash collateral ("Cash Collateral"), the Debtors would be unable to meet their obligations in the ordinary course of business and would be unable to pursue a value-maximizing Marketing and Sale Process. The Debtors vigorously negotiated for the largest

postpetition financing commitment and longest maturity possible to afford enough time to market their assets. I believe the DIP Facility is currently structured on the best possible, available terms under the circumstances. Absent consummation of sale transactions on the timeline contemplated by the DIP Facility, I believe the Debtors' businesses are at significant risk of liquidating, which would cost jobs, erode recoveries for creditors, and prevent valuable customers from receiving these vital services.

15. Against this backdrop, the following key milestones set forth in the DIP Motion,[3] the Restructuring Support Agreement, and the Bidding Procedures Motion allow the Debtors to move through these chapter 11 cases quickly and efficiently, while providing sufficient time to maximize the value of any transaction from the many parties already active in the Marketing and Sale Process—including the several interested parties that have submitted nonbinding indications of interest for various portions of the Company—and affording additional parties reasonable time to submit bids:

DATE	PROPOSED DIP MILESTONES
July 1, 2024	Deadline for (i) parties to submit nonbinding indications of interest and (ii) Debtors to designate a stalking horse
July 8, 2024	Deadline for entry of the bidding procedures order
July 14, 2024	Deadline for entry of the final DIP order
July 22, 2024	Deadline for the submission of bids
July 29, 2024	Deadline for entry of an order approving the sale of the business(es)
August 19, 2024	Deadline to consummate any sale transactions

[3] *Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "DIP Motion").

16. To familiarize the Court with the Debtors, their businesses, the circumstances leading to these chapter 11 cases, and the relief the Debtors seek in the First Day Motions, this Declaration is organized as follows:

- **Part I** provides an overview of the Debtors' corporate history, structure, and business operations;
- **Part II** describes the Debtors' organizational structure and prepetition capital structure;
- **Part III** describes the circumstances leading to the filing of these chapter 11 cases;
- **Part IV** describes the RSA and the sale and marketing process;
- **Part V** describes the Debtors' proposed debtor in possession financing and use of cash collateral; and
- **Part VI** and **Exhibit A** attached hereto provide the factual support for the Petitions and the First Day Motions.

Discussion

I. The Debtors' Corporate History, Structure, and Business Operations.

A. Vyaire's Corporate History and Business Operations.

17. During World War II, Forrest Bird, an experienced Army pilot, carefully studied the high-altitude respiratory problems experienced by his fellow pilots, developing modified plane mechanics to enable pilots to breathe easier at higher altitudes than ever before.[4] Over a decade later, after retiring from the armed services, Bird leveraged his experience in pilot breathing to address respiratory ailments on the ground. Ultimately, Bird invented the first mechanical ventilator. Among Bird's inventions was a small, portable ventilation device popularly known as

[4] *See* Robert D. McFadden, Dr. Forrest Bird, *Inventor of Medical Respirators and Ventilators, Dies at 94*, THE NEW YORK TIMES (Aug. 3, 2015), https://www.nytimes.com/2015/08/04/us/dr-forrest-bird-inventor-of-medical-respirators-and-ventilators-dies-at-94.html.

"Baby Bird," profoundly successful in ameliorating pediatric respiratory illnesses. Thus, Vyaire was born.

18. Over the coming decades, Vyaire grew into a comprehensive respiratory solutions provider and, ultimately, a full-service breathing-focused division of Becton, Dickinson and Company ("BD"). In October 2016, Apax acquired a 50.1% controlling interest in the Company from BD. By 2017, sustained organic growth coupled with periodic merger activity had transformed Vyaire into a global enterprise with approximately $800 million in annual revenue, and in 2018, Apax acquired BD's remaining ownership stake in Vyaire.

19. *Ventilation Business.* Ventilation is centered around its Palm Springs, California, manufacturing and repair facility and its key research and development center in Irvine, California; but its international third party manufacturing facilities stretch from Mexico to Malaysia. The Ventilation business is divided into product categories with associated consumable and service offerings, and such product categories serve three marketplaces: acute, non-acute, and neonatal. While the pandemic increased demand for Ventilation,[5] its growth tailed off as the pandemic waned, further challenging the Company's overall business because of COVID-19 related overinvestment in the sector and slowing sales. In addition to decreasing Ventilation demand generally, Vyaire lost over 10% of its market share in the sub-acute ventilation segment between

[5] *See* Richard D. Branson, *COVID-19 Lessons Learned: Response to the Anticipated Ventilator Shortage*, NAT. LIB. OF MED.: NAT'L CTR FOR BIOTECHNOLOGY INFORMATION (Jan. 2023), https://www.ncbi.nlm.nih.gov/pmc/articles/PMC9993519/#:~:text=Early%20in%20the%20COVID%2D19,unrealistic%20predictions%20of%20ventilator%20requirements.

2021 and 2022, due in part to other vendors entering the space and Vyaire's business challenges, which influenced certain customers to favor Vyaire's competitors.

20. *Respiratory Diagnostics Business.* Respiratory Diagnostics is built around its Hochberg, Germany headquarters, where its primary manufacturing plant is also located. Vyaire continues to experience success in its Respiratory Diagnostics business, as this unit has routinely achieved year over year success and increased profitability. Respiratory Diagnostics offerings relate to pulmonary function testing, cardiopulmonary testing, and spirometry (a subset of pulmonary function testing). Respiratory Diagnostics is structured around device and software product categories, with associated consumable and service offerings. Vyaire offers best-in-class products and is currently a market share leader in this space. The overall respiratory diagnostics market continues to expand, growing at a high compound annual growth rate, providing further tailwinds to Respiratory Diagnostics.

21. *Sale of Consumables Business*. In May 2023, following a 12-month marketing process, Vyaire sold Consumables to SunMed Group Holdings, LLC (the "Consumables Sale") for approximately $310 million ($133.9 million in net cash after pay-down of its then-outstanding and now-terminated revolving credit facility) in order to focus management time and effort on Ventilation and Respiratory Diagnostics. While the Consumables Sale provided the Company with critical liquidity to manage its balance sheet and for general corporate purposes, ultimately the Company needed a more comprehensive solution.

B. Vyaire's Product, Service, and Consumable Offerings.

22. *Ventilation*. The Ventilation business is divided into discrete product lines, and the Company also offers related consumables and services. Ventilation consumables generally support one or more associated product lines, and the Company offers corresponding training, education, and maintenance services. Ventilation product lines include the Bellavista, 3100,

SIPAP, LTV, Avea, Vela, ReVel, and Fabian business segments. Ventilation consumables include circuits, flow sensors, and valves. Ventilation product lines serve one or more of the acute, non-acute, or neonatal marketplaces, and certain product categories serve multiple marketplaces (*e.g.*, acute and neonatal). Ventilation's Bellavista product category—with cutting-edge technology, advanced software, and an intuitive user interface—is Vyaire's dominant device line serving the acute marketplace. The Company's 3100 product category serves countless neonatal intensive care units in the U.S., and together with certain Bellavista and Fabian devices, serves the neonatal market. Vyaire's LTV series and ReVel series, both sophisticated portable ventilators with emergency transport capabilities, serve the non-acute marketplace.

23. *Respiratory Diagnostics*. The Respiratory Diagnostics business is structured around certain product and software offerings, and the Company also offers associated consumables and services. Respiratory Diagnostics products are the gold standard for noninvasive pulmonary and cardiopulmonary testing, lung volume measurement, and cardiopulmonary exercise testing. For example, Vyaire's state-of-the-art Vyntus devices test lung and heart function and measure extensive respiratory data. SentrySuite is Respiratory Diagnostics' proprietary operating software platform that powers its Vyntus devices, and which offers remote viewing capabilities, clinician coaching, and a multitude of detailed measurement applications. Respiratory Diagnostics' consumables assist the Vyntus device line, and include MicroGard Filters, which are a single-use consumable filter protecting patients and clinicians from cross-contamination during diagnostic testing.

24. Service offerings for Ventilation and Respiratory Diagnosis include equipment maintenance and device support, clinician-led education and training programs, and other on-site

and off-site services. Vyaire has also developed a differentiated portfolio of valuable intellectual property related to its product offerings consisting of, among other things, over 700 U.S. patents.

C. Vyaire's Employees.

25. As of the Petition Date, Vyaire employs approximately 950 full-time employees, 74 contingent workers, and 14 periodically retained independent contractors. These individuals perform a wide variety of scientific, manufacturing, corporate, and administrative functions, including, among other things: scientific research and development; laboratory and manufacturing operations; installation and training services; sales, clinical, and marketing operations; finance, legal, and human resources functions; accounting, billing, and revenue collection services; technology support and IT services; business analysis and managerial support services; and security services that support the Debtors' operations. Vyaire also strategically outsources substantial operations to third parties, such as its accounts payable operations. The strength of Vyaire's team and the culture in which it operates are essential to its ability to achieve its broader mission and goals.

D. Vyaire's Global Presence.

26. The Company manufactures and sells its diverse portfolio of medical devices and services to customers including hospitals, long-term care facilities, and private practices across the globe. In 2023, the Company's products were sold to customers in the United States, Brazil, France, the United Kingdom, Thailand, Japan, and India, among 100 other countries. This includes prominent U.S.-based customers, such as the Cleveland Clinic, the Mayo Clinic, and Stanford Healthcare, and well-known international customers, such as Imperial College London, the National Health Service, and the Chris Hani Baragwanath Hospital. Globally, Vyaire has hundreds of key partnerships with integrated delivery networks, group purchasing organizations

(*e.g.*, HealthTrust, Vizient), distributors (*e.g.*, McKesson), and governments that, together with the Company's direct sales force, facilitate its strong global sales network.

27. Nearly half, or 47%, of Vyaire's Ventilation revenue comes from international markets, including numerous countries in Europe and Asia, and it has 96,000 installed capital units globally. The Company also manufactures Ventilation products worldwide, for example, via partnerships with third parties in Mexico, Singapore, and Malaysia. Ventilation has international offices in China, France, Brazil, India, Switzerland, the United Kingdom, Italy, the Netherlands, and Japan. In all, Ventilation sales, manufacturing, and operations occur globally.

28. Respiratory Diagnostics has 26,000 installed capital units globally and serves 93 countries worldwide. The Company is actively and strategically expanding in select geographies, such as the United States, Japan, India, and China. Like Ventilation, all facets of Respiratory Diagnostics penetrate the global marketplace.

29. Vyaire also maintains strong partnerships with international thought leaders to provide customer education worldwide. In fact, over 30 key opinion leaders from 20 countries, including Austria, Saudi Arabia, South Africa, China, Thailand, and New Zealand, provide expert education on ventilation to roughly 5,000 healthcare professionals globally. The Company also provides clinical education and technical training across its business divisions internationally. Further, the Company has partnered with leading research institutions throughout Europe, such as Politecnico Milano, Amsterdam University Medical Center, and Erasmus University Medical Center Rotterdam, to further strengthen its premier neonatal and clinical portfolios.

E. Vyaire's Suppliers.

30. Vyaire has a multitude of suppliers globally, including from the United States, Mexico, Asia, and Europe. Vyaire's Ventilation suppliers provide it with raw materials and finished goods—including plastics, tubing, breathing circuits, masks, and circuit boards—across

all product lines. Ventilation suppliers are, in large part, single source due to industry and regulatory complexities and supply chain nuances. Respiratory Diagnostics suppliers supply Vyaire with certain raw materials, semi-finished goods, and finished goods, including filters, equipment computers, oxygen sensors, and calibration gases. The Respiratory Diagnostics supplier base is in many instances sole source due to supply chain intricacies. The Company's Respiratory Diagnostics business heavily features German-localized suppliers to support its Hochberg manufacturing facility, while its Ventilation supply chain is broader in scope. Without continued access to, and relationships with, these suppliers, which provide specialized parts and difficult-to-source materials required to produce the Company's highly technical products, operations would be severely interrupted.

31. Because of the Company's intricate and near-irreplaceable supplier network, COVID-19's supply chain disruption directly harmed Vyaire's businesses. The Company has been particularly susceptible to the fluctuating availability and cost of raw materials and component parts, labor, and freight, which has resulted in supplier delivery holds, supply and demand shocks, supply chain backups, intermittent production stoppages, and difficulty fulfilling orders across both Ventilation and Respiratory Diagnostics. These challenges have exacerbated Vyaire's need to effectuate a comprehensive restructuring solution.

32. As more fully discussed herein, the Company also operates in a heavily regulated industry whereby many of the Company's products are regulated by the U.S. Food and Drug Administration ("FDA"), among other foreign governing bodies. Accordingly, when selecting suppliers for certain products, the Debtors must comply with stringent processes that incorporate regulations associated with supplier selection, qualification, and approval. Further, when the Company makes modifications that affect some of the components for their finished products, they

are required to ensure continued compliance with applicable, recognized standards. Therefore, it is not possible for the Company to quickly replace many of its custom-designed and unique component parts, products, or materials.

F. Vyaire's Regulatory Landscape.

33. *United States Regulation*. The FDA regulates the development, testing, manufacturing, labeling, modification, promotion, distribution, and marketing of medical devices. Under FDA regulation, medical devices are classified as Class I, Class II, or Class III depending on the risks imposed on end users, with Class III designating the highest risk devices. The Company's products are primarily designated as Class I and Class II, except Vyaire's 3100 High Frequency Ventilators have been classified as Class III, requiring pre-market approval. In general, Class I devices must comply with general controls, including, but not limited to, requirements related to registration and device listing, labeling, and medical device reporting. In addition to general controls, certain Class II devices must comply with design controls, pre-market notification and clearance, and applicable special controls. All of Vyaire's products are legally marketed and have completed the appropriate pre-market notification, clearance, or submission process. Domestic and foreign manufacturers of medical devices sold in the United States are subject to routine inspections by the FDA. Noncompliance with applicable FDA regulatory requirements can result in judicially imposed sanctions, fines, injunctions, penalties, mandatory recalls or seizures, suspensions of production, and liquidated damages.

34. *Foreign Regulation*. Outside of the U.S., it is customary for foreign governments or intergovernmental organizations to have a ministry of health or similar governing body that regulates the design, manufacture, distribution, marketing, and approval of medical devices. The

Company must comply with various nation-specific and transnational medical device regulations across Europe, Asia, and the Americas. Further, the Company is subject to certain additional requirements, such as the conditions for "CE" marking, for sales in the European Union and elsewhere. Overall, given the Company's global presence, it must expend significant resources to ensure that pre-market approvals and post-market regulations in each pertinent jurisdiction are satisfied.

35. *Auditing Requirements*. To market medical devices globally, a company must establish a quality system. Vyaire and all associated manufacturers have satisfactorily implemented compliant quality systems. Integral to quality system compliance are surveillance audits (conducted annually) and recertification audits (conducted every three to five years). The United States, Canada, Australia, Brazil, and Japan have agreed to work together to harmonize regulations and allow for a single audit to confirm compliance with those countries' regulations (such program, the "Medical Device Single Audit Program" or "MDSAP"). Under the MDSAP, annual compliance and surveillance audits of relevant facilities are conducted by a private organization, called a "Notified Body." The Company is subject to annual audits by a Notified Body for certain Ventilation and Respiratory Diagnostics products.

II. The Debtors' Organizational and Prepetition Capital Structure.

A. Organizational Structure.

36. As set forth comprehensively on the structure chart attached as **Exhibit B**, Vyaire Holding Company is the parent entity of Vyaire and has 63 wholly owned, direct, and indirect subsidiaries. As of the Petition Date, there are 28 Debtor entities in these chapter 11 cases.

B. Prepetition Capital Structure.

37. As of the Petition Date, Vyaire had approximately $533.6 million in total funded debt obligations:

Funded Debt	Approximate Principal Amount Outstanding
First Lien Term Loan	$339.3 million
First Lien Notes	$78.6 million
First Lien Debt	**$417.9 million**
Second Lien Term Loan	$115.7 million
Total Funded Debt Obligations	**$533.6 million**

38. ***First Lien Facility***. On April 16, 2018, Vyaire Medical, Inc., Vyaire Company, and Vyaire Finance B.V., a private limited liability company incorporated under the laws of the Netherlands and an indirect, wholly owned subsidiary of Vyaire Holding Company, and certain other subsidiaries of the Company (all such subsidiaries of Vyaire Holding Company, whether in the capacity of a borrower, guarantor, obligor, or pledgor thereunder, the "Obligated Subsidiaries"), and the lenders party thereto from time to time (the "First Lien Term Lenders"), entered into that certain First Lien Credit Agreement[6] (the "First Lien Credit Agreement," as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time), which provides for a "First Lien Term Loan" in an initial principal amount of $360,000,000,

[6] For the avoidance of doubt, such agreement was amended by Amendment No. 1 to the First Lien Credit Agreement, dated as of October 15, 2018, as further amended by Amendment No. 2 to the First Lien Credit Agreement, dated as of September 13, 2019, as further amended by Amendment No. 3 to the First Lien Credit Agreement, dated as of April 7, 2020, as further amended by the Incremental Agreement to the First Lien Credit Agreement, dated as of August 18, 2020, as further amended by Amendment No. 5 to the First Lien Credit Agreement, dated as of September 17, 2021, as further amended by Amendment No. 6 to the First Lien Credit Agreement, dated as of August 19, 2022, as further amended by Amendment No. 7 to the First Lien Credit Agreement, dated as of January 24, 2023, as further amended by Amendment No. 8 to the First Lien Credit Agreement, dated as of May 18, 2023, as further amended by Amendment No. 9 to the First Lien Credit Agreement, dated as of April 10, 2024, and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time.

priced at SOFR + 4.75% for Eurocurrency rate loans and 3.75% for base rate loans, payable every one, three, or six months (at the option of the Obligated Subsidiary) in arrears on each interest payment date.

39. The secured parties under the First Lien Credit Agreement have first-priority liens on all or substantially all assets and property of Vyaire Medical, Inc. and all guarantors. The First Lien Term Loan, unless amended, modified, or extended, will mature on April 16, 2025. At present, interest on the First Lien Term Loan is SOFR + 4.75%, which, as of May 17, 2024, equated to 10.1%. Bank of America, N.A. acts as administrative agent and collateral agent.

40. ***First Lien Notes***. On May 3, 2019, the Obligated Subsidiaries, as issuers, and the purchasers party thereto from time to time (the "Notes Purchasers" and, together with the First Lien Term Lenders, the "First Lien Lenders") entered into that certain Note Purchase Agreement[7] (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Note Purchase Agreement") with Wilmington Trust, National Association acting as notes agent and collateral agent. The Note Purchase Agreement provides for the purchase of a bank note (the "First Lien Notes") for approximately $60,000,000, at the fixed rate adjusted EURIBOR rate of 5.75%, payable every one, three, or six months (at the option of the Obligated Subsidiary) in arrears on each interest payment date. As a result of certain amendments to the Note Purchase Agreement, the borrowing capacity increased by $20,000,000, and as of September 30, 2023, the outstanding principal balance was approximately $76,262,000. At present, interest on the First Lien Notes is EURIBOR + 4.75%, which, as of May 17, 2024, equated

[7] For the avoidance of doubt, such agreement was amended by Amendment No. 1 to the Note Purchase Agreement, dated as of October 1, 2019, as further amended by Amendment No. 2 to the Note Purchase Agreement, dated as of October 15, 2019, as further amended by Amendment No. 3 to the Note Purchase Agreement, dated as of April 7, 2020, as further amended by Amendment No. 4 to the Note Purchase Agreement, dated as of January 24, 2023, and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time.

to 8.5%. The First Lien Notes will mature on April 16, 2025, unless earlier converted, redeemed, or repurchased. The secured parties under the Note Purchase Agreement have first-priority liens on substantially the same assets and property as in the First Lien Credit Agreement.

41. ***Second Lien Facility***. On April 16, 2018, the Obligated Subsidiaries, and the lenders party thereto from time to time (the "Second Lien Lenders"), entered into that certain Second Lien Credit Agreement[8] (as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "Second Lien Credit Agreement" and, together with the First Lien Credit Agreement, the "Credit Agreements"), which provides for a "Second Lien Term Loan" in an initial principal amount of €75,000,000, initially priced at EURIBOR + 7.25%, payable every one, three, or six months (at the option of the Obligated Subsidiary) in arrears on each interest payment date. Wilmington Trust, National Association acts as administrative agent and collateral agent.

42. Between November 6, 2018, and May 31, 2023, certain amendments to the Second Lien Credit Agreement were executed that allowed the Obligated Subsidiaries to make PIK interest payments on the relevant interest payment date. At present, interest on the Second Lien Term Loan is EURIBOR + 8.25%, which, as of May 17, 2024, equated to 12.08%.

43. The Second Lien Term Loan, unless amended, modified, or extended, will mature on April 16, 2026.

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[8] For the avoidance of doubt, such agreement was amended by Amendment No. 1 to the Second Lien Credit Agreement, dated as of November 6, 2018, as further amended by Amendment No. 2 to the Second Lien Credit Agreement, dated as of April 7, 2020, as further amended by Amendment No. 3 to the Second Lien Credit Agreement, dated as of May 31, 2022, as further amended by Amendment No. 4 to the Second Lien Credit Agreement, dated as of September 28, 2022, as further amended by Amendment No. 5 to the Second Lien Credit Agreement, dated as of January 24, 2023, and as may otherwise be amended, restated, supplemented, or otherwise modified from time to time.

44. The collateral priority and enforcement rights as between the First Lien Credit Agreement and the Note Purchase Agreement are governed by a *pari passu* intercreditor agreement; and the collateral priority and enforcement rights as between the First Lien Credit Agreement, Note Purchase Agreement, and Second Lien Credit Agreement are governed by a first lien-second lien intercreditor agreement.

45. ***Equity Interests***.[9] The equity of Vyaire Holding Company, the topco Debtor, is 100% owned by Vyaire Intermediate HoldCo LP which, in turn, is 99.8% beneficially owned by Apax. Vyaire Holding Company is authorized to issue 4,000,000 shares of preferred stock at $.01 par value, but no shares are currently issued and outstanding.

III. Events Leading to the Commencement of These Chapter 11 Cases.

46. The Debtors have worked since the summer of 2023 to explore and execute alternative out-of-court restructuring transactions in an effort to maximize value for all stakeholders. The Debtors, with the assistance of the Advisors, have engaged with their stakeholders on potential out-of-court solutions, and now come before the Court at the conclusion of an exhaustive review of available alternatives. Simply put, these chapter 11 cases are the Debtors' best opportunity to orchestrate the Marketing and Sale Process embodied in the Restructuring Support Agreement that maximizes value of the Debtors' estates while concurrently fully and fairly resolving Company liabilities in a manner that maintains the Debtors' ability to deliver their life-enhancing products and services to their customer base.

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[9] In 2018, Apax bought out BD's remaining ownership stake in Vyaire, giving Apax 99.98% control. Katarina Sallerfors, Funds advised by Apax Partners to acquire remaining minority stake in Vyaire Medical from BD (Monday, Mar. 19, 2018), https://www.apax.com/news-views/funds-advised-by-apax-partners-to-acquire-remaining-minority-stake-in-vyaire-medical-from-bd/.

A. Challenging Macroeconomic Conditions.

47. The pandemic and its lingering consequences have complicated the Company's go-forward plans. The COVID-19 pandemic was simultaneously a headwind reversing Company fortunes and a tailwind thrusting the Company forward. The COVID-19 virus acutely impacts the human respiratory system and can notably cause shortness of breath and difficulty breathing, creating heightened demand for Vyaire's ventilators and related devices and services. The pandemic also boosted Respiratory Diagnostics because of the increased need for diagnostic pulmonary testing, an increased patient population with cardiopulmonary illness (*e.g.*, chronic obstructive pulmonary disease), and complications stemming from long-term COVID-19 after-effects that necessitate ongoing patient monitoring and management. The pandemic also intensified the Company's product line rationalization efforts as Vyaire shifted away from outdated legacy brands and focused on in-demand innovative devices to combat COVID-19. The confluence of these factors improved Company performance. In fact, Respiratory Diagnostics revenue increased from roughly $112 million in 2019 to a projected $180 million in 2024 and is estimated to grow significantly over the next decade. Further, Ventilation generated $215 million in revenue in 2019, which nearly tripled to $620 million in 2020, in light of COVID-19 demand.

48. However, like many businesses around the world, the Company was not immune to the negative residual effects borne by the COVID-19 pandemic. The post-pandemic-induced malaise triggered a rapid shift in approach to patient treatment away from ventilation support to pharmaceutical options, and the Company pivoted toward an emphasis on repair/maintenance services, which undercut the Company's capital investment in further manufacturing capacity. The Company scaled its inventory to meet high sales forecasts and unprecedent COVID-19 demand, but the market shifted dramatically, leaving the Company with an inventory glut and little

cash. At present, the Company's Palm Springs, California, ventilation-focused manufacturing and repair facility operates at a mere 20% of capacity.

49. Further, interruptions in the production and supply of the Company's products due to supply chain disruptions and worldwide shortages in the availability of raw materials and labor, alongside related inflation, led to higher production costs. The cost of medical grade resin, a crucial product ingredient, has increased eight-fold. The Company's limited access to certain materials and component parts negatively impacted its ability to fulfill customer demand. Moreover, once the products were ultimately produced, the pandemic's role in rising freight and delivery costs caused Vyaire significant financial strain. Additionally, certain suppliers refused to distribute or substantially delayed shipments to Vyaire because of the significant ongoing stress on the global supply chain. Ultimately, following a banner year for Ventilation in 2020 touting $620 million in revenue, the business' revenue plummeted to $156 million by 2023. And while Respiratory Diagnostics' demand continued to climb post-COVID-19, supply chain constraints impacted Vyaire's ability to fulfill order backlog.

B. Internal Business Challenges.

50. Vyaire has faced challenges as a standalone company. Operations have largely been cash flow negative after factoring out the temporary demand spike from COVID-19. The Consumables Sale provided some—but not enough—runway for the Company to solve its enduring operational challenges. Several noteworthy challenges are highlighted below.

51. *Strategic/Business Plan Challenges*. The Company has faced concerns related to corporate strategy, particularly in Ventilation. *First*, the Company's business model only had limited synergies between its now-divested Consumables business and its Respiratory Diagnostics and Ventilation businesses. *Second*, while the Company sought to execute on a business plan centered on developing new product lines and converting customers from outdated models (*e.g.*,

Vmax and MasterScreen) to newer lines (*e.g.*, Vyntus and Bellavista), executing on such a plan was capital-intensive due to upfront research and development investments and long customer conversion timelines. The Company's liquidity profile and balance sheet simply could not support those efforts over a longer time horizon. *Third*, SG&A expenditures needed to be right-sized to operations. While the Company ultimately prioritized substantial cost-cutting initiatives to reduce overhead and plummeting available capital, these austerity measures were not drastic or quick enough to stabilize the Company's operations. *Fourth*, the Company needed to solve for post-COVID-19 demand challenges for Ventilation offerings and certain overproduction and inventory glut issues.

52. In response to increased COVID-19-related demand, the Company up-sized its operations, particularly with respect to manufacturing, which caused its fixed costs to rise. As performance dipped in the Ventilation business (especially overseas), the Company began to move to adjust these heightened fixed costs, including by transitioning from a direct-sales strategy to a distributor-sales strategy for select foreign markets. Further, the Company took efforts to rationalize distributor contracts by signing more favorable deals with new distributors. However, the increased reliance on a distributor model came with a downside as the model proved to be unwieldy. Not only did the Company cede a certain amount of control over the sales cycles, but it also was reliant on sales teams marketing and distributing several other products. The Company became further removed from the sales process, which blunted its ability to quickly and directly carry out changes to sales and marketing.

53. The Company also encountered regulatory challenges in important overseas markets (*e.g.*, China and India) that have caused major disruption in those markets and lost sales. The Consumables Sale provided a one-time liquidity boost that was intended, among other things,

to provide breathing room for the Company's efforts to address legacy SG&A and remedy certain operational challenges, but these efforts did not fully address the Company's issues, and the prolonged challenges in Ventilation continued to hamper the Company's balance sheet and liquidity profile. In short, the Company's performance has not allowed it to outlast a high cash-burn rate long enough to make appropriate adjustments to, and investments in, the Company's underlying business model.

54. In response to these various operational, business, and macroeconomic challenges, Vyaire initiated a strategic realignment consisting of certain cost-reduction programs coupled with a shift in focus to higher-margin, higher-growth opportunities among its Ventilation and Respiratory Diagnostics divisions. For instance, the Company worked to: (a) convert its installed customer base to innovative new products; (b) realign geographic priorities to account for foreign-nation preferences (*e.g.*, by shifting the manufacture of products for sale in China to China to account for domestic-preference policies); (c) streamline manufacturing operations by shifting European manufacturing operations to the U.S.; (d) invest in data analytics to reduce the Company's services and software spend; (e) roll out a global, margin-expansion strategy to increase liquidity; and (f) pursue a radical cost-cutting initiative.

55. The business plan's results were especially positive with respect to Respiratory Diagnostics, resulting in improved sales year over year, and achieving double-digit growth with increasing profitability in the U.S. over the last several quarters. However, Ventilation performance has challenged the business plan. In the first half of 2024, Ventilation revenue declined approximately 20%, while Respiratory Diagnostics revenue grew between 5% and 10%. Overall, the Company's liquidity could not sustain the Company through the challenged turnaround efforts, and the Company pursued options to address its over-levered balance sheet.

C. Prepetition Efforts to Address the Company's Balance Sheet.

56. As noted above, the Company began to negotiate with various stakeholders in mid-2023 to better align the Company's balance sheet to support its business plan. The Consumables Sale provided the Company with the capital to allow for time to analyze, in detail, the contours and strategy of a prospective balance sheet enhancing transaction.

57. ***Amend and Extend Efforts***. In March 2024, after months of hard-fought, arm's-length, and intense negotiations, the Company and the 1L Ad Hoc Group neared final transaction terms regarding the Amend and Extend. The Amend and Extend was designed to provide the Company with breathing room while it engaged in an operational restructuring. The downturn in Ventilation sales, however, contributed to the need for additional equity or a capital backstop to maintain the minimum liquidity requirements of the proposed Amend and Extend. Despite over a year of significant efforts, the Amend and Extend transaction was not actionable due to greater than anticipated capital investment requirements, chiefly because of challenges related to the Ventilation business, worsening operational challenges, and a stubbornly high cash-burn rate. Accordingly, the Company and its stakeholders pivoted to considering a potential in-court restructuring and authorized Advisors to engage with the 1L Ad Hoc Group and its other stakeholders to pursue alternative transactions.

58. ***Forbearance Agreement***. To facilitate further solution-oriented discussions between the parties, on April 10, 2024, the Debtors and the 1L Ad Hoc Group entered into Amendment No. 9 to the First Lien Credit Agreement (the "Forbearance Agreement"), whereby the parties agreed to forbear from the exercise of remedies with respect to any existing defaults or to declare that an "event of default" had occurred with respect to the non-payment of interest under the First Lien Credit Agreement, among other things. Further, the Forbearance Agreement set forth (a) enhanced reporting requirements, including the provision of substantial unaudited

financial statements to the 1L Ad Hoc Group; and (b) certain milestones related to the restructuring. The 1L Ad Hoc Group continued to provide forbearance relief by agreeing to extend deadlines and waive other requirements repeatedly though the Petition Date, which enabled the parties to reach agreement on a value-maximizing path and help the Company avoid a fire sale liquidation.

59. ***Formation of the Special Committee***. In April 2024, to ensure a thorough and fair process with respect to the Debtors' review of strategic alternatives and potential conflict matters, the Board formed the Special Committee, comprised of the Disinterested Directors. The Special Committee was formed to conduct an independent review and negotiation of one or more potential recapitalization, reorganization, sale, or restructuring transactions. The Board delegated to the Special Committee the authority to review, develop, investigate, negotiate, and to the extent of any conflicts, approve entry into a Strategic Transaction on behalf of the Company.

60. David Barse joined the Board as a Disinterested Director in April 2024. Mr. Barse was delegated authority to conduct an investigation into any Company claims or causes of action against third parties, and the Company retained Cole Schotz P.C. to aid Mr. Barse in his investigation. Mr. Barse is an experienced board member and industry professional who has previously served as a director on numerous public and private boards of directors, including in distressed situations.

61. ***Bridge Financing Efforts***. In April and May of 2024, the Company and its Advisors worked extensively with the 1L Ad Hoc Group, trading numerous term sheets and drafting and negotiating various ancillary and collateral deliverables, in order to agree to terms for a $30 million new-money, multi-draw term loan facility to bridge the Company's immediate financing needs, subject to certain milestones and covenants related to the Company's marketing

efforts to effectuate a sale. The purpose of this bridge financing was to allow more time for the Company to market a sale of the business in whole or in parts. The Company also received a bridge financing proposal from the Second Lien Lenders, but it was not actionable given it required the First Lien Lenders' consent to be primed by the proposed bridge facility.

62. Ultimately, the parties were not able to finalize terms and close on the bridge financing. However, the exercise in the bridge financing discussions, though unsuccessful, revealed that there was considerable consensus among the Company and its stakeholders that the value-maximizing path forward for the Company would be a fulsome marketing and sale process for some, substantially all, or all of the Company's assets, including the potential for sales exclusively of the assets related to the Company's Ventilation and Respiratory Diagnostics business units, or for the Company as a whole (the "Marketing and Sale Process").

IV. The Marketing and Sale Process and the RSA.

63. In April 2024, with the assistance of its Advisors, Vyaire commenced the Marketing and Sale Process, which would continue through an in-court process, facilitated by an RSA.

64. ***Marketing and Sale Process***. This process has resulted in substantial interest in the Company. In the weeks leading up to the Petition Date, Company management and PJT prepared confidential information memoranda separately for the Ventilation and Respiratory Diagnostics businesses and populated virtual data sites containing significant diligence documentation. So far, the Company has reached out to over 110 identified strategic and financial parties. The Company has executed over 30 non-disclosure agreements with access granted to virtual data rooms, financial models, and business segment standalone models. At this stage, the Debtors have already received multiple first-round nonbinding indications of interest for various portions of the businesses. Such nonbinding indications of interest demonstrate a productive

marketing process to date with respect to both business units and validate the Marketing and Sale Process as a value-maximizing plan. The marketing process will continue postpetition, and the Debtors will determine if any potential purchaser should be designated as a stalking horse. The Debtors will continue to (a) market test any bids that they receive, and (b) solicit the highest and best bid for the Company.

65. Filed substantially contemporaneously herewith, the Bidding Procedures Motion[10] describes in greater detail the Company's approach to build on its productive prepetition marketing efforts through the postpetition sale of the Company.

66. ***RSA***. To best orchestrate the Marketing and Sale Process postpetition, the Debtors and the RSA Parties reached an agreement to pursue and potentially effectuate certain restructuring sale transactions in chapter 11 (the "Restructuring Transactions") and executed the Restructuring Support Agreement on June 9, 2024. Under the Restructuring Support Agreement, the RSA Parties agreed, subject to the terms and conditions thereof, to support the sale process, consummation of any sale transactions, and to wind down the remaining Company. I believe that the Marketing and Sale Process and related transactions set forth in the RSA represent the Company's value-maximizing path forward.

67. The DIP Motion, the Bidding Procedures Motion, and the RSA contain milestones that set out an efficient timeline for these chapter 11 cases to minimize the administrative cost of maintaining the estates and the burden on the Company's operations. The Debtors propose to proceed with these chapter 11 cases along the following timeline:

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[10] *Motion of Debtors for Entry of an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* (the "Bidding Procedures Motion")

- No later than June 10, 2024, the Debtors shall file the First Day Motions, the DIP Motion, and the Bidding Procedures Motion;
- No later than June 12, 2024, the Court shall have entered the interim DIP financing order;
- No later than July 1, 2024, the Debtors shall (i) have received nonbinding indications of interest and (ii) designated a stalking horse;
- No later than July 8, 2024, the Court shall have entered an order approving the Bidding Procedures Motion;
- No later than July 14, 2024, the Court shall have entered the final DIP financing order;
- No later than July 22, 2024, the Debtors shall have received bids that, individually or in the aggregate, meet the minimum bid requirement;
- No later than July 25, 2024, the auction shall have occurred, if applicable;
- No later than July 29, 2024, the Court shall have entered the sale orders, if applicable; and
- No later than August 19, 2024, the Debtors shall have consummated any sale transactions.

V. **The Proposed Debtor in Possession Financing**.

68. Pursuant to the DIP Motion and to provide the Debtors with the liquidity to commence a smooth landing into these chapter 11 cases, certain First Lien Lenders have agreed to provide the DIP Facility and continued access to prepetition Cash Collateral. The DIP Facility and access to Cash Collateral will give the Debtors the necessary liquidity to facilitate their Marketing and Sale Process, to fund their business operations and administrative expenses during these chapter 11 cases, and to fund a wind-down of any remaining estate assets and liabilities in accordance with an agreed wind-down budget between the Company and the required lenders under the DIP Facility.

69. As of the Petition Date, the Debtors only have approximately $1.7 million in cash on hand, which is insufficient to support operations during the first days of these chapter 11 cases.[11] If approved, the DIP Facility will provide the Debtors with access to $25 million of new liquidity on an interim basis and $20 million of new liquidity on a final basis. The DIP Facility is the culmination of rigorous, arm's-length negotiations between the Debtors and the 1L Ad Hoc Group, is the best DIP financing proposal currently available to the Debtors after concerted efforts undertaken by PJT to obtain superior DIP financing proposals, and provides the Debtors with crucial liquidity at the outset of these chapter 11 cases, allowing the Debtors and their Advisors to focus on exiting chapter 11 expeditiously.

70. Absent the liquidity infusion to be provided by the DIP Facility, the Debtors would experience significant business disruption, would need to meaningfully curtail their operations, and would face a number of other value-destructive consequences. Without access to sufficient financing as provided by the DIP Facility, Vyaire may be forced to liquidate and cease Ventilation consumables production, directly halting operations on life-saving ventilators that require such consumables. This would cause direct harm to patients in need of care.

A. The DIP Sizing Process.

71. In connection with the search for viable postpetition financing, AlixPartners, assisted by the Debtors, Kirkland, and PJT, prepared projected cash forecasts (as updated from

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[11] Further information with respect to the DIP Facility is discussed in the *Declaration of Charles N. Braley in Support of the Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "Braley Declaration") and the *Declaration of Michael Schlappig in Support of the Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protection to Prepetition Secured Parties, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "Schlappig Declaration").

time to time in connection with the terms of the DIP Facility, the "Budget") for the Debtors' business during these chapter 11 cases. As contemplated by the Budget, I believe the proposed DIP Facility provides the Debtors with sufficient liquidity to stabilize their operations and fund the administration of these chapter 11 cases as the Debtors proceed quickly toward a value-maximizing resolution.

B. The Debtors' Proposed Use of Cash Collateral.

72. As of the Petition Date, I understand that substantially all of the Debtors' cash is encumbered, which means that the Debtors require immediate access to Cash Collateral to operate their enterprise and to continue to pay debts as they come due. Accordingly, pursuant to the DIP Motion, the Debtors seek the continued use of the secured lenders' Cash Collateral to provide sufficient liquidity for their operations during these chapter 11 cases and to continue operating as a going concern.

VI. Evidence in Support of First Day Motions.

73. Contemporaneously herewith, the Debtors have filed a number of First Day Motions seeking orders granting various forms of relief intended to stabilize the Debtors' business operations, facilitate the efficient administration of these chapter 11 cases, and expedite a swift and smooth restructuring of the Debtors' balance sheet.

74. The First Day Motions request authority to pay certain prepetition claims. I understand that Federal Rule of Bankruptcy Procedure 6003 provides, in relevant part, that the Court shall not consider motions to pay prepetition claims during the first 21 days following the filing of a chapter 11 petition, "except to the extent relief is necessary to avoid immediate and irreparable harm." In light of this requirement, the Debtors have narrowly tailored their requests for immediate authority to pay certain prepetition claims to those circumstances where the failure

to pay such claims would cause immediate and irreparable harm to the Debtors and their estates. Other relief will be deferred for consideration at a later hearing.

75. I am familiar with the information contained in each First Day Motion and believe that the relief sought in each motion (a) is necessary to enable the Debtors to operate in chapter 11 with minimal disruption or loss of productivity and value, (b) constitutes a critical element for the Debtors to successfully implement a chapter 11 strategy, and (c) best serves the Debtors' estates and creditors' interests. A description of the relief requested and the facts supporting each of the First Day Motions is detailed in **Exhibit A**.

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76. The decision to commence these chapter 11 cases is the culmination of extensive negotiations and strategic review, including regular meetings of the Debtors, Special Committee, management, and Advisors. Ultimately, the governing body of each Debtor determined that chapter 11 is the only viable path forward for the Debtors at this time and thus provides the best path to maximize value for all stakeholders, preserve the Company's operations, and orchestrate the already productive Marketing and Sale Process.

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Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing statements are true and correct to the best of my knowledge, information, and belief.

Dated: June 10, 2024

/s/ *John Bibb*
Name: John Bibb
Title: Group Chief Executive Officer,
Vyaire Medical, Inc.

Exhibit A

Evidentiary Support for First Day Motions[1]

[1] Capitalized terms used but not defined herein have the meanings ascribed to them in the applicable First Day Motion.

EVIDENTIARY SUPPORT FOR FIRST DAY MOTIONS [2]

Administrative and Procedural Motions

I. Application of Debtors for Entry of an Order (I) Authorizing and Approving the Appointment of Omni Agent Solutions, Inc. As Claims and Noticing Agent and (II) Granting Related Relief (the "Omni 156(c) Retention Application").

1. Omni is comprised of leading industry professionals with experience in noticing, claims administration, solicitation, balloting, and facilitating other administrative aspects of these chapter 11 cases and experience in matters of this size and complexity.

2. The Omni 156(c) Retention Application pertains only to the work to be performed by Omni under the Clerk's delegation of duties permitted by 28 U.S.C. § 156(c) and Local Rule 2002 1(f), and any work to be performed by Omni outside of the scope of the Omni 156(c) Retention Application is not covered by the application or by any order granting approval hereof. In its role as Claims and Noticing Agent, Omni may provide the following services, among others: (i) prepare and serve required notices and documents in these chapter 11 cases; (ii) maintain an official copy of the Debtors' schedules of assets and liabilities and statements of financial affairs; (iii) furnish a notice to all potential creditors of the last date for filing proofs of claim and a form for filing a proof of claim, after such notice and form are approved by the Court, and notify such potential creditors of the existence, amount, and classification of their respective claims as set forth in the Schedules; (iv) maintain a post office box or address for the purpose of receiving claims and returned mail, and process all mail received; (v) prepare and file, or cause to be filed, with the Clerk an affidavit or certificate of service; (vi) process all proofs of claim received; and (vii) maintain the official claims register for each Debtor.

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[2] To the extent there is any conflict or inconsistency between the relief described herein and the relief requested in the applicable First Day Motion, the relief requested in the applicable First Day Motion shall govern.

3. In accordance with the Claims Agent Protocol, prior to the selection of Omni, the Debtors reviewed and compared engagement proposals from three court-approved claims and noticing agents, including Omni, to ensure selection through a competitive process.

4. Based on my discussions with the Debtors' advisors, I believe that the Debtors' selection of Omni to act as the Claims and Noticing Agent is appropriate under the circumstances and in the best interest of the estates. Moreover, it is my understanding, based on all engagement proposals obtained and reviewed, that Omni's rates are competitive and reasonable given Omni's quality of services and expertise.

5. For the foregoing reasons, I believe that the relief requested in the Omni 156(c) Retention Application is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

II. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Redact Certain Personally Identifiable Information of Individuals; (II) Approving the Form and Manner of Service of the Notice of Commencement; and (III) Granting Related Relief (the "Creditor Matrix Motion").

6. ***Redact Certain Personally Identifiable Information***. I believe that redaction of the home addresses and email addresses of individuals is appropriate because (i) such information can be used to perpetrate identity theft and phishing scams or to locate survivors of domestic violence, harassment, or stalking under section 107(c)(1) of the Bankruptcy Code, and (ii) disclosure risks violating other data and privacy laws and regulations, thereby exposing the Debtors to potential civil liability and significant financial penalties. For these reasons, I submit that the Debtors' proposed redactions are appropriate.

7. ***Approve the Notice to Creditors by the Claims and Noticing Agent***. The Debtors request that Omni Agent Solutions, Inc. ("Omni"), the proposed Claims and Noticing Agent, undertake all mailings directed by the Court or the U.S. Trustee or as required in section 342(a) of

the Bankruptcy Code and Bankruptcy Rules 2002(a) and (f), including serving the notice of commencement of these chapter 11 cases. Service of the Notice of Commencement on the Creditor Matrix will not only avoid confusion among creditors but will also prevent the Debtors' estates from incurring unnecessary costs associated with serving multiple notices to the parties listed on the Debtors' voluminous Creditor Matrix.

8. The Debtors believe that using the Claims and Noticing Agent to promptly provide notices to all applicable parties will maximize efficiency in administering these chapter 11 cases and will ease administrative burdens that would otherwise fall upon the Court and the U.S. Trustee. Additionally, the Claims and Noticing Agent will assist the Debtors in preparing creditor lists and mailing initial notices, and, therefore, it is more efficient to authorize the Claims and Noticing Agent to mail all notices, including the Notice of Commencement. Accordingly, Omni should undertake such mailings.

9. For the foregoing reasons, I believe that the relief requested in the Creditor Matrix Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

III. Motion of Debtors for Entry of an Order (I) Directing Joint Administration of Chapter 11 Cases and (II) Granting Related Relief (the "Joint Administration Motion").

10. Joint administration of these chapter 11 cases will provide significant administrative convenience without harming the substantive rights of any party in interest. Many of the motions, hearings, and orders in these chapter 11 cases will affect each Debtor entity. The entry of an order directing joint administration of these chapter 11 cases will reduce fees and costs by avoiding duplicative filings, objections, or multiple hearings on common issues. Joint administration also will allow the Office of the United States Trustee for the District of Delaware and all parties in interest to monitor these chapter 11 cases with greater ease and efficiency.

11. Moreover, joint administration will not adversely affect the Debtors' respective constituencies because the Joint Administration Motion seeks only administrative, not substantive, consolidation of the Debtors' estates. I believe that parties in interest will not be harmed by the relief requested; instead, parties in interest will benefit from the cost reductions associated with the joint administration of these chapter 11 cases. For the foregoing reasons, I believe that the relief requested in the Joint Administration Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

IV. Motion of Debtors for Entry of an Order (I) Extending Time to File Schedules of Assets and Liabilities, Schedules of Current Income and Expenditures, Schedules of Executory Contracts and Unexpired Leases, Statements of Financial Affairs, and Rule 2015.3 Financial Reports and (II) Granting Related Relief (the "SOFAs and Schedules Motion").

12. Pursuant to the SOFAs and Schedules Motion, the Debtors seek entry of an order (a) extending the deadline by which the Debtors must file their (i) schedules of assets and liabilities, (ii) schedules of current income and expenditures, (iii) schedules of executory contracts and unexpired leases, and (iv) statements of financial affairs by 5 days, in addition to the extension provided by rule 1007-1(b) of the Local Rules, for a total of thirty-three days from the Petition Date, to and including July 12, 2024, without prejudice to the Debtors' ability to request additional extensions for cause shown, (b) extending the deadline by which the Debtors must file their initial reports of financial information with respect to entities in which the Debtors hold a controlling or substantial interest, or to file a motion with the Court seeking a modification of such reporting requirements for cause, to the later of (i) thirty days after the 341 Meeting or (ii) forty-four days from the Petition Date, without prejudice to the Debtors' ability to request additional extensions, and (c) granting related relief.

13. I believe that good and sufficient cause exists for granting an extension of time to file the Schedules and Statements. The ordinary operation of the Debtors' business requires the

Debtors to maintain voluminous books, records, and complex accounting systems. To prepare the Schedules and Statements, the Debtors must compile information from books, records, and documents relating to a myriad of claims of their creditors, many of whom are customers, and the Debtors' many assets and contracts. This information is extensive and located in numerous places throughout the Debtors' organization. Collecting the necessary information requires an enormous expenditure of time and effort on the part of the Debtors, their employees, and their professional advisors in the near term.

14. In the days leading up to the Petition Date, the Debtors' primary focus has been securing debtor in possession financing, preparing for the commencement of these chapter 11 cases as expeditiously and efficiently as possible, including preparing their business to transition into chapter 11, and negotiating with their creditor constituencies for a soft landing in chapter 11. The Debtors intend to refocus the attention of key personnel to compliance with chapter 11 obligations during the early days of these chapter 11 cases. Although the Debtors have commenced the process to prepare and finalize what will be voluminous Schedules and Statements, the Debtors anticipate that they may require up to 5 additional days to complete the Schedules and Statements. Given the substantial burdens already imposed on the Debtors' management by the commencement of these chapter 11 cases, the competing demands upon the Debtors' employees to collect information, the time and attention the Debtors must devote to the restructuring process, and the hundreds of hours required to complete the Schedules and Statements, good cause exists to extend the current deadline by 5 days, until thirty-three days after the Petition Date.

15. The requested extension will enhance the accuracy of the Schedules and Statements when filed and help avoid the potential necessity of substantial subsequent amendments. The Debtors request such an extension without prejudice to their rights to seek further extensions or

waivers from the Court for cause shown. Moreover, an extension will not harm creditors or other parties in interest because, even under the extended deadline, the Debtors will file the Schedules and Statements in advance of any deadline for filing proofs of claim in these chapter 11 cases.

16. Certain of the Debtors maintain interests in non-debtor affiliates that I understand are subject to Bankruptcy Rule 2015.3 and, as such, are required to file 2015.3 Reports. The Debtors are not in a position to complete the initial 2015.3 Reports within the time required under Bankruptcy Rule 2015.3 due to (a) the size, complexity, and geographic scope of the Debtors' businesses, (b) the substantial burdens imposed by complying with Bankruptcy Rule 2015.3 in the early days of these chapter 11 cases, and (c) the same considerations supporting an extension of the date by which to file the Schedules and Statements. Extending the deadline to file the initial 2015.3 Reports will enable the Debtors to work with their advisors and the U.S. Trustee to determine the appropriate nature and scope of the reports and any proposed modifications to the reporting requirements established by Bankruptcy Rule 2015.3.

17. For the foregoing reasons, I believe that the relief requested in the SOFAs and Schedules Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

Operational Motions

V. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief (the "Wages Motion").

18. Throughout the United States, the Debtors employ approximately 480 individuals on a full-time basis (collectively, the "Employees") [3]. The Employees perform a wide variety of functions critical to the administration of these chapter 11 cases. Their skills, knowledge, and understanding of the Debtors' operations and infrastructure are essential to preserving operational stability and efficiency. Many of these Employees have technical and unique Company-specific knowledge essential to the Debtors' operations. Without the continued, uninterrupted services of their Employees, the Debtors' business operations will be halted, and the administration of the Debtors' estates will be materially impaired.

19. Approximately 306 Employees are salaried, and 174 Employees are paid on an hourly basis. None of the Employees are represented by a collective bargaining unit. In addition to the Employees, the Debtors also hire certain contingent workers for a predetermined period on a temporary and as-needed basis (the "Contingent Workers") through a number of staffing agencies (collectively, the "Staffing Agencies"). The Contingent Workers include assemblers, accountants, virtual sales representatives, consultants, and engineers. As of the Petition Date, the Debtors have approximately 74 Contingent Workers. The Debtors also periodically retain consultants and engineers as independent contractors who are employed through single-employee limited liability companies (the "Independent Contractors") to meet staffing and project requirements on an as needed basis. As of the Petition Date, the Debtors have approximately 14

[3] 481 additional employees are employed by the Debtors' foreign, non-Debtor affiliates.

Independent Contractors. Together, the Contingent Workers and Independent Contractors support the Debtors' workforce and operations by providing necessary staff augmentation in engineering, marketing, accounting, IT, and other operating roles. The Debtors' ability to maintain the Contingent Workers and Independent Contractors is critical to supplement the efforts of the Debtors' Employees.

20. In many instances, the Debtors' Employees, Contingent Workers, and Independent Contractors (collectively, the "Workforce") rely exclusively on their compensation and benefits to pay their daily living expenses and to support their families. The Debtors' Workforce will be exposed to significant financial hardship and may leave the employ of the Company in the event the Debtors are not permitted to continue paying wages and salaries, provide employee benefits, and maintain existing employee programs in the ordinary course of business. Accordingly, the Debtors and their estates would be harmed if they are unable to provide compensation and benefits to their Workforce consistent with past practice. Consequently, the Debtors respectfully submit that the relief requested in the Wages Motion is necessary and appropriate under the facts and circumstances of these chapter 11 cases.

Employee Compensation and Benefits	Approximate Interim Amount	Approximate Final Amount
Compensation and Withholding Obligations		
Unpaid Wages	$1,070,000	$0
Unpaid Commissions	$430,000	$0
Unpaid Independent Contractor Obligations	$54,000	$108,000
Unpaid Staffing Agency Obligations	$1,200,000	$900,000
Payroll Fees	$26,000	$7,000
Withholding Obligations	$430,000	$0
Reimbursable Expenses	$1,100,000	$1,000,000
Vyaire Incentive Plan	$0	$0
SIOS Incentive Plan	$0	$0
Non-Insider Quarterly Retention Program	$0	$0
Non-Insider Severance Program	$12,000	$27,000
Benefits and Entitlements		
Health Insurance Programs	$777,000	$233,000
Life and AD&D Insurance and Disability	$44,000	$13,000
Workers' Compensation Program	$0	$0
401(k) Obligations	$240,000	$720,000
Other Employee Benefits		
Employee Assistance Program	$1,200	$0
PTO	N/A	N/A
Miscellaneous Benefits	$20,000	$0
Total	**$5,404,200**	**$3,008,000**

21. For the foregoing reasons, I believe that the relief requested in the Wages Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and will enable the Debtors to continue to effectively operate their businesses during these chapter 11 cases.

VI. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Maintain Insurance and Surety Coverage Entered Into Prepetition and Pay Related Prepetition Obligations, and (B) Renew, Supplement, Modify or Purchase Insurance and Surety Coverage, and (II) Granting Related Relief (the "Insurance Motion").

22. ***The Insurance Policies and Related Payment Obligations***. In the ordinary course of business, the Debtors maintain approximately 40 Insurance Policies that are administered by various third-party Insurance Carriers. The Insurance Policies provide coverage for, among other things, the Debtors' product liability, marine cargo liability, property, general liability, employment benefits liability, employment practices liability, earthquake, flood, automobile liability, cyber liability, workers' compensation, umbrella coverage, pollution legal liability, crime, kidnap & ransom, business travel accident, and directors' and officers' liability. The Insurance Policies generally are one year in length, with no affirmative obligation to renew upon expiration. The total annual premiums for the Insurance Policies were approximately $5.1 million in the aggregate for the 2023-24 term, not including applicable deductibles or self-insured retentions.[4] The premiums for the Insurance Policies are financed pursuant to certain payment arrangements with IPFS Corporation (the "Premium Financing Arrangements"). As of the Petition Date, approximately $1.7 million remains outstanding under the Premium Financing Arrangements, with no amount in arears. The Debtors seek authority, but not direction, to pay any

[4] Some of the Insurance Policies require the Debtors to pay a per-incident deductible (collectively, "Deductibles"). Generally, if a claim is made against such Insurance Policies, the applicable Insurance Carrier will administer the claim and make payments in connection therewith in accordance with the terms of such policy, and the Insurance Carrier will have a claim against the Debtors in the amount of the applicable Deductible. Alternatively, certain of the Insurance Policies use self-insured retentions on a per-claim basis (collectively, the "SIRs") instead of Deductibles. If a claim is made under such Insurance Policies, the Debtors must make payments in the first instance (whether related to defense costs or on account of the underlying liability) up to the amount of the SIR and, once the Debtors have made payments to satisfy such amount, the carrier becomes obligated to cover remaining costs in accordance with the terms of such policy. Out of an abundance of caution, the Debtors seek authority, but not direction, to pay all prepetition amounts that may be due and owing on account of the Deductibles and to continue honoring all payment obligations under the Deductibles in the ordinary course of business to ensure uninterrupted coverage thereunder.

prepetition obligations owing on account of the Insurance Policies in the ordinary course of business as they become due to ensure uninterrupted coverage thereunder.

23. I believe that the Debtors' ability to maintain the Insurance Policies, to renew, supplement, and modify the same as needed, and to enter into new insurance policies as needed in the ordinary course of business, is essential to preserving the value of the Debtors' estates. Moreover, in many instances, insurance coverage is required by the statutes, rules, regulations, and contracts that govern the Debtors' commercial activities. Accordingly, the Debtors seek authorization, but not direction, to maintain the Insurance Policies, to pay related prepetition obligations, to renew, supplement, or modify the Insurance Policies as needed, and to enter into new insurance policies in the ordinary course of business.

24. ***The Debtors' Surety Bond Program***. In the ordinary course of business, the Debtors maintain four Surety Bonds, which together provide approximately $700,000 in aggregate coverage for the Debtors' obligations. The Surety Bonds are issued in favor of various federal, state, and industry regulatory agencies to guarantee certain obligations related to various state licenses, permits, and custom duties. The Debtors are required to maintain the Surety Bonds under certain state and federal law in order to lawfully conduct their business and operations in the applicable jurisdictions. As of the Petition Date, the Debtors do not believe that there are any amounts outstanding on account of the Surety Bonds. Nevertheless, out of an abundance of caution, the Debtors seek authority to (a) pay any amounts related to renewal or supplementation of the Surety Bond Program on a postpetition basis, and (b) continue the Surety Bond Program, each in the ordinary course of business, and execute other agreements as needed during the administration of these chapter 11 cases.

25. I believe that continuing the Surety Bond Program is also necessary to maintain the Debtors' operations. As such, failing to provide, maintain, or timely replace the Surety Bonds may prevent the Debtors from lawfully continuing to conduct their business in the applicable state.

26. ***The Debtors' Insurance and Surety Brokers***. The Debtors obtain most of their Insurance Policies and all of their Surety Bonds through Marsh USA Inc. (the "Broker").[5] As of the Petition Date, the Debtors do not believe that they owe any amounts to the Broker on account of Broker Fees. Out of an abundance of caution, however, the Debtors seek authority, but not direction, to pay any prepetition obligations owed to the Broker and to continue to pay the Broker for services rendered in the ordinary course of business to ensure uninterrupted coverage under their Insurance Policies and Surety Bonds.

27. For the foregoing reasons, I believe that the relief requested in the Insurance Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and will enable the Debtors to continue to effectively operate their businesses during these chapter 11 cases.

VII. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Operate the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Business Forms, (D) Continue to Perform Intercompany Transactions, and (II) Granting Related Relief (the "Cash Management Motion").

28. In the ordinary course of business, the Debtors, together with their non-Debtor affiliates, maintain a consolidated cash management system to facilitate the efficient operation of their business. Comparable to the centralized cash management systems used by similarly situated companies, the Cash Management System is used to manage the cash of operating units in a cost-effective manner and ensure the availability of adequate funds at each entity. The Debtors

[5] For the avoidance of doubt, Marsh USA LLC, is the broker for the Debtors' workers' compensation policy, for which relief is requested in the Wages Motion.

use the Cash Management System in the ordinary course of their business to collect, transfer, and disburse funds generated from their operations and to facilitate cash monitoring, forecasting, and reporting.

29. The Cash Management System facilitates the timely and efficient collection, management, and disbursement of funds used in the Debtors' business. The Debtors estimate that cash collections will average approximately $12 million per month for the first three months of these chapter 11 cases, including cash receipts, credit card receipts, wire transfer receipts, and ACH receipts (exclusive of Intercompany Claims). In addition, the Debtors estimate that total disbursements will be approximately $16 million per month for the first three months of these chapter 11 cases (exclusive of Intercompany Claims).

30. The Debtors' accounting and treasury departments manage the Bank Accounts, including the opening, closing, and day-to-day maintenance of the Cash Management System. The accounting and treasury departments implement controls for entering, processing, and releasing funds in the ordinary course of the Debtors' business, including in connection with the intercompany transactions, and performs monthly reconciliations of the Bank Accounts to the Debtors' books and records to ensure that all transfers are accounted for properly. The Debtors have used the Cash Management System without substantial modification for more than five years.

31. The Cash Management System uses integrated systems to help control funds, ensure cash availability for each entity, and reduce administrative expenses by facilitating the movement of funds among multiple entities. Given the economic and operational scale of the Debtors' business, any disruption to the Cash Management System would be materially detrimental to the Debtors' operations to the detriment of their estates and stakeholders.

32. The Cash Management System includes a total of 63 bank accounts, 19 of which are held by Debtors. The Bank Accounts are all held at JPMorgan Chase Bank, N.A. ("JPM") (the "Cash Management Bank"). The bank accounts not owned by the Debtors, all of which are maintained at banks outside of the United States, are used to collect receipts and make disbursements for non-Debtor entity activities.

33. The 19 Bank Accounts are held by the following Debtors:

- 3 Bank Accounts owned by Vyaire Medical, Inc.;
- 3 Bank Accounts owned by Vyaire Medical LLC;
- 2 Bank Accounts owned by Vyaire Medical Receivables LLC;
- 2 Bank Accounts owned by Vyaire Respiratory Diagnostics LLC;
- 2 Bank Account owned by Vyaire Medical Consumables LLC;
- 1 Bank Account owned by Vyaire Medical Payroll LLC;
- 1 Bank Account owned by Vyaire Medical 203, Inc.;
- 1 Bank Account owned by Vyaire Medical 211, Inc.;
- 1 Bank Account owned by Vyaire Finance B.V.;
- 1 Bank Account owned by Breathe US HoldCo, Inc.;
- 1 Bank Account owned by Vyaire TSR Sub, LLC; and
- 1 Bank Account owned by Vyaire Receivables LLC.

34. As of the Petition Date, the Debtors have approximately $1.7 million of cash on hand available in the Bank Accounts. The majority of the Debtors' Bank Accounts are denominated in U.S. dollars (USD), with one Bank Account (ending in 3729) denominated in Euros.

35. I understand that the Cash Management Bank is an Authorized Depository under the U.S. Trustee Guidelines. Likewise, all of the Debtors' Bank Accounts are insured by the FDIC.

36. ***Bank Fees.*** The Debtors pay the Cash Management Bank approximately $25,000 per month in the aggregate on account of fees incurred in connection with the administration of the Cash Management System. Alternatively, the Debtors sometimes carry a balance in the Bank Accounts high enough to have the Bank Fees waived. The Debtors do not

believe that they owe any prepetition amounts on account of Bank Fees as of the Petition Date. The Debtors seek authorization to continue paying any Bank Fees throughout these chapter 11 cases. I believe that absent payment of the Bank Fees, the Cash Management Bank might assert setoff rights against the funds in the Bank Accounts, freeze the Debtor Bank Accounts, and/or refuse to provide banking services to the Debtors.

37. ***Credit Card Program***. As part of the Cash Management System, the Debtors provide certain employees with access to (i) approximately 156 corporate credit cards used for work-related expenses, such as work-related meals, office supplies, work-related lodging, vendor payments, and small, nonrecurring purchases made on behalf of the Debtors; (ii) four purchasing credit cards used for U.S. and international office purchases; and (iii) a virtual credit card that is used globally for the purchase of work-related airline flights. The credit cards held under the Credit Card Program are provided through American Express Company on arms-length terms. In the aggregate, the line of credit under the Credit Card Program totals approximately $800,000. The Debtors pay off outstanding balances monthly, and the Debtors estimate that approximately $95,000 is outstanding on account of the Credit Card Program as of the Petition Date.

38. I believe that the Credit Card Program is an integral part of the Debtors' Cash Management System and that employees' continued use of the Credit Cards for procurement and travel purposes is essential to the continued operation of the Debtors' businesses.

39. ***Business Forms***. As part of the Cash Management System, the Debtors may utilize numerous business forms from time to time in the ordinary course of their business, including letterhead, purchase orders, invoices, and checks. The U.S. Trustee Guidelines require that the Cash Management Bank prints "Debtor in Possession" and the bankruptcy case number on checks issued after the Petition Date. With respect to any checks that are generated electronically after

the Petition Date, the Debtors will update such checks to indicate their status as "Debtor in Possession" and the bankruptcy case numbers. However, out of an abundance of caution, the Debtors request that, to the extent there are any pre-printed checks and other Business Forms, the Court authorizes the Debtors' continued use of all such Business Forms in existence immediately before the Petition Date, without reference to the Debtors' status as debtors in possession to minimize expenses to their estates and avoid confusion on the part of employees, customers, vendors, and suppliers during the pendency of these chapter 11 cases.

40. ***Intercompany Transactions***. In the ordinary course of business, the Debtors regularly engage in routine business relationships with each other and non-Debtor affiliates resulting in intercompany receivables and payables. The Intercompany Transactions are an essential component of the Debtors and their non-Debtor affiliates' complex global operations, and they are crucial for the Debtors' ability to process payroll and payments to third-party vendors, provide enterprise-wide management and support services, and otherwise facilitate operations on a daily basis.

41. The Debtors closely track all fund transfers in their respective accounting systems and can ascertain, trace, and account for all Intercompany Transactions. The Debtors, with the assistance of their advisors, have also put in place monitoring systems to be able to track postpetition intercompany transfers. Further, I understand that the Debtors will continue to track postpetition Intercompany Transactions consistent with historical practice and ensure that any setoff of a postpetition obligation owed to a Debtor against any prepetition obligation owed by a Debtor to a non-Debtor foreign affiliate will not be to the disadvantage of the Debtors.

42. As of the Petition Date, the Debtors estimate that there is approximately $71 million in outstanding net Intercompany Claims owed on account of such reimbursement obligations. The

Debtors estimate that, on a monthly basis, approximately $1 million is transferred from Debtor entities to non-Debtor entities.

43. I believe that the Intercompany Transactions are an essential component of the Debtors' operations and Cash Management System and that any interruption of the Intercompany Transactions would severely disrupt the Debtors' operations and greatly harm the Debtors' estates and their stakeholders.

44. For the foregoing reasons, I believe that the relief requested in the Cash Management Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and will enable the Debtors to continue to effectively operate their businesses during these chapter 11 cases.

VIII. Motion of Debtors Seeking Entry of Interim and Final Orders (I) Authorizing Debtors to Pay Prepetition Claims of Certain Critical Vendors, Foreign Vendors, 503(b)(9) Claimants, and Lien Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief (the "Critical Vendors Motion").

45. Pursuant to the Critical Vendors Motion, the Debtors seek entry of interim and final orders (a) authorizing the Debtors to pay prepetition amounts in the ordinary course of business owing on account of (i) Critical Vendor Claims in an aggregate amount of up to $3,300,000 on an interim basis and $1,400,000 on a final basis, (ii) Foreign Vendor Claims in an aggregate amount of up to $1,300,000 on an interim basis and $500,000 on a final basis, (iii) Lien Claims in an aggregate amount of up to $750,000 on an interim basis and $350,000 on a final basis, and (iv) 503(b)(9) Claims in an aggregate amount of up to $300,000 on an interim basis and $100,000 on a final basis, and (b) granting administrative expense priority status to all Outstanding Orders and authorizing the payment of such obligations in the ordinary course of business.

46. The Debtors' customers require strict specifications for consistency and quality control to meet certain product-specific standards, often promulgated by the U.S. Food and Drug

Administration (the "FDA") and similar state and local governmental agencies. These regulations address, among other things, manufacturing, packing, and transportation standards, delineation of processes and controls for raw materials and other components, and particular defect levels for natural or unavoidable defects in products. Careful assessment of the Debtors' products, including their components and production process, is a vital part of clearing the applicable regulatory and customer requirements. The Debtors have spent considerable time and resources to develop their biomedical products, ensuring that their production process and final products comply with applicable regulations. Any deviation by the Debtors from these standards could put the Debtors in breach of these regulations and impact the Debtors' ability to place their products on the market.

47. Accordingly, to effectuate their business model and ensure the uninterrupted flow of products and services to their customers, the Debtors rely on goods and services provided by approximately 350 vendors. As of the Petition Date, the Debtors estimate that they owe approximately $35,000,000 in aggregate outstanding amounts to all of their vendors on account of goods delivered and/or services rendered prior to the Petition Date.

48. The Debtors rely on the goods and services provided by the Critical Vendors to continue to sell their life-enhancing products and provide services to customers efficiently and in compliance with applicable governmental regulations. The loss of the goods and services provided by the Critical Vendors could result in the Debtors' inability to produce and provide their life-enhancing products and services to customers, which would immediately and irreparably harm the Debtors' business and significantly impair their going-concern viability. Such harm would likely far outweigh the cost of payment of the prepetition claims accrued in the ordinary course of business held by certain Critical Vendors (collectively, the "Critical Vendor Claims"). As part of the Critical Vendor identification process, the Debtors considered numerous factors, including:

(a) whether a vendor is a sole or limited-source or high-volume supplier for goods or services critical to the Debtors' business operations;

(b) whether alternative vendors are available that can provide similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;

(c) whether an agreement exists that permits the Debtors to compel a vendor to continue performing on prepetition terms;

(d) whether certain regulatory frameworks, specifications, or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternative sources;

(e) the degree to which replacement costs (including pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim; and

(f) whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to provide critical goods or services on a postpetition basis.

49. As a multinational company, the Debtors' supply chain includes certain foreign vendors and suppliers (collectively, the "Foreign Vendors") that provide a significant number of materials utilized by the Debtors in all stages of the manufacturing process of their products, including machine parts, filters, and assembly tools. These materials are sourced for their effectiveness and adherence to the Debtors', and their customers', regulatory standards. As of the Petition Date, the Debtors estimate that there is approximately $1,800,000 in aggregate amounts outstanding on account of prepetition goods provided by the Debtors' Foreign Vendors (the "Foreign Vendor Claims").

50. The Debtors believe there is a material risk that the nonpayment of Foreign Vendor Claims could cause a Foreign Vendor to stop shipping goods and supplies to the Debtors on a timely basis and/or completely sever its business relationship with the Debtors. Suppliers and vendors located in foreign countries are often unfamiliar with the chapter 11 process and react skeptically to its debtor protections. Short of severing their relations with the Debtors, nonpayment

of certain Foreign Vendor Claims may also cause Foreign Vendors to take other harmful actions, including delaying shipments of goods. Timely shipment of inventory is critical to the Debtors' business, and the Debtors can ill afford any delays or interruptions of this nature.

51. In the ordinary course of business, the Debtors incur obligations (the "Lien Claims") to various shippers, maintenance workers, and other service providers (collectively, the "Lien Claimants") for the distribution, receipt, and delivery of the Debtors' goods. The Debtors' business depends on the ability to maintain uninterrupted flow of materials, components, goods, and services through their supply chain and distribution network, which relies heavily on shippers and third-party logistics providers. To maintain their operations and efficiently transport products, the Debtors employ an extensive distribution network that utilizes the services of the Lien Claimants. Under the laws of most states, these servicers or carriers will, in certain circumstances, have a lien on the goods in their possession that secures the charges or expenses incurred regarding the transportation of goods or the supply of labor.[6] Thus, if the Lien Claims are not satisfied, the Lien Claimants may refuse to release the Debtors' property, thereby disrupting the Debtors' supply chain and distribution network.

52. The Debtors may have received goods from various vendors within the twenty-day period immediately preceding the Petition Date (collectively, the "503(b)(9) Claimants"), thereby giving rise to prepetition claims under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims"). The Debtors receive large volumes of equipment components and related materials from their vendors on a rolling basis to satisfy their customers' demands.

[6] For example, section 7-307 of the Uniform Commercial Code provides, in pertinent part, that a "carrier has a lien on the goods covered by a bill of lading or on the proceeds thereof in its possession for charges after the date of the carrier's receipt of the goods for storage or transportation (including demurrage and terminal charges) and for expenses necessary for preservation of the goods incident to their transportation or reasonably incurred in their sale pursuant to law." *See* U.C.C. § 7-307(a) (2005).

53. The vast majority of the 503(b)(9) Claimants are also Critical Vendors or Foreign Vendors. The Debtors' relationships with the majority of their vendors and, similarly, with many of the other 503(b)(9) Claimants, are not governed by long-term contracts. Rather, the Debtors obtain goods from such claimants on an order-by-order basis, typically subject to applicable payment terms. As a result, a 503(b)(9) Claimant may refuse to supply new orders if the Debtors do not pay the 503(b)(9) Claims. Such refusal would negatively affect the Debtors' estates, as the Debtors' businesses are dependent on the steady flow of biomedical manufacturing components.

54. Subject to Court approval, the Debtors intend to pay the Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, and Lien Claims only to the extent necessary to preserve their business. To that end, in return for paying such claims either in full or in part, the Debtors propose that they be authorized to require the Critical Vendors, the Foreign Vendors, the 503(b)(9) Claimants, and Lien Claimants, as applicable, to provide favorable trade terms for the postpetition procurement of goods and services.

55. Prior to the Petition Date, and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date. Any such goods delivered and accepted by the Debtors following the Petition Date are referred to herein as the "Outstanding Orders." In the mistaken belief that they would be general unsecured creditors of the Debtors' estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition—potentially disrupting the Debtors' ongoing business operations and requiring the Debtors to expend substantial time and effort in issuing such substitute orders. Because the Outstanding Orders are likely administrative expenses of the Debtors' estates, the Debtors are requesting that the Court confirm the administrative expense

priority of the Outstanding Orders and authorize the Debtors to pay amounts due on account of Outstanding Orders in the ordinary course of business.

56. For the foregoing reasons, I believe that the relief requested in the Critical Vendors Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and will enable the Debtors to continue to effectively operate their businesses during these chapter 11 cases.

IX. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and Fees, and (II) Granting Related Relief (the "Taxes Motion").

57. In the ordinary course of business, the Debtors collect, withhold, and incur: (a) income taxes; (b) franchise taxes; (c) property taxes; (d) sales and use taxes; (e) customs and import duties; and (f) regulatory taxes and fees, as well as other governmental taxes, fees, assessments, interest, penalties, and additions to tax; and (g) fees to various third-party tax services providers (collectively, the "Taxes and Fees"). The Debtors pay or remit, as applicable, the Taxes and Fees to various governmental authorities (each, an "Authority," and collectively, the "Authorities") on a periodic basis (monthly, quarterly, semi-annually, or annually) depending on the nature and incurrence of a particular Tax or Fee and as required by applicable laws and regulations. The Debtors generally, but not exclusively, pay and remit Taxes and Fees through electronic transfers that are processed through their banks and other financial institutions or service providers. From time to time, the Debtors may also receive tax credits for overpayments or refunds with respect to Taxes and Fees. The Debtors generally use these credits in the ordinary course of business to offset against future Taxes and Fees or cause the amount of such credits to be refunded to the Debtors.

58. The Debtors are currently subject to certain Audit investigations and may be subject to future Audits, which may result in additional prepetition Taxes and Fees being assessed against

the Debtors during the pendency of these chapter 11 cases. Such Audits may result in additional prepetition Taxes and Fees being assessed against the Debtors during the pendency of these chapter 11 cases. The Debtors seek authority to pay or remit tax obligations on account of any Assessments as they arise in the ordinary course of the Debtors' business, including as a result of any resolutions of issues addressed in an Audit.

59. The Debtors seek authority to pay and remit all prepetition and postpetition obligations on account of Taxes and Fees, including: (a) Taxes and Fees that accrue or are incurred postpetition; (b) Taxes and Fees that have accrued or were incurred prepetition but were not paid prepetition, or were paid in an amount less than actually owed; (c) payments made by the Debtors prepetition that were lost or otherwise not received in full by any of the Authorities; and (d) Taxes and Fees incurred for prepetition periods that become due and payable after the commencement of these chapter 11 cases, including as a result of Audits. In addition, for the avoidance of doubt, the Debtors seek authority to pay Taxes and Fees for so called "straddle" periods.

60. The Debtors estimate that approximately $2,840,000 in Taxes and Fees are outstanding as of the Petition Date.[7]

61. The Debtors seek authority to undertake certain typical activities related to tax planning, and to pay Taxes and Fees related thereto, including (a) converting Debtor entities from one form to another (*e.g.*, converting an entity from a corporation to a limited liability company) via conversion, merger, or otherwise ("Entity Conversions"); (b) making certain tax elections (including with respect to the tax classification of Debtor entities) ("Entity Classification Elections"); (c) changing the position of Debtor entities within the Debtors' corporate structure

[7] The Debtors cannot predict the amounts of any potential Assessments that may result from Audits, if any. Accordingly, the Debtors' estimate of outstanding Taxes and Fees as of the Petition Date does not include any amounts relating to potential Assessments.

("Entity Movements"); and (d) modifying or resolving intercompany claims and moving assets or liabilities among Debtor entities if doing so will not alter the substantive rights of the Debtors' stakeholders in these chapter 11 cases ("Asset and Liability Movements" and, together with the Entity Conversions, Entity Classification Elections, and Entity Movements, the "Tax Planning Activities"). These Tax Planning Activities are necessary to protect and preserve the Debtors' estate and are critical to their continued and uninterrupted operations. Preventing the Debtors from undertaking the Tax Planning Activities may trigger Authorities' ability to recover amounts owed directly from the Debtors' directors, officers, or employees, thereby distracting such key personnel from the administration of these chapter 11 cases.

62. Any failure by the Debtors to pay the Taxes and Fees could materially disrupt the Debtors' business operations in several ways, including (but not limited to): (a) the Authorities may initiate Audits of the Debtors, which would unnecessarily divert the Debtors' attention from these chapter 11 cases; (b) the Authorities may attempt to suspend the Debtors' operations, file liens, seek to lift the automatic stay, and/or pursue other remedies that will harm the Debtors' estates; and (c) in certain instances, certain of the Debtors' directors and officers could be subject to claims of personal liability, which would likely distract those key individuals from their duties related to the Debtors' chapter 11 cases. Taxes and Fees not paid on the due date as required by law may result in fines and penalties, the accrual of interest, or both. In addition, nonpayment of the Taxes and Fees may give rise to priority claims under section 507(a)(8) of the Bankruptcy Code. The Debtors also collect and hold certain outstanding tax liabilities in trust for the benefit of the applicable Authorities, and these funds may not constitute property of the Debtors' estates. Risking any of these negative outcomes is unnecessary.

63. For the foregoing reasons, I believe that the relief requested in the Taxes Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and will enable the Debtors to continue to effectively operate their business in during these chapter 11 cases.

X. Motion of Debtors for Entry of Interim and Final Orders (I) Authorizing the Debtors to Maintain and Administer Their Existing Customer Programs and Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief (the "Customer Programs Motion").

64. The Debtors historically have provided certain incentives, discounts, and accommodations to their customers to attract and maintain positive customer relationships, the majority of which do not independently entail the expenditure of cash. The Debtors believe that their ability to continue the Customer Programs and to honor any obligations thereunder in the ordinary course of business is necessary to retain their reputation for reliability, comply with their legal obligations, meet competitive market pressures, and ensure customer satisfaction, thereby retaining current customers, attracting new ones, and, ultimately, enhancing revenue and profitability for the benefit of all of the Debtors' stakeholders. In light of the importance of the Customer Programs to the Debtors' businesses, the Debtors request authority to continue to honor obligations related to these programs in the ordinary course of business.

65. In the ordinary course of business, the Debtors provide warranties for their products (the "Product Warranties"). The majority of the Product Warranties are considered assurance-type warranties that are recognized as an expense when the products are sold. The Product Warranties cover defects in material and workmanship for various periods depending on the product from the date of sale to the customer. Currently, the Debtors offer warranties on all products. The majority of ventilation and respiratory diagnostics products have a one-year warranty. Consumables and parts typically have a 90-day warranty. The Debtors record an estimated warranty cost on their

books at the time of sale based upon actual experience, regularly assess the adequacy of these product warranty accruals, and make adjustments as needed.

66. Product Warranties may be expressly or impliedly included in a Customer's contract or purchase order, set forth in a warranty statement or manual delivered with the product, or found on the Debtors' website.

67. Under the Product Warranties, the Debtors repair or replace damaged, defective, or faulty products as a matter of quality control during the normal warranty period regardless of whether an express warranty provision is set forth in a purchase order, contract, or product manual (the "Product Repairs"). The Debtors estimate that Product Repairs typically amount to approximately $100,000 per month. Separately, the Debtors also provide refunds for returns that occur in the ordinary course of business. The Debtors estimate that ordinary course returns amount to an average of approximately $100,000 per month.

68. In addition to the standard Product Warranties, the Debtors also routinely enter into prepaid extended warranty service contracts (the "Service Contracts") with their customers. Service Contracts are normally recorded as contract liabilities and the related revenue is recognized over-time on a straight-line basis, over the duration of the service period.

69. The Debtors believe that maintaining their Product Warranties and honoring Product Repairs and ordinary course returns is essential to maintaining a healthy relationship with their customers and mitigating potential adverse publicity resulting from the bankruptcy filings. As of the Petition Date, the Debtors estimate that approximately $400,000 in ordinary course returns and Product Repairs has been accrued, but not yet expended. The Debtors request that the Court authorize the Debtors to continue the Product Warranties, and honor Product Repairs and

ordinary course returns accrued prepetition, without interruption in the ordinary course of business consistent with past practice.

70. In the ordinary course of business, the Debtors offer certain pricing discounts to their customers. For example, the Debtors have historically offered preferred pricing to customers purchasing through Group Purchasing Organizations (the "GPOs"), historically at rates between 20-35% off the non-discounted price. The Debtors believe that the discounts are in the best interest of the customers, as well as in their own best interests to help to grow the client base and inure to the benefit of the estates. The pricing discounts do not require any cash expenditures from the Debtors. Accordingly, as of the Petition Date, the Debtors believe there are no outstanding prepetition amounts owed on account of the discounts.

71. Pursuant to the agreements between the Debtors and the GPOs, the Debtors offer products available for purchase by individual entities (the "Members of GPOs") or groups of entities designated by the GPOs at negotiated prices. The Debtors typically compensate the GPOs a rebate equal to 3% of all net sales of products sold directly or indirectly to Members of GPOs. As of the Petition Date, the Debtors estimate that approximately $1.3 million in expected GPO rebates have been accrued, but not yet paid or credited to GPOs. Approximately $375,000 of that amount is estimated to be due during the first 21 days of these cases. The Debtors request that the court authorize the Debtors to continue the GPO rebate program and honor GPO rebates accrued prepetition without interruption in the ordinary course of business postpetition consistent with past practice.

72. For the foregoing reasons, I believe that the relief requested in the Customer Programs Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

XI. Motion of Debtors for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Approving the Debtors' Proposed Procedures for Resolving Additional Assurance Requests, (III) Prohibiting Utility Providers from Altering, Refusing or Discontinuing Services, and (IV) Granting Related Relief (the "Utilities Motion").

73. In the ordinary course of their business, the Debtors obtain electricity, gas, telecommunications, cable/television, water, waste management (including sewer and trash), internet, and other similar services (collectively, the "Utility Services") from a number of utility providers or brokers (collectively, the "Utility Providers"). Pursuant to the leases for several of the Debtors' rental properties, certain Utility Services are billed directly to the Debtors' landlords and passed through to the Debtors as part of the Debtors' lease payments in accordance with the applicable lease agreements. The Debtors pay approximately $112,200 each month for Utility Services, calculated as a historical average payment for the 12-month period ended March 31, 2024. I do not anticipate this monthly average will change materially during the initial thirty days following the commencement of these chapter 11 cases. Accordingly, the Debtors estimate that their cost for Utility Services during the next thirty days will be approximately $112,200.

74. The Debtors intend to satisfy postpetition obligations owed to the Utility Providers in a timely manner. Cash held by the Debtors, cash generated in the ordinary course of business, and the Debtors' anticipated access to cash collateral and debtor in possession financing will provide sufficient liquidity to pay the Debtors' Utility Service obligations in accordance with their prepetition practice. To provide additional assurance of payment, the Debtors propose to deposit $56,100 (the "Adequate Assurance Deposit") into a segregated account (the "Adequate Assurance Account") for the benefit of the Utility Providers. The Adequate Assurance Deposit represents an amount equal to approximately one-half of the Debtors' average monthly cost of Utility Services, as of the Petition Date, calculated as a historical average payment for the 12-month period ended March 31, 2024.

75. I submit that the Debtors' proposed Adequate Assurance Procedures will provide a streamlined process for Utility Providers to address potential concerns with respect to the Proposed Adequate Assurance, while allowing the Debtors to continue their operations uninterrupted. Further, I believe that uninterrupted Utility Services are essential to the Debtors' ongoing business operations and, hence, the overall success of these chapter 11 cases. The Debtors' business operations require uninterrupted electricity, telecommunications, internet, heat, water, and other utility services to operate. Specifically, the Debtors must maintain constant communication with their customers to properly serve their needs, which requires a dependable provision of Utility Services. Additionally, the Debtors are a services provider and require workable office space with continued utility services to properly operate their business. Should any Utility Provider refuse or discontinue service, even for a brief period, the Debtors' business operations would be severely disrupted. Such disruption would adversely affect customer goodwill and employee relations, which, in turn, would jeopardize the Debtors' reorganization efforts. Accordingly, it is essential that the Utility Services continue uninterrupted during these chapter 11 cases.

76. For the foregoing reasons, I believe that the relief requested in the Utilities Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest, and will enable the Debtors to continue to effectively operate their businesses during these chapter 11 cases.

XII. Motion of Debtors for Entry of Interim and Final Orders (I) Approving Notification and Hearing Procedures for Certain Transfers of and Declarations of Worthlessness with Respect to Common Stock and (II) Granting Related Relief (the "NOL Motion").

77. The Debtors currently estimate that, as of September 30, 2023, they had approximately $405 million of U.S. federal NOLs and approximately $127 million of 163(j) Carryforwards. The Debtors expect to generate significant additional tax attributes in the current

tax year, including during the pendency of these chapter 11 cases (together with the aforementioned NOLs, 163(j) Carryforwards, and certain other tax attributes, collectively, the "Tax Attributes"). The Tax Attributes are potentially of significant value to the Debtors and their estates because the Tax Attributes may offset U.S. federal taxable income or U.S. federal tax liability in future years, including any taxable income generated by transactions consummated during these chapter 11 cases (including with respect to any taxable disposition of some or all of the Debtors' assets). Accordingly, the value of the Tax Attributes will inure to the benefit of all of the Debtors' stakeholders.

78. Under sections 382 and 383 of the Internal Revenue Code of 1986, as amended, certain transfers of or declarations of worthlessness with respect to Beneficial Ownership of Common Stock prior to the consummation of a chapter 11 plan could cause the termination or limit the use of the Tax Attributes. Further, these Tax Attributes may be necessary to address tax consequences resulting from the implementation of a chapter 11 plan, and, depending upon the structure utilized to consummate a chapter 11 plan, they may provide the potential for material future tax savings (including in post-emergence years). Accordingly, I believe that the implementation of the Procedures is necessary and appropriate to enforce the automatic stay under section 362 of the Bankruptcy Code and to preserve the value of the Tax Attributes for the benefit of the Debtors' estates.

79. To maximize the use of the Tax Attributes and enhance recoveries for the Debtors' stakeholders, the Debtors seek limited relief that will enable them to closely monitor certain transfers of Beneficial Ownership of Common Stock and certain worthless stock deductions with respect to Beneficial Ownership of Common Stock so as to be in a position to act expeditiously to prevent such transfers or worthlessness deductions, if necessary, with the purpose of preserving

the Tax Attributes. By establishing and implementing such Procedures, the Debtors will be in a position to object to "ownership changes" that threaten their ability to preserve the value of their Tax Attributes for the benefit of the estates.

80. For the foregoing reasons, I believe that the relief requested in the NOL Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest.

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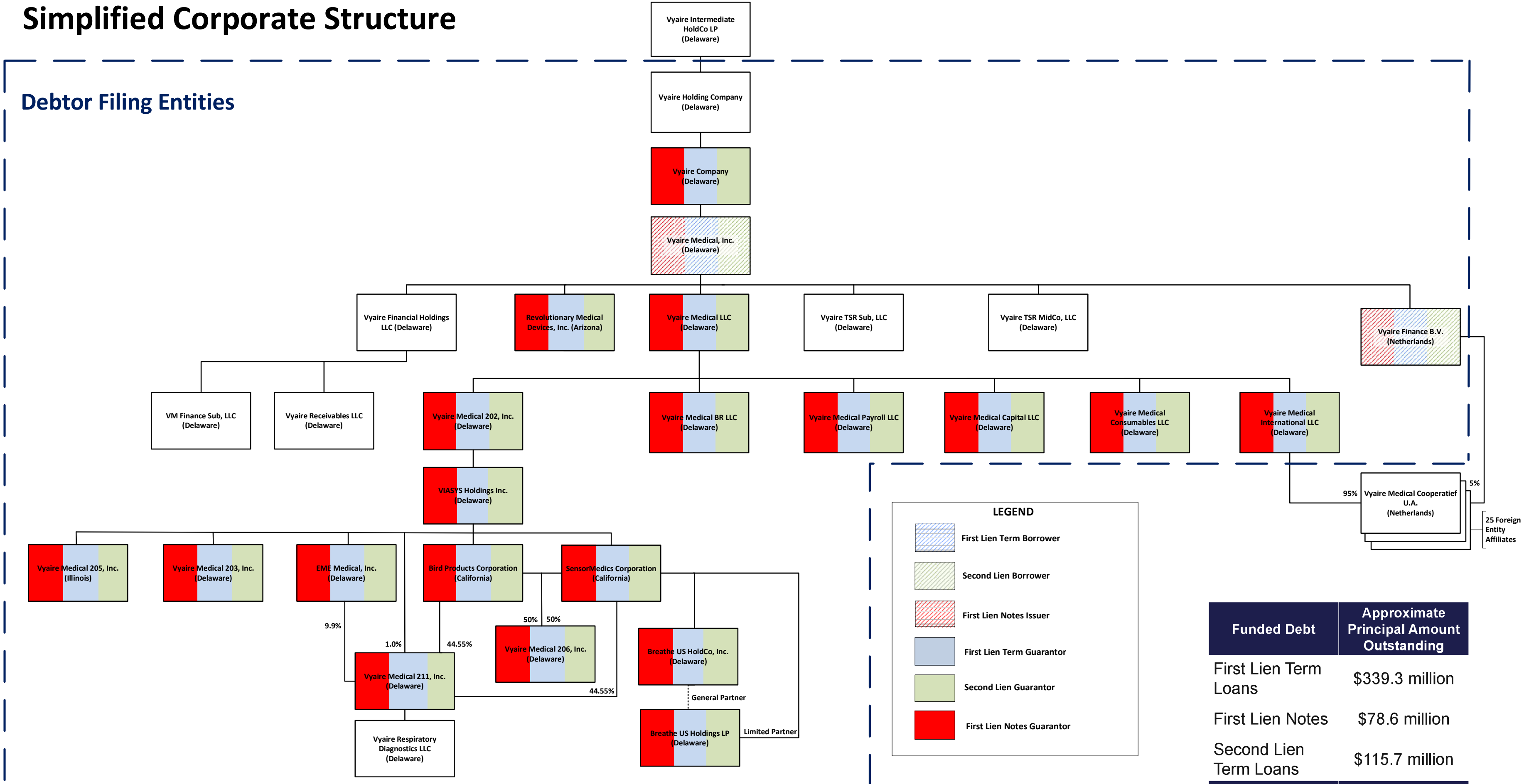
Exhibit B

Corporate Structure Chart

Vyaire Holding Company
Simplified Corporate Structure



Funded Debt	Approximate Principal Amount Outstanding
First Lien Term Loans	$339.3 million
First Lien Notes	$78.6 million
Second Lien Term Loans	$115.7 million
Total Funded Debt Obligations	$533.6 million

Exhibit C

Restructuring Support Agreement

Execution Version

THIS RESTRUCTURING SUPPORT AGREEMENT IS NOT, DOES NOT CONSTITUTE, AND SHALL NOT BE CONSTRUED TO CONSTITUTE, AN OFFER OR ACCEPTANCE WITH RESPECT TO ANY SECURITIES OR A SOLICITATION OF ACCEPTANCES OF A CHAPTER 11 PLAN WITHIN THE MEANING OF SECTION 1125 OF THE BANKRUPTCY CODE. ANY SUCH OFFER OR SOLICITATION WILL COMPLY WITH ALL APPLICABLE SECURITIES LAWS AND/OR PROVISIONS OF THE BANKRUPTCY CODE. NOTHING CONTAINED IN THIS RESTRUCTURING SUPPORT AGREEMENT SHALL BE AN ADMISSION OF FACT OR LIABILITY OR, UNTIL THE OCCURRENCE OF THE AGREEMENT EFFECTIVE DATE ON THE TERMS DESCRIBED HEREIN, DEEMED BINDING ON ANY OF THE PARTIES HERETO.

THIS RESTRUCTURING SUPPORT AGREEMENT IS THE PRODUCT OF SETTLEMENT DISCUSSIONS AMONG THE PARTIES HERETO. ACCORDINGLY, THIS RESTRUCTURING SUPPORT AGREEMENT IS PROTECTED BY RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ANY OTHER APPLICABLE STATUTES OR DOCTRINES PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL SETTLEMENT DISCUSSIONS.

THIS RESTRUCTURING SUPPORT AGREEMENT DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, REPRESENTATIONS, WARRANTIES, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN AND THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS AND THE APPROVAL RIGHTS OF THE PARTIES SET FORTH HEREIN AND IN SUCH DEFINITIVE DOCUMENTS, IN EACH CASE, SUBJECT TO THE TERMS HEREOF.

RESTRUCTURING SUPPORT AGREEMENT

This RESTRUCTURING SUPPORT AGREEMENT (including all exhibits, annexes, and schedules hereto in accordance with Section 14.02, this "**Agreement**") is made and entered into as of June 9, 2024 (the "**Execution Date**"), by and among the following parties (each of the following described in sub-clauses (i) through (vi) of this preamble, collectively, the "**Parties**" and, each, a "**Party**"):[1]

i. Vyaire Holding Company, a company incorporated under the Laws of Delaware ("**Holdings**") and each of its Affiliates listed on **Exhibit A** to this Agreement that have executed and delivered counterpart signature pages to this Agreement to counsel to the Consenting Stakeholders (the Entities in this clause (i), collectively, the "**Company Parties**");

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[1] Capitalized terms used but not defined in the preamble and recitals to this Agreement have the meanings ascribed to them in Section 1.

ii. Vyaire Intermediate HoldCo LP in its capacity as the undersigned holder of Equity Interests that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (the "**Sponsor**");

iii. the undersigned holders (or beneficial holders) of, or nominees, investment advisors, sub-advisors, or managers of discretionary accounts that hold, Existing First Lien Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (collectively, the "**Consenting First Lien Term Lenders**" or the **Consenting First Lien Creditors**); and

v. the undersigned holders (or beneficial holders) of, or nominees, investment advisors, sub-advisors, or managers of discretionary accounts that hold Existing Second Lien Term Loan Claims that have executed and delivered counterpart signature pages to this Agreement, a Joinder, or a Transfer Agreement to counsel to the Company Parties (collectively, the "**Consenting Second Lien Term Lenders**" and, together with the Consenting First Lien Creditors and the Sponsor, the "**Consenting Stakeholders**");

RECITALS

WHEREAS, the Company Parties and the Consenting Stakeholders have in good faith and at arms' length negotiated or been apprised of certain restructuring, and recapitalization transactions, including the Sale Transactions, with respect to the Company Parties' business and capital structure on the terms set forth in this Agreement and as specified in the term sheet attached as **Exhibit B** hereto (including all exhibits, annexes and schedules attached hereto, the "**Restructuring Term Sheet**" and, such transactions as described in this Agreement and the Restructuring Term Sheet to the extent applicable, the "**Restructuring Transactions**");

WHEREAS, the Company Parties intend to implement and consummate the Restructuring Transactions pursuant to the terms and conditions set forth in this Agreement, including through the commencement by the Debtors of voluntary cases under chapter 11 of the Bankruptcy Code in the Bankruptcy Court (the cases commenced, the "**Chapter 11 Cases**"); and

WHEREAS, the Parties have agreed to take certain actions in support of the Restructuring Transactions on the terms and conditions set forth in this Agreement and the Restructuring Term Sheet;

NOW, THEREFORE, in consideration of the covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, each Party, intending to be legally bound hereby, agrees as follows:

AGREEMENT

Section 1. ***Definitions and Interpretation***.

1.01. Definitions. The following terms shall have the following definitions:

"**Ad Hoc Group**" means, collectively, the holders of (or beneficial holders of), or nominees, investment advisors, sub-advisors, or managers of holders of, the Existing First Lien Claims represented by the Ad Hoc Group Advisors.

"**Ad Hoc Group Advisors**" means, collectively, Gibson, Rothschild, and such other professional advisors as are retained by the Ad Hoc Group.

"**Affiliate**" has the meaning set forth in section 101(2) of the Bankruptcy Code as if such entity was a debtor in a case under the Bankruptcy Code.

"**Agent**" means, individually, any administrative agent, collateral agent, or similar entity under the Existing First Lien Credit Agreement or the Existing Second Lien Credit Agreement, as applicable, including any successors thereto.

"**Agreement**" has the meaning set forth in the preamble to this Agreement and, for the avoidance of doubt, includes all the exhibits, annexes, and schedules hereto in accordance with Section 14.02 (including the Restructuring Term Sheet).

"**Agreement Effective Date**" means the date on which the conditions set forth in Section 2 have been satisfied or waived by the appropriate Party or Parties in accordance with this Agreement.

"**Agreement Effective Period**" means, with respect to a Party, the period from the Agreement Effective Date to the Termination Date applicable to that Party.

"**Alternative Restructuring Proposal**" means any written or oral plan, inquiry, proposal, offer, bid, term sheet, discussion, or agreement with respect to a sale, disposition, new-money investment, restructuring, reorganization, merger, amalgamation, acquisition, consolidation, dissolution, debt investment, equity investment, liquidation, asset sale, share issuance, consent solicitation, exchange offer, tender offer, recapitalization, plan of reorganization or liquidation, share exchange, business combination, joint venture, debt incurrence (including, without limitation, any debtor in possession financing or exit financing) or similar transaction involving any one or more Company Parties, or any Affiliates of the Company Parties, or the debt, equity, or other interests in any one or more Company Parties or any Affiliates of the Company Parties that is an alternative to one or more of the Restructuring Transactions.

"**Bankruptcy Code**" means title 11 of the United States Code, 11 U.S.C. §§ 101–1532, as amended.

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

"**Bidding Procedures**" means the procedures governing the sale and marketing process for the Sale Transactions.

"**Bidding Procedures Motion**" means the motion seeking approval of the Bidding Procedures.

"**Bidding Procedures Order**" means the order entered by the Bankruptcy Court approving the Bidding Procedures, which Bidding Procedures Order shall be consistent with this Agreement and the Restructuring Term Sheet.

"**Borrowers**" means Vyaire Medical, Inc., a Delaware corporation and Vyaire Finance B.V., a private limited liability company incorporated under the laws of the Netherlands, collectively.

"**Business Day**" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized to close under the Laws of, or are in fact closed in, the state of New York.

"**Causes of Action**" means any claims, interests, damages, remedies, causes of action, demands, rights, actions, controversies, proceedings, agreements, suits, obligations, liabilities, accounts, defenses, offsets, powers, privileges, licenses, liens, indemnities, guaranties, and franchises of any kind or character whatsoever, whether known or unknown, foreseen or unforeseen, existing or hereinafter arising, contingent or non-contingent, liquidated or unliquidated, secured or unsecured, assertable, directly or derivatively, matured or unmatured, suspected or unsuspected, whether arising before, on, or after any petition date in connection with any Chapter 11 Cases, in contract, tort, law, equity, or otherwise. Causes of Action also include: (a) all rights of setoff, counterclaim, or recoupment and claims under contracts or for breaches of duties imposed by law or in equity; (b) the right to object to or otherwise contest Claims or Equity Interests; (c) claims pursuant to section 362 or chapter 5 of the Bankruptcy Code; (d) such claims and defenses as fraud, mistake, duress, and usury, and any other defenses set forth in section 558 of the Bankruptcy Code; and (e) any avoidance actions arising under chapter 5 of the Bankruptcy Code or under similar local, state, federal, or foreign statutes and common law, including fraudulent transfer laws.

"**Chapter 11 Cases**" has the meaning set forth in the recitals to this Agreement.

"**Claim**" has the meaning ascribed to it in section 101(5) of the Bankruptcy Code.

"**Company Claims/Interests**" means any Claim against, or Equity Interest in, a Company Party, including the Existing First Lien Claims and the Equity Interests.

"**Company Parties**" has the meaning set forth in the preamble to this Agreement.

"**Confidentiality Agreement**" means an executed confidentiality agreement, including with respect to the issuance of a "cleansing letter" or other public disclosure of material non-public information agreement, in connection with any proposed Restructuring Transactions.

"**Confirmation Order**" means the confirmation order with respect to the Plan.

"**Consenting First Lien Creditors**" has the meaning set forth in the preamble to this Agreement.

"**Consenting First Lien Term Lenders**" has the meaning set forth in the preamble to this Agreement.

"**Consenting Second Lien Creditors**" has the meaning set forth in the preamble to this Agreement.

"**Consenting Stakeholders**" has the meaning set forth in the preamble to this Agreement.

"**Debtors**" means the Company Parties that commence the Chapter 11 Cases.

"**Definitive Documents**" means the documents listed in Section 3.01.

"**DIP Agent**" Wilmington Savings Fund Society, FSB (in such capacity, together with its successors and assigns).

"**DIP Credit Agreement**" means that certain Senior Secured Superiority Debtor-in-Possession Credit Agreement, dated on or about June 9, 2024, by and among Holdings, the Borrowers, the lenders from time to time party thereto, and the DIP Agent.

"**DIP Documents**" means collectively, the DIP Credit Agreement, the DIP Orders, and any and all other agreements, documents, and instruments delivered or entered into in connection therewith, including any guarantee agreements, pledge and collateral agreements, intercreditor agreements, and other security documents (including any amendments, restatements, supplements, or modifications of any of the foregoing).

"**DIP Facility**" means a superpriority senior secured multiple draw term loan credit facility comprised of (i) a new money term loan facility available in multiple draws for an aggregate maximum principal amount of $45,000,000 and (ii) a roll-up facility in an aggregate maximum principal amount of $135,000,000, each as set forth in the DIP Documents.

"**DIP Lenders**" means the lenders under the DIP Facility.

"**DIP Loans**" means the loans issued pursuant to the DIP Credit Agreement.

"**DIP Motion**" means the motion filed with the Bankruptcy Court seeking entry of the DIP Orders.

"**DIP Orders**" means the Interim DIP Order and the Final DIP Order.

"**Entity**" shall have the meaning set forth in section 101(15) of the Bankruptcy Code.

"**Equity Interests**" means, collectively, the shares (or any class thereof), common stock, preferred stock, limited liability company interests, and any other equity, ownership, or profits interests of any Company Party, and options, warrants, rights, or other securities or agreements to acquire or subscribe for, or which are convertible into the shares (or any class thereof) of, common stock, preferred stock, limited liability company interests, or other equity, ownership, or profits interests of any Company Party (in each case whether or not arising under or in connection with any employment agreement).

"**Event**" means any event, development, occurrence, circumstance, effect, condition, result, state of facts or change.

"**Execution Date**" has the meaning set forth in the preamble to this Agreement.

"**Existing First Lien Claims**" means any Claim on account of the Existing First Lien Term Loans.

"**Existing First Lien Credit Agreement**" means that certain First Lien Credit Agreement, dated as of April 16, 2018, by and between, among other parties, Holdings, the Borrowers, certain other Company Parties as Guarantors (as defined therein), the First Lien Administrative Agent, and the lenders from time to time party thereto, providing for the Existing First Lien Term Loans, as amended, supplemented, or modified from time to time in accordance with its terms.

"**Existing First Lien Term Loans**" means the term loans issued pursuant to the Existing First Lien Credit Agreement.

"**Existing Second Lien Credit Agreement**" means that certain Second Lien Credit Agreement, dated as of April 16, 2018, by and between, among other parties, Holdings, the Borrowers, certain other Company Parties as Guarantors (as defined therein), the Agent thereunder, and the lenders from time to time party thereto, providing for the Existing Second Lien Term Loans, as amended, supplemented, or modified from time to time in accordance with its terms.

"**Existing Second Lien Term Loan Claims**" means any Claim on account of the Existing Second Lien Term Loans.

"**Existing Second Lien Term Loans**" means the term loans issued pursuant to the Existing Second Lien Credit Agreement.

"**Existing Term Loan Claims**" means any Existing First Lien Term Loan Claim and any Existing Second Lien Term Loan Claim.

"**Final DIP Order**" means the order entered by the Bankruptcy Court approving the DIP Facility on a final basis.

"**First Day Pleadings**" means the first-day and second-day pleadings that the Company Parties determine are necessary or desirable to file.

"**First Lien Administrative Agent**" means Bank of America, N.A., in its capacity as administrative agent under the Existing First Lien Credit Agreement.

"**First Lien Administrative Agent's Advisors**" means, collectively, Haynes Boone and RPA.

"**Gibson Dunn**" means Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc Group.

"**Haynes Boone**" means Haynes and Boone, LLP, as counsel to the First Lien Administrative Agent.

"**Holdings**" has the meaning set forth in the preamble to this Agreement.

"**Interim DIP Order**" means the order entered by the Bankruptcy Court approving the DIP Facility on an interim basis.

"**Joinder**" means a joinder to this Agreement substantially in the form attached hereto as **Exhibit D**.

"**Law**" means any federal, state, local, or foreign law (including common law), statute, code, ordinance, rule, regulation, order, ruling, or judgment, in each case, that is validly adopted, promulgated, issued, or entered by a governmental authority of competent jurisdiction (including the Bankruptcy Court).

"**Material Adverse Change**" means any Event arising after the date hereof and before the earlier of the Plan Effective Date and the date on which this entire Agreement is terminated that individually or in the aggregate with all other Events, that (i) is or would reasonably be expected to be materially adverse to the business, condition (financial or otherwise), properties, assets (tangible or intangible), liabilities (including any contingent liabilities), results or operations of the Company Parties taken as a whole or (ii) prevents or materially and adversely affects the ability of the Company Parties to perform their respective obligations under this Agreement or the other Definitive Documents except, to the extent such Event directly or indirectly results from, arises out of, or is attributable to, the following (either alone or in combination): (a) any changes after the date hereof in applicable Law or GAAP, or in the interpretation or enforcement thereof; (b) any change in currency exchange rates; (c) changes in the market price or trading volume of the claims or equity or debt securities of the Company Parties (but not the underlying Events giving rise to such changes unless such Events are otherwise excluded pursuant to the clauses contained in this definition); (d) any adoption, proposal, implementation or change in applicable laws or any interpretation thereof by any governmental authority; (e) the execution, announcement or performance of this Agreement or the Definitive Documents or the completion of the transactions contemplated thereby, including the Restructuring Transactions; (f) any existing Event with respect to which the Required DIP Lenders have actual knowledge as of the date hereof; (g) any immaterial failure by the Company Parties to meet any internal or published projection for any period (but not the underlying Events giving rise to such failure unless such Events are otherwise excluded pursuant to other clauses contained in this definition); (h) any action taken by the Company Parties which is contemplated in this Agreement or is consented to by Required DIP Lenders, as applicable, including any breach of this Agreement by any Required Consenting Creditors; or (i) any adverse change in or effect on the business of any of the Company Parties that is cured before the earlier of (1) the Plan Effective Date and (2) the date on which this entire Agreement is terminated.

"**Milestones**" means the case milestones set forth in Section 4 of this Agreement.

"**Minimum Bid Requirement**" means the aggregate cash consideration for the Debtors' assets, whether consisting of one bid or a series of bids for some, substantially all, or all of the Debtors' assets that would be payable to the DIP Lenders upon the consummation of the Sale Transactions that is not less than $140 million after taking into account all wind down costs and expenses associated with any wind down budget, all professional fees and expenses accrued and unpaid as of the closing date of the Sale Transactions, including any success or completion fees required to be paid pursuant to the DIP Documents and this Agreement.

"**Parties**" has the meaning set forth in the preamble to this Agreement.

"**Permitted Transferee**" means each transferee of any Company Claims/Equity Interests who meets the requirements of Section 9.01.

"**Petition Date**" means the first date any of the Company Parties commences a Chapter 11 Case.

"**Plan**" means a joint plan of liquidation filed by the Debtors under chapter 11 of the Bankruptcy Code that embodies the Restructuring Transactions to be consistent in all respects with this Agreement.

"**Plan Effective Date**" means, to the extent applicable, the occurrence of the effective date of the Plan according to its terms.

"**Plan Supplement**" means the compilation of documents and forms of documents, schedules, and exhibits to the Plan that may be filed by the Debtors with the Bankruptcy Court.

"**Purchase Agreement**" means one or more purchase agreements pursuant to which the Company Parties will effectuate one or more Sale Transactions.

"**Qualified Marketmaker**" means an entity that (a) holds itself out to the public or the applicable private markets as standing ready in the ordinary course of business to purchase from customers and sell to customers Company Claims/Equity Interests (or enter with customers into long and short positions in Company Claims/Equity Interests), in its capacity as a dealer or market maker in Company Claims/Equity Interests and (b) is, in fact, regularly in the business of making a market in claims against issuers or borrowers (including debt securities or other debt).

"**Required Consenting Creditors**" means, as of the relevant date, Consenting First Lien Creditors holding at least 50.01% of the aggregate outstanding principal amount of Existing First Lien Claims party to this Agreement.

"**Required DIP Lenders**" means, as of the relevant date, DIP Lenders holding at least 66.67% of the aggregate outstanding principal amount of DIP Loans that are held by DIP Lenders that are party to this Agreement. For the avoidance of doubt each DIP Lender shall be party to this Agreement as of the Agreement Effective Date or otherwise exercise a joinder hereto.

"**Restructuring Fees and Expenses**" means the reasonable and documented fees and out-of-pocket costs and expenses of each of the Ad Hoc Group Advisors, which are: (a) in connection with the negotiation, formulation, preparation, execution, delivery, implementation, consummation, and/or enforcement of this Agreement and/or any of the other Definitive Documents, and/or the transactions contemplated hereby or thereby, and/or any amendments, waivers, consents, supplements, or other modifications to any of the foregoing and, to the extent applicable; or (b)(i) consistent with any engagement letters or fee reimbursement letters entered into between the Company Parties, on the one hand, and the applicable Ad Hoc Group Advisors on the other hand, in each case, including any monthly fees, success fees, transaction fees, or similar fees contemplated thereby and earned thereunder, or (ii) provided in the Existing First Lien Credit Agreement; provided that the invoices for such fees and expenses shall be in summary format (with such redactions as may be necessary to maintain attorney-client privilege), and the Ad Hoc Group Advisors shall not be required to provide the Company Parties with attorney or financial advisor time entries; provided further that such Restructuring Fees and Expenses shall only be paid in accordance with the DIP Documents.

"**Restructuring Term Sheet**" has the meaning set forth in the recitals to this Agreement.

"**Restructuring Transactions**" has the meaning set forth in the recitals to this Agreement, and, for the avoidance of doubt, shall include the Sale Transactions.

"**Rothschild**" means Rothschild & Co., as investment banker and financial advisor to the Ad Hoc Group.

"**RPA**" means RPA Advisors, LLC, as financial advisor to the First Lien Administrative Agent.

"**Rules**" means Rule 501(a)(1), (2), (3), and (7) of the Securities Act.

"**Sale Motion**" means the motion seeking approval of one or more Sale Orders.

"**Sale Orders**" means one or more orders of the Bankruptcy Court authorizing the Debtors to enter into one or more Purchase Agreements.

"**Sale Transactions**" means a sale or series of sales of all, substantially all, or a portion of the Company Parties' assets pursuant to sections 363 or 1123 of the Bankruptcy Code.

"**Securities Act**" means the Securities Act of 1933, as amended.

"**Sponsor**" has the meaning set forth in the preamble to this Agreement.

"**Termination Date**" means the date on which termination of this Agreement as to a Party is effective in accordance with Section 12.

"**Termination Event**" means the occurrence of a termination event arising under Section 12.

"**Transfer**" means to sell, resell, reallocate, use, pledge, assign, transfer, hypothecate, participate, donate, or otherwise encumber or dispose of, directly or indirectly (including through derivatives, options, swaps, pledges, forward sales, or other transactions).

"**Transfer Agreement**" means an executed form of the transfer agreement providing, among other things, that a transferee is bound by the terms of this Agreement and substantially in the form attached hereto as **Exhibit C**.

1.02. Interpretation. For purposes of this Agreement:

(a) in the appropriate context, each term, whether stated in the singular or the plural, shall include both the singular and the plural, and pronouns stated in the masculine, feminine, or neuter gender shall include the masculine, feminine, and the neuter gender;

(b) capitalized terms defined only in the plural or singular form shall nonetheless have their defined meanings when used in the opposite form;

(c) unless otherwise specified, any reference herein to a contract, lease, instrument, release, indenture, or other agreement or document being in a particular form or on particular terms and conditions means that such document shall be substantially in such form or substantially on such terms and conditions;

(d) unless otherwise specified, any reference herein to an existing document, schedule, or exhibit shall mean such document, schedule, or exhibit, as it may have been or may be amended, restated, supplemented, or otherwise modified from time to time; provided that any capitalized terms herein which are defined with reference to another agreement, are defined with reference to such other agreement as of the date of this Agreement, without giving effect to any termination of such other agreement or amendments to such capitalized terms in any such other agreement following the date hereof;

(e) unless otherwise specified, all references herein to "Sections" are references to Sections of this Agreement;

(f) the words "herein," "hereof," and "hereto" refer to this Agreement in its entirety rather than to any particular portion of this Agreement;

(g) captions and headings to Sections are inserted for convenience of reference only and are not intended to be a part of or to affect the interpretation of this Agreement;

(h) references to "shareholders," "directors," and/or "officers" shall also include "members" and/or "managers," as applicable, as such terms are defined under the applicable limited liability company Laws;

(i) the use of "include" or "including" is without limitation, whether stated or not; and

(j) the phrase "counsel to the Consenting Stakeholders" refers in this Agreement to each counsel specified in Section 14.10 other than counsel to the Company Parties.

Section 2. ***Effectiveness of this Agreement***. This Agreement shall become effective and binding upon each of the Parties at 12:00 a.m., prevailing Eastern Standard Time, on the Agreement Effective Date, which is the date on which all of the following conditions have been satisfied or waived in accordance with this Agreement:

(a) each of the Company Parties shall have executed and delivered counterpart signature pages of this Agreement to counsel to each of the Parties;

(b) the following shall have executed and delivered counterpart signature pages of this Agreement:

(i) members of the Ad Hoc Group that collectively holds at least 90.41% of the aggregate outstanding principal amount of Existing First Lien Claims;

(iii) the holder of Existing Second Lien Term Loan Claims; and

(iv) the Sponsor.

(c) unless otherwise waived by the Ad Hoc Group Advisors, the Company Parties shall have paid in full any and all Restructuring Fees and Expenses for which an invoice has been received by the Company Parties on or before the date that is two (2) Business Days prior to the Agreement Effective Date (inclusive of any reasonable estimate of Restructuring Fees and Expenses through and including the Agreement Effective Date); and

(d) counsel to the Company Parties shall have given notice to counsel to the Consenting Stakeholders in the manner set forth in Section 14.10 hereof (by email or otherwise) that the other conditions to the Agreement Effective Date set forth in this Section 2 have occurred.

Section 3. ***Definitive Documents***.

3.01. The Definitive Documents governing the Restructuring Transactions shall include the following, to the extent applicable: (a) the DIP Documents; (b) all motions, filings, documents, and agreements related to the Sale Transactions, including without limitation, the Purchase Agreement, the Sale Motion, the Sale Orders, the Bidding Procedures, the Bidding Procedures Motion, and the Bidding Procedures Order; (c) all material pleadings and motions filed by the Company Parties in connection with the Chapter 11 Cases, including the First Day Pleadings and all orders sought pursuant thereto but excluding retention application; and (d) any and all other deeds, agreements, filings, notifications, pleadings, orders, certificates, letters, instruments or other documents reasonably necessary or desirable to consummate and document the transactions contemplated by this Agreement or the Restructuring Transactions (including any exhibits, amendments, modifications, or supplements from time to time). The Definitive Documents governing the Restructuring Transactions shall also include, if applicable, the (a) Plan, (b) the Plan Supplement, (c) any Plan-related documents, and (d) the Confirmation Order in each case consistent with the terms of this Agreement.

3.02. The Definitive Documents not executed or in a form attached to this Agreement as of the Execution Date remain subject to negotiation and completion. Upon completion, the Definitive Documents and every other document, deed, agreement, filing, notification, letter or instrument related to the Restructuring Transactions shall contain terms, conditions, representations, warranties, and covenants consistent with the terms of this Agreement, as they may be modified, amended, or supplemented in accordance with Section 13. Further, the Definitive Documents not executed or in a form attached to this Agreement as of the Execution

Date shall otherwise be in form and substance reasonably acceptable to, and any amendment, modification, supplement or waiver of any Definitive Document shall require the written consent of, the (a) Company Parties, (b) the Required DIP Lenders, (c) the Required Consenting Creditors (solely with respect to any Definitive Document, amendment, modification, supplement or waiver, as applicable, that materially, disproportionately, and adversely affects the economic rights or the releases of the Consenting First Lien Creditors, in each case as provided under this Agreement and the Restructuring Term Sheet), and (d) the Sponsor (solely with respect to any Definitive Document, amendment, modification, supplement or waiver, as applicable, that materially, disproportionately, and adversely affects the rights or releases of the Sponsor, in each case as provided under this Agreement and the Restructuring Term Sheet).

Section 4. ***Milestones.***

4.01. The Company Parties shall implement the Restructuring Transactions in accordance with the following milestones (the "**Milestones**"), unless extended or waived in writing in advance by the DIP Agent at the direction of the Required DIP Lenders; provided that if any such Milestone falls on a date which is not a Business Day, such Milestone shall be automatically extended to the first Business Day thereafter:

(a) No later than June 9, 2024, the Company Parties shall file (i) petitions in the Bankruptcy Court to commence the Chapter 11 Cases and (ii) within 24 hours thereafter file the First Day Pleadings, the DIP Motion, and the Bidding Procedures Motion;

(b) No later than June 12, 2024, the Bankruptcy Court shall have entered the Interim DIP Order;

(c) No later than July 1, 2024, the Debtors shall have (i) designated a stalking horse and (ii) received indications of interest that, individually or in the aggregate, in the good faith estimate of the Debtors and their advisors, with the consent of the Required DIP Lenders, are likely to lead to bids that, individually or in the aggregate, meet the Minimum Bid Requirement as set forth in the Bidding Procedures and the Bidding Procedures Order; provided that if the Debtors do not receive any indications of interest consistent with the foregoing clause, then the Debtors shall terminate the sale process, cancel the auction, and, with the consent of the Required DIP Lenders, wind down their estates pursuant to a Plan in a manner consistent with this Agreement;

(d) No later than July 8, 2024, the Bankruptcy Court shall have entered the Bidding Procedures Order;

(e) No later than July 14, 2024, the Bankruptcy Court shall have entered the Final DIP Order;

(f) No later than July 22, 2024, the Debtors shall have received bids that, individually or in the aggregate, meet the Minimum Bid Requirement as set forth in the Bidding Procedures and the Bidding Procedures Order; provided that if the Debtors do not receive any bids consistent with the foregoing clause, then the Debtors shall terminate the sale process, cancel the auction, and, with the consent of the Required DIP Lenders, wind down their estates pursuant to a Plan in a manner consistent with this Agreement;

(g) No later than July 25, 2024, the auction shall have occurred, if applicable;

(h) No later than July 29, 2024, the Bankruptcy Court shall have entered the Sale Orders, if applicable; and

(i) No later than August 19, 2024, the Debtors shall have consummated the Sale Transactions.

Section 5. ***Commitments of the Consenting Stakeholders***.

5.01. General Commitments, Forbearances, and Waivers.

(a) During the Agreement Effective Period, each Consenting Stakeholder agrees, in respect of all of its Company Claims/Interests, to:

(i) with respect to the Consenting Stakeholders that hold Existing First Lien Claims and/or Second Lien Term Loan Claims give any notice, order, instruction, or direction to the Agent, as applicable, necessary to give effect to the Restructuring Transactions as of the Agreement Effective Date;

(ii) support the Restructuring Transactions on the terms and subject to the conditions of this Agreement and the Restructuring Term Sheet by exercising any powers or rights available to it (including in any board, shareholders', or creditors' meeting or in any process requiring voting or approval to which they are legally entitled to participate) in each case in favor of any matter requiring approval to the extent necessary to implement the Restructuring Transactions;

(iii) use commercially reasonable efforts to oppose any party or person from taking any actions contemplated in Section 5.01(b); provided that no Consenting Stakeholder shall be obligated to incur any out-of-pocket costs or to provide anything in the nature of an indemnity in discharging such obligation;

(iv) use commercially reasonable efforts to (A) cooperate with and assist the Company Parties in obtaining additional support for the Restructuring Transactions from the Company Parties' other stakeholders and (B) coordinate its activities with the other Parties hereto (subject to the terms hereof) in respect of all material matters concerning the implementation and consummation of the Restructuring Transactions; provided that no Consenting Stakeholder shall be obligated to incur any out-of-pocket costs or to provide anything in the nature of an indemnity in discharging such obligation; and

(v) negotiate in good faith and execute and implement the Definitive Documents that are consistent with this Agreement to which it is required to be a party.

(b) During the Agreement Effective Period, each Consenting Stakeholder severally, and not jointly or jointly and severally, agrees, in respect of all of its Company Claims/Interests, that it shall not directly or indirectly:

(i) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(ii) propose, file, support, or vote for any Alternative Restructuring Proposal;

(iii) file any motion, pleading, or other document with the Bankruptcy Court or any other court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement or the Definitive Documents;

(iv) initiate, or have initiated on its behalf, any litigation or proceeding of any kind with respect to the Chapter 11 Cases, this Agreement, or the other Restructuring Transactions contemplated herein against the Company Parties or the other Parties other than to enforce this Agreement or any Definitive Document or as otherwise permitted under this Agreement;

(v) exercise, or direct any other person to exercise, any right or remedy for the enforcement, collection, or recovery of any of Claims against or Equity Interests in the Company Parties other than in accordance with this Agreement and the Definitive Documents; or

(vi) object to, delay, impede, or take any other action to interfere with the Company Parties' ownership and possession of their assets, wherever located, or interfere with the automatic stay arising under section 362 of the Bankruptcy Code; provided that nothing in this Agreement shall limit the right of any Party to exercise any right or remedy provided under this Agreement or any other Definitive Documents.

5.02. Commitments with Respect to Chapter 11 Cases.

(a) During the Agreement Effective Period, subject to the rights set forth in Section 3, decide to pursue the Plan, each Consenting Stakeholder that is entitled to vote to accept or reject the Plan pursuant to its terms severally, and not jointly or jointly and severally, agrees that it shall:

(i) to the extent that it is permitted to vote, vote each of its Company Claims/Interests to accept the Plan by delivering its duly executed and completed ballot accepting the Plan on a timely basis following the commencement of the solicitation of the Plan and its actual receipt of the solicitation materials and the ballot;

(ii) not change, withdraw, amend, or revoke (or cause to be changed, withdrawn, amended, or revoked) any vote or election referred to in clause (i) above; provided that such votes or elections shall be immediately revoked and deemed void *ab initio* upon the occurrence of a Termination Date; and

(iii) support and not object to any of the releases set forth in the Plan, and to the extent it is permitted to elect whether to opt in or opt out of any of the releases set forth in the Plan, elect to opt in and not to opt out of such releases, as applicable, by timely delivering its duly executed and completed ballot(s) indicating such election.

(b) During the Agreement Effective Period, each Consenting Stakeholder, in respect of each of its Company Claims/Interests, severally, and not jointly or jointly and severally, agrees that it will support, and will not directly or indirectly object to, delay, impede, or take any other action to interfere with any motion or other pleading or document filed by a Company Party in the Bankruptcy Court that is consistent with this Agreement.

5.03 Forbearances and Waivers.

(a) Each Consenting Stakeholder, severally, and not jointly or jointly and severally, during the Agreement Effective Period, hereby agrees to forbear from exercising or directing any Entity to exercise remedies on account of, any breach by any Company Party or its Affiliates of, and any default or event of default (howsoever described) under, the Existing First Lien Credit Agreement, the Existing Second Lien Credit Agreement, or any other loan document entered into in connection therewith which shall or may arise as a result of, directly or indirectly:

(i) any of the steps, actions, or transactions expressly required or contemplated by, or expressly undertaken pursuant to this Agreement, the entry into any Definitive Document, or the commencement of the Chapter 11 Cases; or

(ii) failing to make any regularly scheduled payment of principal, amortization or interest, or other amount due under the Existing First Lien Credit Agreement, Existing Second Lien Credit Agreement or any other loan document entered into in connection therewith.

Section 6. Additional Provisions Regarding the Consenting Stakeholders' Commitments. Notwithstanding anything contained in this Agreement, nothing in this Agreement shall: (a) affect the ability of any Consenting Stakeholder to consult with any other Consenting Stakeholder, the Company Parties, or any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee); (b) impair or waive the rights of any Consenting Stakeholder to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions; (c) prevent any Consenting Stakeholder from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement; (d) limit the rights of a Consenting Stakeholder under the Chapter 11 Cases, including appearing as a party in interest in any matter to be adjudicated in order to be heard concerning any matter arising in the Chapter 11 Cases, so long as the exercise of any such right is not inconsistent with such Consenting Stakeholder's obligations hereunder; (e) limit the ability of a Consenting Stakeholder to purchase, sell, or enter into any transactions regarding the Company Claims/Interests, subject to the terms hereof; (f) constitute a waiver or amendment of any term or provision of the Existing First Lien Credit Agreement, Existing Second Lien Credit Agreement, or any intercreditor agreement, except as expressly contemplated in this Agreement or the Definitive Documents; (g) constitute a termination or release of any liens on, or security interests in, any of the assets or properties of the Company Parties that secure the obligations under the Existing First Lien Credit Agreement, Existing Second Lien Credit Agreement; (h) require any Consenting Stakeholder, other than as expressly set forth and agreed to in this Agreement or any other Definitive Document (if any), to (i) incur, assume, become liable in respect of or suffer to exist any expenses, liabilities, or other obligations or (ii) agree to or become bound by any commitments, undertakings, concessions, indemnities, or other arrangements that could result in expenses, liabilities, or other obligations to such Consenting Stakeholder, except with respect to costs and expenses that a Company Party has agreed to reimburse on terms satisfactory to such Consenting Stakeholder or except as contemplated in the Definitive Documents; (i) prevent a Consenting Stakeholder from taking any action that is required to comply with applicable Law; (j) prevent a Consenting Stakeholder from taking any action that is otherwise consistent with this Agreement or the Restructuring Transactions; or (k) affect the ability of any DIP Lender or the DIP Agent to credit bid for some, substantially all, or all of the Debtors' assets pursuant to the Sale Transactions; or (l) if applicable, obligate a Consenting Stakeholder to deliver a vote to support a Plan (or any other Restructuring Transactions) or prohibit a Consenting Stakeholder from withdrawing such vote, in each case, from and after the Termination Date (other than a Termination Date as a result of the occurrence of the Plan Effective Date); provided that upon the withdrawal of any such vote after the Termination Date (other than a Termination Date as a result of the occurrence of the Plan Effective Date), such vote shall be deemed void ab initio and such Consenting Stakeholder shall have the opportunity to change its vote; or (l) require any Consenting Stakeholder to take any action which is prohibited by applicable Law or to waive or forego the benefit of any applicable legal professional privilege.

Section 7. ***Commitments of the Company Parties*.**

7.01. Affirmative Commitments. Except as set forth in Section 8, during the Agreement Effective Period, the Company Parties agree to:

(a) support and take all steps reasonably necessary and desirable to consummate the Restructuring Transactions in accordance with this Agreement;

(b) to the extent any legal or structural impediment arises that would prevent, hinder, or delay the consummation of the Restructuring Transactions contemplated herein, take all steps reasonably necessary and desirable to address any such impediment in consultation with the Required DIP Lenders;

(c) use commercially reasonable efforts to obtain any and all required regulatory and/or third-party approvals for the Restructuring Transactions in consultation with the Required DIP Lenders;

(d) negotiate in good faith and use commercially reasonable efforts to execute and deliver the Definitive Documents and any other required agreements to effectuate and consummate the Restructuring Transactions as contemplated by this Agreement;

(e) use commercially reasonable efforts to seek additional support for the Restructuring Transactions from other material stakeholders (if any) to the extent reasonably prudent;

(f) provide counsel for the Required DIP Lenders and the Sponsor a reasonable opportunity to review draft copies of all Definitive Documents, including, but not limited to, all material motions or pleadings, and First Day Pleadings;

(g) continue ordinary course practices to maintain their good standing under the Laws of the state or other jurisdiction in which they are incorporated or organized, except to the extent that any failure to maintain such Company Party's good standing arises solely from the filing of the Chapter 11 Cases;

(h) except as otherwise expressly set forth in this Agreement, operate their businesses and operations in the ordinary course in a manner that is consistent with its past practices and this

Agreement but taking into consideration the effects of the chapter 11 proceedings, and use commercially reasonable efforts to preserve intact the Company Parties' business organization and relationships with third parties (including, without limitation, suppliers, customers, and governmental and regulatory authorities and employees) consistent with this Agreement and the Restructuring Transactions, and to the extent reasonably practicable, timely consult with and provide prior notice and updates to, the Ad Hoc Group Advisors with respect to any material development in connection with any Company Party, including, without limitation, businesses, operations (including, without limitation, material changes to the cash management system, employee benefit programs, and insurance and surety programs), material expenditures (including, without limitation, any payments on account of critical vendors and customer programs as well as increased funding obligations of non-Debtor affiliates to the extent not provided for in the Approved Budget (as defined in the DIP Orders)), and relationships with material third parties (including, without limitation, co-owners, vendors, and customers);

(i) promptly inform counsel to the Sponsor, counsel to the Ad Hoc Group, and counsel to the First Lien Administrative Agent in writing (email being sufficient) as soon as reasonably practicable after becoming aware (and in any event within two (2) Business Days of such actual knowledge) of: (i) the occurrence, or failure to occur, of any event, including a breach of this Agreement by any Party, that (a) would permit any Party to terminate this Agreement or that would result in the termination of this Agreement and (b) is known by a Company Party aware of such event to permit a Party to terminate this Agreement or would result in the termination of this Agreement; (ii) any matter or circumstance that is, or is reasonably likely to be, a material impediment to the implementation or consummation of the Restructuring Transactions; or (iii) the commencement of any insolvency proceeding, excluding the Chapter 11 Cases, or material (in respect of the Company Parties collectively) (a) lawsuit, (b) investigation, (c) hearing (at which one or more of the Company Parties has been summoned to appear) in each case excluding the, and matters arising out of or related to the, Chapter 11 Cases, or (d) enforcement action from or by any person or entity in respect of any Company Party;

(j) after the Agreement Effective Date, timely pay in full and in cash all Restructuring Fees and Expenses when properly incurred and invoiced in accordance with the relevant engagement letters and/or fee arrangements, and continue to pay such amounts as they come due, and otherwise in accordance with the applicable engagement letters and/or fee arrangements of the Ad Hoc Group Advisors (and not terminate such engagement letters and/or fee arrangements or seek to reject them in the Chapter 11 Cases, except for any fraud, willful misconduct, or gross negligence as determined by a final order by a court of competent jurisdiction, which may include the Bankruptcy Court); provided that in the event a Termination Date occurs with respect to the Company Parties, the Company Parties shall remain obligated to pay all Restructuring Fees and Expenses of any non-breaching Party accrued and unpaid as of such Termination Date, in each case subject to and in accordance with the terms of the DIP Orders;

(k) oppose and if necessary object to the efforts of any person seeking to object to, delay, impede, or take any other action to interfere with the implementation or consummation of the Restructuring Transactions (including, if applicable, the Debtors' timely filing of objections or written responses in the Chapter 11 Cases) to the extent such opposition or objection is reasonably necessary to facilitate implementation of the Restructuring Transactions in consultation with the Required DIP Lenders; and

(l) upon reasonable advance notice and to the extent the subject matter of each such request is related to the Restructuring Transactions, use, and cause its agents to use, commercially reasonable efforts to provide the Ad Hoc Group Advisors with reasonable access to, during regular business hours: (i) the non-privileged, non-confidential books, work papers, records, and materials of any Company Party; (ii) the senior management and advisors of any Company Party; and (iii) timely responses to all other reasonable diligence requests provided by the Ad Hoc Group Advisors.

7.02. Negative Commitments. Except as set forth in Section 8, during the Agreement Effective Period, each of the Company Parties shall not directly or indirectly:

(a) object to, delay, impede, or take any other action to interfere with acceptance, implementation, or consummation of the Restructuring Transactions;

(b) take any action, or encourage any other person of entity to take any action, that is inconsistent in any material respect with, or is intended to frustrate or impede approval, implementation, and consummation of the Restructuring Transactions described in this Agreement or any Definitive Document;

(c) execute, deliver, and/or file with the Bankruptcy Court any agreement, instrument, motion, pleading, order, form, or other document that is to be utilized to implement or effectuate, or that otherwise relates to, this Agreement and/or the Restructuring Transactions that, in whole or in part, is materially inconsistent with this Agreement or is otherwise not in form and substance acceptable in accordance with the terms set forth in this Agreement, or if applicable, file any pleading with the Bankruptcy Court seeking authorization to accomplish or effect any of the foregoing; or (ii) waive, amend, or modify any of the Definitive Documents, or, if applicable, file with the Bankruptcy Court a pleading seeking to waive, amend, or modify any term or condition of any of the Definitive Documents, which waiver, amendment, modification, or filing contains any provision that is materially inconsistent with this Agreement (including the Restructuring Term Sheet) or is otherwise not in form and substance acceptable in accordance with the terms set forth in this Agreement;

(e) seek to modify the Definitive Documents, in whole or part, in a manner that is not consistent with this Agreement and the Restructuring Term Sheet in all material respects;

(f) file any motion, pleading, or Definitive Documents with any court (including any modifications or amendments thereof) that, in whole or in part, is not materially consistent with this Agreement, the Restructuring Term Sheet, or is otherwise not in form and substance acceptable in accordance with terms set forth in Section 3;

(g) without the prior written consent of the Required DIP Lenders, with respect to any employee or director qualifying as an insider under the Bankruptcy Code, (i) enter into or amend, establish, adopt, restate, supplement, or otherwise modify or accelerate (A) any deferred compensation, incentive, success, retention, bonus, or other compensatory arrangements, programs, practices, plans, or agreements, including, without limitation, offer letters, employment agreements, consulting agreements, severance arrangements, or change in control arrangements with or for the benefit of any employee, or (B) any contracts, arrangements, or commitments that entitle any current or former director, officer, employee, manager, or agent to indemnification from the Company Parties, or (ii) amend or terminate any existing compensation or benefit plans or arrangements (including employment agreements);

(h) grant, agree to grant, or make any payment on account of (including pursuant to a key employee retention plan, key employee incentive plan, or other similar arrangement) any additional or any increase in the wages, salary, bonus, commissions, retirement benefits, pension, severance, or other compensation or benefits of any employee or director qualifying as an insider under the Bankruptcy Code in each case, outside of the ordinary course of business and inconsistent with past practice, without the prior written consent of the Required DIP Lenders;

(i) commence any proceeding or other action that challenges (A) the amount, validity, allowance, character, enforceability, or priority of any Company Claims/Interests of any of the Consenting First Lien Creditors, or (B) the validity, enforceability, or perfection of any lien or other encumbrance securing (or purporting to secure) any Company Claims/Interests of any of the Consenting First Lien Creditors; (ii) otherwise seek to restrict any rights of any of the Consenting First Lien Creditors or the Sponsor; or (iii) support any person in connection with any of the acts described the foregoing clauses;

(j) without the prior written consent of the Required DIP Lenders, enter into any contract with respect to debtor-in-possession financing, cash collateral usage, exit financing, and/or other financing arrangements;

(k) amend or change, or propose to amend or change, in any material way, any of their respective existing organizational documents without the prior written consent of the Required DIP Lenders;

(l) (i) authorize, create, issue, sell, or grant any additional Equity Interests, or (ii) reclassify, recapitalize, redeem, purchase, acquire, declare any distribution on, or make any distribution on any Equity Interests, in each case without the prior written consent of the Required DIP Lenders;

(m) sell any assets (including, without limitation, any intellectual property) in a transaction or a series of transaction, other than pursuant to the Sale Transactions or in connection with ordinary course sale of inventory and product, having a fair market value of $1 million or greater without the prior written consent of the Required DIP Lenders;

(n) except in accordance with the Restructuring Transactions or in the ordinary course of business and consistent with past practice, incur any indebtedness other than trade indebtedness or guarantee any indebtedness of another entity (other than a Company Party solely for intercompany transactions; provided that such intercompany transactions shall be subject to the terms of the DIP Documents and the Bankruptcy Court's interim and final orders approving the Debtors' cash management motion) involving amounts greater than $1 million in principal amount in the aggregate across all such transactions without the prior written consent of the Required DIP Lenders;

(o) except in the ordinary course of business and consistent with past practice, terminate or release (i) any obligors or guarantors of their obligations under the Existing First Lien

Credit Agreement or (ii) any of the liens on, security interests in, or guarantees of any of the assets of the Company Parties that secure the obligations under the Existing First Lien Credit Agreement, in each case without the prior written consent of the Required Consenting Creditors, as applicable; and

(p) except for any actions related to implementation of the Restructuring Transactions or Sale Transactions, assume, reject, terminate, settle, or renegotiate any material contract (including any material executory contracts and unexpired leases), in each case without the prior written consent of the Required DIP Lenders, other than in the ordinary course of business consistent with past practice.

Section 8. ***Additional Provisions Regarding Company Parties' Commitments***.

8.01. Notwithstanding anything to the contrary in this Agreement, nothing in this Agreement shall require a Company Party or the board of directors, board of managers, or similar governing body of a Company Party, after consulting with counsel, to take any action or to refrain from taking any action with respect to the Restructuring Transactions to the extent taking or failing to take such action would be inconsistent with applicable Law or its fiduciary obligations under applicable Law, and any such action or inaction pursuant to this Section 8.01 shall not be deemed to constitute a breach of this Agreement. To the extent such action or inaction by a Company Party is inconsistent with this Agreement, including but not limited to a determination to pursue an Alternative Restructuring Proposal, and solely to the extent disclosing such information is not subject to any attorney-client privilege, such Company Party shall provide the Ad Hoc Group and the First Lien Administrative Agent prompt written notice (email between counsel sufficient) of such determination or breach within twenty-four (24) hours of making such determination. For the avoidance of doubt, this Section 8.01 shall not impede any Party's termination or other rights provided hereunder.

8.02. Notwithstanding anything to the contrary in this Agreement (but subject to Section 8.01), each Company Party and its respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the rights to: (a) consider, respond to, and facilitate Alternative Restructuring Proposals; (b) provide access to non-public information concerning any Company Party to any Entity or enter into Confidentiality Agreements or nondisclosure agreements with any Entity; (c) maintain or continue discussions or negotiations with respect to Alternative Restructuring Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiation of Alternative Restructuring Proposals; and (e) enter into or continue discussions or negotiations with holders of Claims against or Equity Interests in a Company Party (including any Consenting Stakeholder), any other party in interest in the Chapter 11 Cases (including any official committee and the United States Trustee), or any other Entity regarding the Restructuring Transactions or Alternative Restructuring Proposal. If a Company Party receives any Alternative Restructuring Proposal, then such Company Party shall: (i) promptly (within 24 hours) provide counsel to the Ad Hoc Group and the First Lien Administrative Agent with a copy of such proposal (and, in the case of a verbal proposal, a written summary thereof); (ii) provide counsel to the Ad Hoc Group and the First Lien Administrative Agent with reasonable updates as to the status and progress of such Alternative Restructuring Proposal; and (iii) reasonably promptly respond to reasonable information requests and questions from counsel to the Ad Hoc Group and First Lien Administrative Agent relating to such Alternative Restructuring Proposal, in each case solely to the extent disclosing such information is not subject to any attorney-client privilege.

8.03. Nothing in this Agreement shall: (a) impair or waive the rights of any Company Party to assert or raise any objection permitted under this Agreement in connection with the Restructuring Transactions; or (b) prevent any Company Party from enforcing this Agreement or contesting whether any matter, fact, or thing is a breach of, or is inconsistent with, this Agreement.

Section 9. ***Transfer of Equity Interests and Securities***.

9.01. During the Agreement Effective Period, no Consenting Stakeholder shall Transfer any ownership (including any beneficial ownership as defined in the Rule 13d-3 under the Securities Exchange Act of 1934, as amended) in any Company Claims/Interests to any affiliated or unaffiliated party, including any party in which it may hold a direct or indirect beneficial interest, unless:

(a) in the case of any Company Claims/Interests, the authorized transferee is either (1) a qualified institutional buyer as defined in Rule 144A of the Securities Act, (2) a non-U.S. person in an offshore transaction as defined under Regulation S under the Securities Act, (3) an institutional accredited investor (as defined in the Rules), or (4) a Consenting Stakeholder; and

(b) either (i) the transferee executes and delivers to counsel to the Company Parties, at or before the time of the proposed Transfer, a Transfer Agreement or (ii) the transferee is a Consenting Stakeholder and the transferee provides notice of such Transfer (including the amount and type of Company Claim / Interests Transferred) to counsel to the Company Parties, the Ad Hoc Group Advisors, and the First Lien Administrative Agent's Advisors at or before the time of the proposed Transfer; and

(c) such Transfer does not violate the terms of any order entered by the Bankruptcy Court with respect to preservation of tax attributes.

9.02. Upon compliance with the requirements of Section 9.01, the transferor shall be deemed to relinquish its rights (and be released from its obligations) under this Agreement to the extent of the rights and obligations in respect of such transferred Company Claims/Interests. Any Transfer in violation of Section 9.01 shall be void *ab initio*.

9.03. This Agreement shall in no way be construed to preclude the Consenting Stakeholders from acquiring additional Company Claims/Interests; provided, however, that (a) such additional Company Claims/Interests shall automatically and immediately upon acquisition by a Consenting Stakeholder be deemed subject to the terms of this Agreement (regardless of when or whether notice of such acquisition is given to counsel to the Company Parties or counsel to the Consenting Stakeholders) and (b) such Consenting Stakeholder must provide notice of such acquisition (including the amount and type of Company Claim/Interests acquired) to counsel to the Company Parties, the Ad Hoc Group Advisors, and the First Lien Administrative Agent's Advisors within five (5) Business Days of such acquisition.

9.04. This Section 9 shall not impose any obligation on any Company Party to issue any "cleansing letter" or otherwise publicly disclose information for the purpose of enabling a

Consenting Stakeholder to Transfer any of its Company Claims/Interests. Notwithstanding anything to the contrary herein, to the extent a Company Party and another Party have entered into a Confidentiality Agreement, the terms of such Confidentiality Agreement shall continue to apply and remain in full force and effect according to its terms, and this Agreement does not supersede any rights or obligations otherwise arising under such Confidentiality Agreements.

9.05. Notwithstanding Section 9.01, a Qualified Marketmaker that acquires any Company Claims/Interests with the purpose and intent of acting as a Qualified Marketmaker for such Company Claims/Interests shall not be required to execute and deliver a Transfer Agreement in respect of such Company Claims/Interests if (i) such Qualified Marketmaker subsequently transfers such Company Claims/Interests (by purchase, sale assignment, participation, or otherwise) within five (5) Business Days of its acquisition to a transferee that is an entity that is not an affiliate, affiliated fund, or affiliated entity with a common investment advisor; (ii) the transferee otherwise is a Permitted Transferee under Section 9.01; and (iii) the Transfer otherwise is a permitted Transfer under Section 9.01. To the extent that a Consenting Stakeholder is acting in its capacity as a Qualified Marketmaker, it may Transfer (by purchase, sale, assignment, participation, or otherwise) any right, title or interests in Company Claims/Interests that the Qualified Marketmaker acquires from a holder of the Company Claims/Interests who is not a Consenting Stakeholder without the requirement that the transferee be a Permitted Transferee.

9.06. Notwithstanding anything to the contrary in this Section 9, the restrictions on Transfer set forth in this Section 9 shall not apply to (i) the grant of any liens or encumbrances on any claims and interests in favor of a bank or broker-dealer holding custody of such claims and interests in the ordinary course of business and which lien or encumbrance is released upon the Transfer of such claims and interests or (ii) the grant of any liens or encumbrances in favor of any lender, noteholder, agent or trustee to secure obligations under indebtedness issued or held by a managed fund or account, including any collateralized loan obligation or collateralized debt obligation.

9.07. Additional Consenting Stakeholders. Any holder of Claims that is not a party to this Agreement as of the Agreement Effective Date may, at any time after the Agreement Effective Date but prior to the Petition Date, become a Consenting Stakeholder by executing a Joinder, pursuant to which such Consenting Stakeholder shall be bound by the terms of this Agreement.

9.08 From the Agreement Effective Date until the Termination Date: the Sponsor shall not (a) claim any worthless stock deduction for U.S. federal income tax purposes with respect to the Equity Interests of Holdings or its subsidiaries for any tax period ending prior to the Termination Date, nor (b) acquire or pledge, encumber, assign, sell, or otherwise Transfer, offer, or contract to pledge, encumber, assign, sell, or otherwise Transfer, in whole or in part, directly or indirectly (including, for the avoidance of doubt, constructively owned Equity Interests based on the application of Section 382(l)(3) of the Internal Revenue Code), any portion of its right, title, or interests in any of its Equity Interests, or any other interest treated as equity for U.S. federal income tax purposes, to the extent such acquisition or Transfer (including any such pledge, encumbrance, assignment, sale, or other transaction or event) could result in an "ownership change" of Holdings or its subsidiaries for purposes of Section 382 of the Internal Revenue Code of 1986, as amended.

Section 10. ***Representations and Warranties of Consenting Stakeholders***. Each Consenting

Stakeholder severally, and not jointly, represents and warrants that, as of the date such Consenting Stakeholder executes and delivers this Agreement and as of the Agreement Effective Date:

(a) it is the beneficial or record owner (which shall be deemed to include any unsettled trades) of the face amount of the Company Claims/Interests or is the nominee, investment manager, or advisor for beneficial holders of the Company Claims/Interests reflected in, and, having made reasonable inquiry, is not the beneficial or record owner of any Company Claims/Interests other than those reflected in, such Consenting Stakeholder's signature page to this Agreement (including a Joinder hereto) or a Transfer Agreement, as applicable (as may be updated pursuant to Section 9);

(b) it has the full power and authority to act on behalf of, vote and consent to matters concerning, such Company Claims/Interests;

(c) such Company Claims/Interests are free and clear of any pledge, lien, security interest, charge, claim, equity, option, proxy, voting restriction, right of first refusal, or other limitation on disposition, transfer, or encumbrances of any kind, that would materially and adversely affect in any way such Consenting Stakeholder's ability to perform any of its obligations under this Agreement at the time such obligations are required to be performed;

(d) it has the full power to vote, approve changes to, and transfer all of its Company Claims/Interests referable to it as contemplated by this Agreement subject to applicable Law; and

(e) solely with respect to holders of Company Claims/Interests, (i) it is either (A) a qualified institutional buyer as defined in Rule 144A of the Securities Act, (B) not a U.S. person (as defined in Regulation S of the Securities Act), or (C) an institutional accredited investor (as defined in the Rules), and (ii) any securities acquired by the Consenting Stakeholder in connection with the Restructuring Transactions will have been acquired for investment and not with a view to distribution or resale in violation of the Securities Act;

Section 11. ***Mutual Representations, Warranties, and Covenants***. Each of the Parties represents, warrants, and covenants to each other Party, as of the date such Party executed and delivers this Agreement, a Joinder, or a Transfer Agreement, as applicable, on the Agreement Effective Date:

(a) it is validly existing and in good standing under the Laws of the state of its organization, and this Agreement is a legal, valid, and binding obligation of such Party, enforceable against it in accordance with its terms, except as enforcement may be limited by applicable Laws relating to or limiting creditors' rights generally or by equitable principles relating to enforceability;

(b) except as expressly provided in this Agreement, any Definitive Documents, and the Bankruptcy Code, no consent or approval is required by any other person or entity in order for it to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement;

(c) the entry into and performance by it of, and the transactions contemplated by, this Agreement do not, and will not, conflict in any material respect with any Law or regulation applicable to it or with any of its articles of association, memorandum of association or other constitutional documents;

(d) except as expressly provided in this Agreement, it has (or will have, at the relevant time) all requisite corporate or other power and authority to enter into, execute, and deliver this Agreement and to effectuate the Restructuring Transactions contemplated by, and perform its respective obligations under, this Agreement; and

(e) except as expressly provided by this Agreement, it is not party to any restructuring or similar agreements or arrangements with the other Parties to this Agreement that have not been disclosed to all Parties to this Agreement.

Section 12. ***Termination Events***.

12.01. Certain Consenting First Lien Creditor Termination Events. This Agreement may be terminated solely with respect to the Consenting First Lien Creditors, by the Required Consenting Creditors, in each case, by the delivery to the Company Parties of a written notice in accordance with Section 14.10 hereof upon the occurrence of the following events:

(a) the breach in any material respect by a Company Party or other Consenting Stakeholder of any of the representations, warranties, or covenants of the Company Parties or other Consenting Stakeholder, as applicable, set forth in this Agreement that (i) is adverse to such applicable Consenting First Lien Creditor seeking termination pursuant to this provision and (ii) remains uncured for five (5) Business Days after such terminating Consenting First Lien Creditor transmits a written notice in accordance with Section 14.10 hereof detailing any such breach;

(b) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for fifteen (15) Business Days after such terminating Consenting First Lien Creditor, as applicable, transmits a written notice in accordance with Section 14.10 hereof detailing any such issuance; provided, that this termination right may not be exercised by any Party that sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement;

(c) any Company Party: (i) publicly announces, or announces in writing, to any of the Consenting Stakeholders, or other holders of Company Claims/Interests (other than another Company Party), its intention not to support or pursue the Restructuring Transactions (including but not limited to Section 8.01 hereof); (ii) exercises any right pursuant to Section 8.01 that constitutes a material breach pursuant to this Agreement that remains uncured (to the extent curable) for five (5) Business Days after the Company Party transmits a written notice in accordance with Section 14.10 hereof indicating such determination; and (iii) breaches any of the covenants, agreements, or obligations set forth in Section 8.02;

(d) the termination of this Agreement by the Required Consenting Creditors, the Sponsor, or the Company Parties;

(e) the failure to achieve any Milestone (after giving effect to any extension or waiver in accordance with the terms of this Agreement);

(f) any Definitive Document does not comply with Section 3 of this Agreement;

(g) any Company Party, without the consent of the Required Consenting DIP Lenders (i) commences a voluntary case under chapter 11 of the Bankruptcy Code other than as provided for under this Agreement, (ii) consents to the appointment of, or taking possession by, a receiver, liquidator, assignee, custodian, trustee, or sequestrator (or similar official) of any Company Party or the property or assets of any Company Party, (iii) seeks any arrangement, adjustment, protection, or relief of its debtors, (iv) makes any general assignment for the benefit of its creditors, or (v) the commencement of an involuntary case against any Company Party or the filing of an involuntary petition or application seeking bankruptcy, insolvency, winding up, dissolution, liquidation, administration, moratorium, reorganization, corporate reorganization, any stay of enforcement and/or proceedings, or other relief in respect of any Company Party, or their debts, or of a substantial part of their assets, under any federal, state, provincial, or other foreign bankruptcy, insolvency, corporate restructuring, administrative receivership, or similar law now or hereafter in effect (provided that such involuntary proceeding is not dismissed within a period of thirty (30) days after the filing thereof) or if any court grants the relief sought in such involuntary proceeding, provided, that, this termination right may not be exercised by any Consenting First Lien Creditor if such Consenting First Lien Creditor commenced, filed, or supported such case or proceeding;

(h) any default under the DIP Documents that remains uncured pursuant to the terms thereof;

(i) the failure of the Company Parties to pay all reasonable and documented professional fees of the Ad Hoc Group Advisors, as and when required, subject to and in accordance with the terms of the DIP orders;

(j) any Material Adverse Change shall have occurred that remains uncured for ten (10) Business Days after the date such terminating Consenting First Lien Creditor transmits a written notice in accordance with Section 14.10; or

(k) any modification of the Bidding Procedures without the consent of the Required DIP Lenders or any Company Party's failure to comply with the terms and conditions of the Bidding Procedures.

12.02. Company Party Termination Events. Any Company Party may terminate this Agreement as to all Parties upon prior written notice to all Parties in accordance with Section 14.10 hereof upon the occurrence of any of the following events:

(a) the breach in any material respect by one or more of the Consenting Stakeholders of any provision set forth in this Agreement that remains uncured for five (5) Business Days after such terminating Company Parties transmit a written notice in accordance with Section 14.10 hereof detailing any such breach; provided that such termination shall only be effective as against the breaching Consenting First Lien Creditor so long as the non-breaching Consenting First Lien Creditors continue to hold or control at least 50.01% of the aggregate outstanding principal amount of the Existing First Lien Claims;

(b) the board of directors, board of managers, or such similar governing body of any Company Party determines, after consulting with counsel, (i) that proceeding with any of the

Restructuring Transactions would be inconsistent with the exercise of its fiduciary duties or applicable Law or (ii) in the exercise of its fiduciary duties, to pursue an Alternative Restructuring Proposal;

(c) the termination of this Agreement in accordance with its terms by the Required Consenting Creditors or the Sponsor;

(d) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for fifteen (15) Business Days after such terminating Consenting Stakeholders, as applicable, transmit a written notice in accordance with Section 14.10 hereof detailing any such issuance; provided, that this termination right shall not apply to or be exercised by any Company Party that sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement; or

(e) the failure to achieve any Milestone (after giving effect to any extension or waiver in accordance with the terms of this Agreement).

12.03. Sponsor Termination Events. This Agreement may be terminated solely with respect to the Sponsor, by the Sponsor, by the delivery to the Company Parties of a written notice in accordance with Section 14.10 hereof upon the occurrence of the following events:

(a) the breach in any material respect by one or more of the Consenting Stakeholders of any provision set forth in this Agreement that remains uncured for ten (10) Business Days after such terminating Company Parties transmit a written notice in accordance with Section 14.10 hereof detailing any such breach; provided that such termination shall only be effective as against the breaching Consenting First Lien Creditor so long as the non-breaching Consenting First Lien Creditors continue to hold or control at least 50.01% of the aggregate outstanding principal amount of the Existing First Lien Claims;

(b) the termination of this Agreement in accordance with its terms by any of Required Consenting Creditors or the Company Parties; or

(c) the issuance by any governmental authority, including any regulatory authority or court of competent jurisdiction, of any final, non-appealable ruling or order that (i) enjoins the consummation of a material portion of the Restructuring Transactions and (ii) remains in effect for fifteen (15) Business Days after such terminating Consenting Stakeholders, as applicable, transmit a written notice in accordance with Section 14.10 hereof detailing any such issuance; provided, that this termination right shall not apply to or be exercised by any Company Party that sought or requested such ruling or order in contravention of any obligation or restriction set out in this Agreement.

12.05. Mutual Termination. This Agreement, and the obligations of all Parties hereunder, may be terminated by mutual written agreement among all of the following: (a) the Required Consenting Creditors; (b) the Sponsor; and (c) the Company Parties.

12.06. Automatic Termination. This Agreement shall terminate automatically without any further required action or notice immediately after (i) the Debtors consummate the wind down of their estates (regardless of any consummation of the Sale Transactions that met the Minimum Bid Requirement) or (ii) in the event the Debtors pursue a Plan with the consent of the Required DIP Lenders, the Plan Effective Date. For the avoidance of doubt, Company Parties' obligations (or the obligations of their successors in interest) to pay the Restructuring Fees and Expenses (if any) shall survive termination of this Agreement on account of this Section 12.06 to the extent provided for in the applicable engagement letters and/or other fee arrangements.

12.07. Effect of Termination. Upon the occurrence of a Termination Date as to a Party, this Agreement shall be of no further force and effect as to such Party and each Party subject to such termination shall be released from its commitments, undertakings, and agreements under or related to this Agreement and shall have the rights and remedies that it would have had, had it not entered into this Agreement, and shall be entitled to take all actions, whether with respect to the Restructuring Transactions or otherwise, that it would have been entitled to take had it not entered into this Agreement, including with respect to any and all Claims or Causes of Action. Upon the occurrence of a Termination Date prior to the Confirmation Order being entered by a Bankruptcy Court, any and all consents or ballots provided or tendered by the Parties subject to such termination with respect to the Restructuring Transactions, in each case before such Termination Date, shall be deemed, for all purposes, to be null and void from the first instance and shall not be considered or otherwise used in any manner by the Parties in connection with the Restructuring Transactions and this Agreement or otherwise; provided, however, any Consenting Stakeholder withdrawing or changing its vote pursuant to this Section 12.07 shall promptly provide written notice of such withdrawal or change to each other Party to this Agreement and, if such withdrawal or change occurs on or after the Petition Date, file notice of such withdrawal or change with the Bankruptcy Court. Nothing in this Agreement shall be construed as prohibiting a Company Party or any of the Consenting Stakeholders from contesting whether any such termination is in accordance with its terms or to seek enforcement of any rights under this Agreement that arose or existed before a Termination Date. Except as expressly provided in this Agreement, nothing herein is intended to, or does, in any manner waive, limit, impair, or restrict (a) any right of any Company Party or the ability of any Company Party to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Consenting Stakeholder, and (b) any right of any Consenting Stakeholder, or the ability of any Consenting Stakeholder, to protect and preserve its rights (including rights under this Agreement), remedies, and interests, including its claims against any Company Party or Consenting Stakeholder. No purported termination of this Agreement shall be effective under this Section 12.07 or otherwise if the Party seeking to terminate this Agreement is in material breach of this Agreement, except a termination pursuant to Section 12.02(b). Nothing in this Section 12.07 shall restrict any Company Party's right to terminate this Agreement in accordance with Section 12.02(b).

Section 13. ***Amendments and Waivers*.**

(a) Other than as expressly provided by the terms of this Agreement, this Agreement may not be modified, amended, or supplemented, and no condition or requirement of this Agreement may be waived, in any manner except in accordance with this Section 13.

(b) This Agreement may be modified, amended, or supplemented, or a condition or requirement of this Agreement may be waived, in a writing signed by: (a) each Company Party and (b) the Required DIP Lenders; provided that (i) the consent of the Required Consenting Creditors is required solely with respect to any modification, amendment, waiver or supplement that materially, disproportionately, and adversely affects the economic rights or the releases of the Consenting First Lien Creditors and (ii) the consent of the Sponsor is required solely with respect to any modification, amendment, waiver or supplement that materially and adversely affects the rights or releases of the Sponsor; provided, however, that if the proposed modification, amendment, waiver, or supplement has a material, disproportionate, and adverse effect on any of the Company Claims/Interests held by a Consenting Stakeholder, then the consent of each such affected Consenting Stakeholder shall also be required to effectuate such modification, amendment, waiver or supplement; provided, further, that (i) any modification or amendment to the definition of "Required Consenting Creditors" shall also require the written consent of each Consenting First Lien Creditor, and (ii) any modification or amendment to this Section 13 shall require the written consent of each Company Party and the Required DIP Lenders.

(c) Any proposed modification, amendment, waiver, or supplement that does not comply with this Section 13 shall be ineffective and void *ab initio*.

(d) The waiver by any Party of a breach of any provision of this Agreement shall not operate or be construed as a further or continuing waiver of such breach or as a waiver of any other or subsequent breach. No failure on the part of any Party to exercise, and no delay in exercising, any right, power or remedy under this Agreement shall operate as a waiver of any such right, power or remedy or any provision of this Agreement, nor shall any single or partial exercise of such right, power or remedy by such Party preclude any other or further exercise of such right, power or remedy or the exercise of any other right, power or remedy. All remedies under this Agreement are cumulative and are not exclusive of any other remedies provided by Law.

Section 14. ***Miscellaneous*.**

14.01. Acknowledgement. Notwithstanding any other provision herein, this Agreement is not and shall not be deemed to be an offer with respect to any securities or solicitation of votes for the acceptance of a plan of reorganization for purposes of sections 1125 and 1126 of the Bankruptcy Code or otherwise. Any such offer or solicitation will be made only in compliance with all applicable securities Laws, provisions of the Bankruptcy Code, and/or other applicable Law.

14.02. Exhibits Incorporated by Reference; Conflicts. Each of the exhibits, annexes, signatures pages, and schedules attached hereto (together with any exhibits, annexes, or schedules thereto), including the Restructuring Term Sheet, is expressly incorporated herein and made a part of this Agreement, and all references to this Agreement shall include such exhibits, annexes, and schedules. In the event of any inconsistency between this Agreement (without reference to the exhibits, annexes, and schedules hereto) and the exhibits, annexes, and schedules hereto, this Agreement (without reference to the exhibits, annexes, and schedules thereto) shall govern.

14.03. Further Assurances. Subject to the other terms of this Agreement, the Parties agree to execute and deliver such other instruments and perform such acts, in addition to the matters herein specified, as may be reasonably appropriate or necessary, or as may be required by order of the Bankruptcy Court, from time to time, to effectuate the Restructuring Transactions, as applicable.

14.04. Complete Agreement. Except as otherwise explicitly provided herein, this Agreement constitutes the entire agreement among the Parties with respect to the subject matter hereof and supersedes all prior agreements, oral or written, among the Parties with respect thereto, other than any Confidentiality Agreement.

14.05. GOVERNING LAW; SUBMISSION TO JURISDICTION; SELECTION OF FORUM. THIS AGREEMENT IS TO BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND TO BE PERFORMED IN SUCH STATE, WITHOUT GIVING EFFECT TO THE CONFLICT OF LAWS PRINCIPLES THEREOF THAT WOULD REQUIRE THE APPLICATION OF LAWS OF ANY OTHER JURISDICTION. Each Party hereto agrees that it shall bring any action or other proceeding in respect of any claim arising out of or related to this Agreement, to the extent possible, in either a state or federal court of competent jurisdiction in the State and County of New York, Borough of Manhattan, or if the Chapter 11 Cases are filed, the Bankruptcy Court, and solely in connection with claims arising under this Agreement: (i) irrevocably submits to the exclusive jurisdiction of such courts, as applicable; (ii) waives any objection to laying venue in any such action or proceeding in such courts, as applicable; and (iii) waives any objection that such courts are an inconvenient forum or does not have jurisdiction over any Party hereto.

14.06. TRIAL BY JURY WAIVER. EACH PARTY HERETO IRREVOCABLY WAIVES ANY AND ALL RIGHT TO TRIAL BY JURY IN ANY LEGAL PROCEEDING ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY.

14.07. Execution of Agreement. This Agreement may be executed and delivered in any number of counterparts and by way of electronic signature and delivery, each such counterpart, when executed and delivered, shall be deemed an original, and all of which together shall constitute the same agreement. Except as expressly provided in this Agreement, each individual executing this Agreement on behalf of a Party has been duly authorized and empowered to execute and deliver this Agreement on behalf of said Party.

14.08. Rules of Construction. This Agreement is the product of negotiations among the Company Parties and the Consenting Stakeholders, and in the enforcement or interpretation hereof, is to be interpreted in a neutral manner, and any presumption with regard to interpretation for or against any Party by reason of that Party having drafted or caused to be drafted this Agreement, or any portion hereof, shall not be effective in regard to the interpretation hereof. The Company Parties and the Consenting Stakeholders were each represented by counsel during the negotiations and drafting of this Agreement and continue to be represented by counsel.

14.09. Successors and Assigns; Third Parties. This Agreement is intended to bind and inure to the benefit of the Parties and their respective successors and permitted assigns, as applicable. There are no third-party beneficiaries under this Agreement, and the rights or obligations of any Party under this Agreement may not be assigned, delegated, or transferred to any other person or entity.

14.10. Notices. All notices hereunder shall be deemed given if in writing and delivered, by electronic mail, courier, or registered or certified mail (return receipt requested), to the following addresses (or at such other addresses as shall be specified by like notice, including the addresses provided in any party's Joinder or Transfer Agreement):

(a) if to a Company Party, to:

c/o Vyaire Medical, Inc.
26126 N Riverwoods Blvd
Mettawa, IL 60045
Attention: John Bibb, Chief Executive Officer
Rachel Lisenby, Associate General Counsel
E-mail address:
John.Bibb@vyaire.com
Rachel.Lisenby@vyaire.com

with copies to:

Kirkland & Ellis LLP
333 West Wolf Point Plaza
Chicago, IL 60654
Attention: Spencer Winters, P.C.; Yusuf Salloum
E-mail address: spencer.winters@kirkland.com
yusuf.salloum@kirkland.com

and

Kirkland & Ellis LLP
601 Lexington Avenue
New York, New York 10022
Attention: Josh Sussberg, P.C., Chris Ceresa
E-mail address: jsussberg@kirkland.com
chris.ceresa@kirkland.com

(b) if to a DIP Lender or a Consenting First Lien Creditor to the address and email address set forth on such party's signature page to this Agreement, with copies to (which shall not constitute notice hereof) to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166
Attention: Scott J. Greenberg
Jason Zachary Goldstein
Joshua Brody

Kevin Liang
E-mail address:
SGreenberg@gibsondunn.com
JGoldstein@gibsondunn.com
JBrody@gibsondunn.com
KLiang@gibsondunn.com

Pachulski Stang Ziehl & Jones LLP
919 North Market Street, 17th Floor
Wilmington, DE 19801
Attention: Laura Davis Jones

E-mail address:
ljones@pszjlaw.com

(c) if to the Sponsor, to:

Simpson Thacher & Bartlett LLP
425 Lexington Avenue
New York, NY 10017
Attention: Elisha Graff
Ashley Gherlone
E-mail address: agraff@stblaw.com
Ashley.gherlone@stblaw.com

Any notice given by delivery, mail, or courier shall be effective when received.

14.11. Independent Due Diligence and Decision Making. Each Consenting Stakeholder hereby confirms that its decision to execute this Agreement has been based upon its independent investigation of the operations, businesses, financial and other conditions, and prospects of the Company Parties and it has been represented by counsel or other advisors (or has had ample opportunity to seek representation or advice from counsel or other advisors) in connection with this Agreement and the Restructuring Transactions.

14.12. Enforceability of Agreement. Each of the Parties to the extent enforceable waives any right to assert that the exercise of termination rights under this Agreement is subject to the automatic stay provisions of the Bankruptcy Code, and expressly stipulates and consents hereunder to the prospective modification of the automatic stay provisions of the Bankruptcy Code for purposes of exercising termination rights under this Agreement, to the extent the Bankruptcy Court determines that such relief is required.

14.13. Waiver. If the Restructuring Transactions are not consummated, or if this Agreement is terminated for any reason, the Parties fully reserve any and all of their rights. Pursuant to Federal Rule of Evidence 408 and any other applicable rules of evidence, this Agreement and all negotiations relating hereto shall not be admissible into evidence in any proceeding other than a proceeding to enforce its terms or the payment of damages to which a Party may be entitled under this Agreement.

14.14. Specific Performance. It is understood and agreed by the Parties that money damages would be an insufficient remedy for any breach of this Agreement by any Party, and each non-breaching Party shall be entitled to specific performance and injunctive or other equitable relief (without the posting of any bond and without proof of actual damages) as a remedy of any such breach, including an order of a court of competent jurisdiction requiring any Party to comply promptly with any of its obligations hereunder.

14.15. Several, Not Joint, Claims. Except where otherwise specified, the agreements, representations, warranties, and obligations of the Parties under this Agreement are, in all respects, several and not joint.

14.16. Severability and Construction. If any provision of this Agreement shall be held by a court of competent jurisdiction to be illegal, invalid, or unenforceable, the remaining provisions shall remain in full force and effect if essential terms and conditions of this Agreement for each Party remain valid, binding, and enforceable.

14.17. Remedies Cumulative. All rights, powers, and remedies provided under this Agreement or otherwise available in respect hereof at Law or in equity shall be cumulative and not alternative, and the exercise of any right, power, or remedy thereof by any Party shall not preclude the simultaneous or later exercise of any other such right, power, or remedy by such Party.

14.18. Capacities of Consenting Stakeholders. Each Consenting Stakeholder has entered into this Agreement on account of all Company Claims/Interests that it holds (directly or through discretionary accounts that it manages or advises) and, except where otherwise specified in this Agreement, shall take or refrain from taking all actions that it is obligated to take or refrain from taking under this Agreement with respect to all such Company Claims/Interests.

14.19. Survival. Notwithstanding (i) any Transfer of any Company Claims/Interests in accordance with this Agreement or (ii) the termination of this Agreement in accordance with its terms, the agreements and obligations of the Parties in Section 14 and the Confidentiality Agreements shall survive such Transfer and/or termination and shall continue in full force and effect for the benefit of the Parties in accordance with the terms hereof and thereof. For the avoidance of doubt, the Parties acknowledge and agree that if this Agreement is terminated, Section 14 shall survive such termination.

14.20. Email Consents. Where a written consent, acceptance, approval, or waiver is required pursuant to or contemplated by this Agreement, pursuant to Section 3, Section 12, or otherwise, including a written approval by the Company Parties, the Required DIP Lenders, the Required Consenting Creditors, or the Sponsor, such written consent, acceptance, approval, or waiver shall be deemed to have occurred if, by agreement between counsel to the Parties submitting and receiving such consent, acceptance, approval, or waiver, it is conveyed in writing (including electronic mail) between each such counsel without representations or warranties of any kind on behalf of such counsel.

14.21. Public Disclosure. Other than to the extent required by applicable Law and regulation or by any governmental or regulatory authority, no Party shall disclose to any person (including for the avoidance of doubt, any other Consenting Stakeholder), other than legal, accounting, financial, and other advisors to the Company Parties (who are under obligations of confidentiality to the Company Parties with respect to such disclosure, and whose compliance with such obligations the Company Parties shall be responsible for), the principal amount or percentage of the Company Claims/Interests held by any Consenting Stakeholder or any of its respective subsidiaries (including, for the avoidance of doubt, any Company Claims/Interests acquired pursuant to any Transfer) or the signature page of such Consenting Stakeholder; provided, however, that the Company Parties shall be permitted to disclose at any time the aggregate principal amount of, and aggregate percentage of, any class of the Company Claims/Interests held by the Consenting Stakeholders collectively. Notwithstanding the foregoing, the Consenting Stakeholders hereby consent to the disclosure of the execution, terms, and contents of this Agreement by the Company Parties in the Definitive Documents to the extent required by Law or regulation; provided, however, that (i) if any of the Company Parties determine that it is required to attach a copy of this Agreement, any Joinder, or Transfer Agreement to any Definitive Documents or any other filing or similar document relating to the transactions contemplated hereby, to the extent permissible under applicable Law, it will redact any reference to or concerning a specific Consenting Stakeholder's holdings of Company Claims/Interests and such Consenting Stakeholder's signature page and (ii) if disclosure of additional information of any Consenting Stakeholders is required by applicable Law, advance notice of the intent to disclose, if permitted by applicable Law, shall be given by the disclosing Party to each Consenting Stakeholder (who shall have the right to seek a protective order prior to disclosure). The Company Parties further agree that such information shall be redacted from "closing sets" or other representations of the fully executed Agreement, any Joinder, or Transfer Agreement. The Company Parties shall deliver drafts to the Consenting Stakeholders' advisors of any press releases and public documents that constitute disclosure of the existence or terms of this Agreement, the Restructuring Term Sheet, the Restructuring Transactions, or any amendment thereof to the general public (each, a "**Public Disclosure**") at least twenty-four (24) hours before making any such disclosure or, if twenty-four (24) hours is not feasible pursuant to applicable law, then such amount of time reasonably feasible pursuant to such applicable law, and will consider in good faith input from the Consenting Stakeholders with respect to such Public Disclosure and such Public Disclosure shall be reasonably acceptable to the Consenting Stakeholder. Except as required by law, the Company Parties shall avoid making any public disclosure that would disclose either: (a) the holdings of any Consenting Stakeholder (including on the signature pages of the Consenting Stakeholders, which shall not be publicly disclosed or filed) or (b) the identity of any Consenting Stakeholder, in each case without the prior written consent of such Consenting Stakeholder or a final order of a court with competent jurisdiction; provided, however, that notwithstanding anything to the contrary in this Section 14.21, (x) if any disclosure pursuant to this Section 14.21 is required by law, and to the extent reasonably practicable and not otherwise prohibited by law, the Company Parties shall afford the relevant Consenting Stakeholders a reasonable opportunity to review and comment in advance of such disclosure, and such Company Parties shall take all reasonable measures to limit such disclosure and (y) the Company Parties shall not be required to keep confidential the aggregate holdings of all Consenting Stakeholders, and each Consenting Stakeholder hereby consents to the disclosure of the execution of this Agreement by the Company Parties, and the terms and contents hereof, to the Agents, as applicable, and in any filings required by applicable law or regulation or the rules of any applicable stock exchange or regulatory body.

[*Signature Pages Follow*]

EXHIBIT A

Company Parties

1. Vyaire Medical, Inc.
2. Bird Products Corporation
3. Breathe US Holdco, Inc.
4. Breathe US Holdings LP
5. EME Medical, Inc.
6. Revolutionary Medical Devices, Inc.
7. SensorMedics Corporation
8. VIASYS Holdings Inc.
9. VM Finance Sub, LLC
10. Vyaire Company
11. Vyaire Finance B.V.
12. Vyaire Financial Holdings LLC
13. Vyaire Holding Company
14. Vyaire Medical 202, Inc.
15. Vyaire Medical 203, Inc.
16. Vyaire Medical 205, Inc.
17. Vyaire Medical 206, Inc.
18. Vyaire Medical 211, Inc.
19. Vyaire Medical BR LLC
20. Vyaire Medical Capital LLC
21. Vyaire Medical Consumables LLC
22. Vyaire Medical International LLC
23. Vyaire Medical LLC
24. Vyaire Medical Payroll LLC
25. Vyaire Receivables LLC
26. Vyaire Respiratory Diagnostics LLC
27. Vyaire TSR MidCo, LLC
28. Vyaire TSR Sub, LLC

EXHIBIT B

Restructuring Term Sheet

VYAIRE HOLDING COMPANY, ET AL.

RESTRUCTURING TERM SHEET

JUNE 9, 2024

THIS RESTRUCTURING TERM SHEET (TOGETHER WITH ALL ANNEXES, SCHEDULES, AND EXHIBITS HERETO, THIS "RESTRUCTURING TERM SHEET") DESCRIBES THE PRINCIPAL TERMS AND CONDITIONS OF A RESTRUCTURING TRANSACTION FOR VYAIRE HOLDING COMPANY ("VYAIRE") AND CERTAIN OF ITS SUBSIDIARIES AND AFFILIATES (TOGETHER WITH VYAIRE, THE "COMPANY") THAT WILL BE EFFECTUATED THROUGH VOLUNTARY PREARRANGED CASES UNDER CHAPTER 11 OF THE BANKRUPTCY CODE (THE "CHAPTER 11 CASES") IN THE BANKRUPTCY COURT, ON THE TERMS, AND SUBJECT TO THE CONDITIONS, SET FORTH IN THE RESTRUCTURING SUPPORT AGREEMENT (TOGETHER WITH THE EXHIBITS AND SCHEDULES ATTACHED TO SUCH AGREEMENT, INCLUDING THIS RESTRUCTURING TERM SHEET, EACH AS MAY BE AMENDED, RESTATED, SUPPLEMENTED, OR OTHERWISE MODIFIED FROM TIME TO TIME IN ACCORDANCE WITH THE TERMS THEREOF, THE "RESTRUCTURING SUPPORT AGREEMENT").[1]

THIS RESTRUCTURING TERM SHEET IS NOT AN OFFER OR A SOLICITATION WITH RESPECT TO ANY SECURITIES, LOANS, OR OTHER INSTRUMENTS OF THE COMPANY OR A SOLICITATION OF ACCEPTANCES OR REJECTIONS AS TO ANY CHAPTER 11 PLAN, IT BEING UNDERSTOOD THAT SUCH AN OFFER OR SOLICITATION, IF ANY, SHALL COMPLY WITH ALL APPLICABLE PROVISIONS OF SECURITIES, BANKRUPTCY, AND/OR OTHER APPLICABLE LAWS.

THIS RESTRUCTURING TERM SHEET IS FOR DISCUSSION AND SETTLEMENT PURPOSES ONLY. ACCORDINGLY, THIS RESTRUCTURING TERM SHEET AND THE INFORMATION CONTAINED HEREIN ARE ENTITLED TO PROTECTION FROM ANY USE OR DISCLOSURE TO ANY PARTY OR PERSON PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE AND ANY OTHER APPLICABLE RULE, STATUTE, OR DOCTRINE OF SIMILAR IMPORT PROTECTING THE USE OR DISCLOSURE OF CONFIDENTIAL SETTLEMENT DISCUSSIONS. THIS RESTRUCTURING TERM SHEET DOES NOT PURPORT TO SUMMARIZE ALL OF THE TERMS, CONDITIONS, AND OTHER PROVISIONS WITH RESPECT TO THE TRANSACTIONS DESCRIBED HEREIN, WHICH TRANSACTIONS WILL BE SUBJECT TO THE COMPLETION OF DEFINITIVE DOCUMENTS INCORPORATING THE TERMS SET FORTH HEREIN, AND THE CLOSING OF ANY TRANSACTION SHALL BE SUBJECT TO THE TERMS AND CONDITIONS SET FORTH IN SUCH DEFINITIVE DOCUMENTS.

[1] Capitalized terms used but not immediately defined herein shall have the meaning hereinafter ascribed to such terms, or if not defined herein, shall have the meaning given to them in the Restructuring Support Agreement.

GENERAL PROVISIONS	
Company Parties	A list of the Company Parties is attached to the Restructuring Support Agreement as Exhibit A.
Debtors	The Company Parties from and after the commencement of the Chapter 11 Cases.
Proposed Filing Date and Venue	No later than June 9, 2024 (the "**Petition Date**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").
Implementation	The restructuring will be implemented through prearranged cases commenced by certain of the Company Parties under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (as amended, the "**Bankruptcy Code**") in the Bankruptcy Court. The Restructuring Transactions shall be consummated pursuant to the Definitive Documents through the Sale Transactions (as defined below) and wind-down, which wind-down may be pursuant to a Plan (as defined below) or, if necessary, such alternative wind-down mechanism acceptable to the Required DIP Lenders; provided, in the event no Sale Transactions consistent with the Minimum Bid Requirement are consummated and the Debtors terminate the Sale Process (as defined below) and cancel the auction, the Debtors, with the consent of the Required DIP Lenders, shall wind-down their estates pursuant to a Plan, in each case, consistent in material respects with the terms of the Restructuring Support Agreement (including the exhibits thereto) and the consent rights set forth therein. Notwithstanding anything to the contrary, to the extent the Debtors and the Required DIP Lenders agree to a wind-down amount for the wind-down of the Debtors' estates, regardless of whether the Sale Transactions are consummated, the DIP Lenders shall not be obligated to fund any amount in excess of such agreed wind-down amount. The Restructuring Transactions will be effectuated pursuant to one or more sales involving some, substantially all, or all of the Debtors' assets to a purchaser pursuant to section 363 of the Bankruptcy Code (such sales together, the "**Sale Transactions**") followed by a wind-down of the estates by the Debtors, which may be through a chapter 11 liquidating plan (the "**Plan**"), based on a budget to be agreed upon between the Debtors and the Required DIP Lenders and in accordance with the terms of the Restructuring Support Agreement and this Restructuring Term Sheet, or if necessary such alternative wind-down mechanism acceptable to the Required DIP Lenders.
Sale Transactions	The Company shall continue its pre-petition sale and marketing process (the "**Sale Process**") to solicit bids for the Sale Transactions in accordance with the Milestones, Bidding Procedures, and other terms set forth in the Restructuring Support Agreement and this Restructuring Term Sheet. The Debtors shall, subject to the terms of the Restructuring Support Agreement, continue to solicit bids for the sale of some, substantially all, or all of the equity

	interests in and/or assets of the Debtors, including the equity interests in and/or assets of the Debtors' respiratory diagnostics business (the "**Respiratory Diagnostics Assets**"), the equity interests in and/or assets of the Debtors' ventilation business (the "**Ventilation Assets**" and, the assets subject to any Sale Transaction, collectively, the "**Acquired Assets**") to one or more purchasers (collectively, the "**Purchasers**") pursuant to definitive transaction documents, including one or more asset purchase agreement (each, an "**APA**" and, together with all definitive transaction documentation thereto, the "**Sale Transaction Documentation**"), pursuant to which the Purchaser(s) will agree to purchase the applicable Acquired Assets, subject to the terms and conditions therein. If, by the indication of interest deadline set forth in the Restructuring Support Agreement, DIP Documents, Bidding Procedures, and Bidding Procedures Order, the Debtors have not received indications of interest that, in the good faith estimate of the Debtors and their advisors, and with the consent of the Required DIP Lenders, are likely to lead to bids that, individually or in the aggregate, satisfy the Minimum Bid Requirement, then the Debtors shall terminate the sale process and cancel the auction. In addition, if, by the bid deadline set forth in the Restructuring Support Agreement, DIP Documents, Bidding Procedures, and the Bidding Procedures Order, the Debtors do not receive bids, individually or in the aggregate, that satisfy the Minimum Bid Requirement, then the Debtors shall terminate the sale process and cancel the auction. A bid or series of bids shall not constitute a "Qualified Bid" in the Bidding Procedures and the Bidding Procedures Order unless such bid(s) meet the Minimum Bid Requirement. The aggregate cash sale proceeds of such bid(s) shall be indefeasibly paid to the DIP Lenders immediately upon the closing of the Sale Transactions subject to deductions for wind down costs and expenses required to be paid pursuant to the DIP Documents and the Restructuring Support Agreement. The DIP Lenders and the DIP Agent shall be allowed pursuant to section 363(k) of the Bankruptcy Code to credit bid all or any portion of the obligations under the DIP Credit Agreement; *provided* that the DIP Lenders and the DIP Agent agree solely to the extent that the Debtors receive one or more bids by the bid deadline that collectively are not less than the Minimum Bid Requirement, the DIP Lenders and the DIP Agent shall not credit bid for the assets.
Definitive Documents	Any documents contemplated by this Restructuring Term Sheet, including any Definitive Documents, that remain the subject of negotiation as of the Agreement Effective Date shall be subject to the rights and obligations set forth in Section 3 of the Restructuring Support Agreement. Failure to reference such rights and obligations as it relates to any document referenced in this Restructuring Term Sheet shall not impair such rights and obligations.
Tax Structure	To the extent practicable and if applicable, the Restructuring Transactions contemplated by this Restructuring Term Sheet and the Restructuring Support

	Agreement will be structured so as to obtain the most beneficial tax structure for the Company Parties subject to the consent of the Required DIP Lenders and the Purchasers (if any).
DIP Financing	The Company shall seek approval of a $180 million super-senior secured debtor-in-possession financing facility (the "**DIP Facility**" and, all obligations arising thereunder, the "**DIP Obligations**" and, the claims related thereto, the "**DIP Facility Claims**" and, the lenders thereunder, the "**DIP Lenders**"). The DIP Facility shall be acceptable to the DIP Agent, the DIP Lenders, and the Company Parties. The DIP Facility shall be committed in the aggregate amount of $180 million, consisting of (A)(i) $45 million of new money term loans, $25 million of which shall be funded directly to DIP Borrowers (as defined in the Interim DIP Order) and $20 million of which shall be funded into an escrow account upon the entry of an interim order by the Bankruptcy Court approving the DIP Facility (the "**Interim DIP Order**") and (ii) $75 million of rolled-up term loans, consisting of $25 million of Existing First Lien Term Loan Claims being deemed converted into and exchanged for rolled-up term loans, shall be deemed funded upon entry of the Interim DIP Order and (B)(i) $20 million of new money term loans shall be available from the escrow account upon the entry of a final order by the Bankruptcy Court approving the DIP Facility (the "**Final DIP Order**" and, together with the Interim DIP Order, the "**DIP Orders**") (the loans under the DIP Facility, the "**DIP Loans**") and funded on an incremental basis pursuant to the draw terms and conditions set forth in the DIP Documents and (ii) upon entry of the Final DIP Order, up to $60 million of Existing First Lien Term Loan Claims shall be deemed converted into and exchanged for rolled-up term loans on an incremental basis upon each draw by the Debtors of DIP Loans from the escrow account in an amount equal to three times the amount of DIP Loans being drawn at such time, in each case on the terms and conditions set forth in the DIP Documents. The DIP Loans shall be funded in accordance with the terms set forth in the DIP Documents. The DIP Orders shall provide for the Debtors' consensual use of cash collateral of the prepetition lenders under the Existing First Lien Credit Agreement and the Note Purchase Agreement. The DIP Facility shall be backstopped by (i) certain members of the ad hoc group of lenders under the Existing First Lien Credit Agreement and Note Purchase Agreement represented by Gibson Dunn & Crutcher LLP and Rothschild & Co (the "**Ad Hoc Group**") that have executed and delivered counterparty signature pages to the Restructuring Support Agreement prior to the Petition Date and (ii) other certain non-Ad Hoc Group lenders under the Existing First Lien Credit Agreement that have executed and delivered counterparty signature pages to the Restructuring Support Agreement prior to the Petition Date in their capacity as holders Existing First Lien Term Loan Claims. For the avoidance of doubt each DIP Lender shall be party to the Restructuring Support Agreement as of the Agreement Effective Date or otherwise exercise a joinder thereto.

	The proceeds of the DIP Facility will be used, among other things, (i) for working capital and general corporate purposes, (ii) to fund the administration of the Chapter 11 Cases, (iii) to fund the Carve-Out, and (iv) to fund the Wind-Down Budget, in each case in accordance with the budget then in effect under the DIP Facility.
Plan of Liquidation	In the event that the Debtors determine it is in the best interests of the estates to seek confirmation of a Plan, following (i) consummation of the Sale Transactions or (ii) termination of the sale process and cancellation of the auction (and in the case of this clause (ii), the Required DIP Lenders have agreed to such Plan), the Consenting Stakeholders agree that they will not object to the confirmation of a Plan and will opt in (or not opt out of) any release provisions provided in a Plan; provided that such Plan shall (i) provide that Existing First Lien Claims and Existing Second Lien Term Loan Claims receive a *pro rata* share of any available distributable proceeds, in accordance with any applicable intercreditor agreement and the Bankruptcy Code, up to the allowed amount of the Existing First Lien Claims and the Existing Second Lien Term Loan Claims; provided, for the avoidance of doubt, that such Existing First Lien Claims and Existing Second Lien Term Loan Claims shall only be entitled to any distributable value if the DIP Facility Claims have been first paid in full in cash, (ii) include release and exculpation provisions in favor of the DIP Lenders, the DIP Agent, the Agent, and the Consenting Stakeholders (and their affiliates and related parties) substantially in form set forth in **Exhibit 1** to this Restructuring Term Sheet, and (iii) be otherwise in form and substance acceptable to the Required DIP Lenders. The Debtors and the Required DIP Lenders shall mutually agree upon the terms of a wind-down budget funding the wind-down of the Debtors estates and such amount shall be held in escrow by the DIP Agent and to be released only upon the wind-down of the Debtors' estates (the "**Wind-Down Budget**"); provided that, for the avoidance of doubt, the DIP Lenders shall not be obligated to fund any amount in excess of the Wind-Down Budget in any wind down scenario. Notwithstanding anything to the contrary in the Restructuring Support Agreement, to the extent the DIP Facility Claims are not satisfied in full by the aggregate cash proceeds from the Sale Transactions (the "Aggregate Sale Proceeds") minus the sum of: (i) the Wind-Down Budget, plus (ii) all professional fees and expenses accrued and unpaid as of the closing date of the Sale Transactions, including any success or completion fees, required to be paid pursuant to the DIP Documents and the Restructuring Support Agreement and consistent with the carve out reserves under the DIP Facility, plus (iii) any cash proceeds from the sale of the Ventilation Assets, other than pursuant to the Sale Process, solely if such assets are contemplated to be monetized for the wind-down of the ventilation business, if applicable, pursuant to the approved budget under the DIP Orders

	(such sum, the "Wind-Down Reserve" and, the difference between the Aggregate Sale Proceeds and the Wind-Down Reserve, the "Distributable Value"); provided, for the avoidance of doubt, the Distributable Value shall also include, without limitation, any and all of the Debtors' cash and assets, or proceeds relating thereto, in each case, other than as part of the Wind-Down Budget or the Wind-Down Reserve, the DIP Lenders agree that payment of the Distributable Value shall be in full and final satisfaction of their DIP Facility Claims notwithstanding the deficiency in the payment of the DIP Facility Claims; provided, for the avoidance of doubt, that Existing First Lien Claims and Existing Second Lien Term Loan Claims shall only be entitled to any Distributable Value if the DIP Facility Claims have been first paid in full in cash.

GENERAL PROVISIONS REGARDING A PLAN (IF APPLICABLE)	
Plan Administrator	The person or Entity, or any successor thereto, designated by the Debtors with the consent of the Required DIP Lenders, to be appointed on the Plan Effective Date and who will serve as the administrator for the Wind-Down Debtor as set forth in a Plan (the "**Plan Administrator**").
Wind-Down Debtor	At least one Debtor shall continue in existence after the Plan Effective Date (the "**Wind-Down Debtor**") for the purpose of (1) winding down the Debtors' business and affairs as expeditiously as reasonably possible, conducting any going out of business sales, and liquidating any assets held by the Wind-Down Debtor after the Plan Effective Date, (2) performing any obligations under any transition services agreement entered into on or after the Plan Effective Date, (3) resolving any disputed Claims, (4) paying Allowed Claims, (5) filing appropriate tax returns, and (6) administering a Plan, if applicable, in an efficacious manner. The Wind-Down Debtor shall be deemed to be substituted as the party-in-lieu of the Debtors in all matters, including (1) motions, contested matters, and adversary proceedings pending in the Bankruptcy Court, and (2) all matters pending in any courts, tribunals, forums, or administrative proceedings outside of the Bankruptcy Court, in each case without the need or requirement for the Plan Administrator to file motions or substitutions of parties or counsel in each such matter.
Releases	The Plan and the Confirmation Order shall contain the exculpation provisions and releases set forth in **Exhibit 1** attached hereto.
Retention of Jurisdiction	The Plan will provide for the retention of jurisdiction by the Bankruptcy Court for usual and customary matters.

Exhibit 1 to Restructuring Term Sheet

Release, Exculpation, and Injunction

RELEASE, EXCULPATION, AND INJUNCTION PROVISIONS	
Affiliate	Shall have the meaning set forth in section 101(2) of the Bankruptcy Code as if the reference Entity were a debtor in a case under the Bankruptcy Code.
Related Party	Collectively, and in each case in its capacity as such, current and former directors, managers, officers, equity holders (regardless of whether such interests are held directly or indirectly), affiliated investment funds or investment vehicles, predecessors, participants, successors, assigns (whether by operation of law or otherwise), subsidiaries, current, former, and future associated entities, managed or advised entities, accounts or funds, partners, limited partners, general partners, principals, members, management companies, fund advisors, managers, fiduciaries, trustees, employees, agents (including any disbursing agent), advisory board members, financial advisors, attorneys, accountants, investment bankers, consultants, representatives, and other professionals, representatives advisors, predecessors, successors, and assigns (including any attorneys or professionals retained by any current or former director or manager of a Debtor in his or her capacity as director or manager as a Debtor).
Released Parties	Collectively, and in each case in its capacity as such: (a) each Debtor; (b) the Wind-Down Debtor; (c) the Consenting Stakeholders; (d) the DIP Lenders; (e) the DIP Agent; (f) the Agents; (g) each current and former Affiliate of each Entity in clause (a) through the following clause (h); and (h) each Related Party of each Entity in clauses (a) through this clause (h); *provided, however*, that each Entity that timely and properly opts out of the releases contemplated herein shall not be a Released Party.
Releasing Parties	Collectively, and in each case in its capacity as such: (a) each Debtor; (b) the Wind-Down Debtor; (c) the Consenting Stakeholders; (d) the DIP Lenders; (e) the DIP Agent; (f) the Agents; (g) each other secured party that is not a consenting stakeholder; (g) all Holders of Claims; (h) all Holders of Interests; (i) each current and former Affiliate of each Entity in clause (a) through the following clause (j); and (j) each Related Party of each Entity in clauses (a) through this clause (j) for which such Entity is legally entitled to bind such Related Party to the releases contained herein under applicable law; *provided, however*, that each Entity that timely and properly opts out of the releases contemplated herein shall not be a Releasing Party.

Releases by the Debtors[2]	Except as otherwise specifically provided in the Plan or the Confirmation Order, pursuant to section 1123(b) of the Bankruptcy Code, for good and valuable consideration, as of the Plan Effective Date, each Released Party is deemed, hereby conclusively, absolutely, unconditionally, irrevocably, and forever released and discharged by the Debtors, the Wind-Down Debtor, and their Estates, in each case on behalf of themselves and their respective successors, assigns, and representatives from any and all Claims and Causes of Action, whether known or unknown, including any derivative claims asserted or assertable on behalf of the Debtors, the Wind-Down Debtor, and their Estates, that the Debtors, the Wind-Down Debtor, or their Estates would have been legally entitled to assert in their own right (whether individually or collectively), or on behalf of the Holder of any Claim against, or Interest in, a Debtor or other Entity, or that any Holder of any Claim against or Interest in a Debtor or other Entity could have asserted on behalf of the Debtors based on or relating to, or in any manner arising from, in whole or in part, the Debtors (including the management, ownership, or operation thereof or otherwise), the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among the Debtors or between the Debtors and their non-Debtor Affiliates, the Existing First Lien Credit Agreement, the Existing Second Lien Credit Agreement, the Note Purchase Agreement, the DIP Facility, the DIP Documents, the Disclosure Statement Order, the Confirmation Order, the Sale Order, the First Day Pleadings, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the DIP Facility, the Plan, or the Plan Supplement, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, or upon any other act or omission, transaction, agreement, event, or other occurrence taking place on or before the Plan Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any post-Plan Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (ii) any Causes of Action specifically retained by the Debtors pursuant to a schedule of retained Causes of Action to be attached as an exhibit to the Plan Supplement, or (iii) any Claims or Causes of Action arising out of, or related to, any act or omission of a Released Party that is determined by a final order of the Bankruptcy Court or any other court of competent jurisdiction to have constituted actual fraud, gross negligence, or willful misconduct (it

[2] All Releases contemplated in this Restructuring Term Sheet are subject to the ongoing Independent Investigation.

	being agreed that any Released Parties' consideration, approval, or receipt of any distribution did not arise from or relate to actual fraud, gross negligence, or willful misconduct). Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Debtor Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Debtor Release is: (1) in exchange for the good and valuable consideration provided by the Released Parties, including, the Released Parties' contribution to facilitating the Restructuring Transactions and implementing the Plan; (2) a good faith settlement and compromise of the Claims released by the Debtor Release; (3) in the best interests of the Debtors and all Holders of Claims and Interests; (4) fair, equitable, and reasonable; (5) given and made after due notice and opportunity for a hearing; and (6) a bar to any of the Debtors, the Wind-Down Debtor, or the Debtors' Estates asserting any Claim or Cause of Action released pursuant to the Debtor Release.
Releases by Holders of Claims and Interests of the Debtors (the "Third Party Release")	Except as otherwise specifically provided in the Plan or the Confirmation Order, as of the Plan Effective Date, each Releasing Party is deemed to have, hereby conclusively, absolutely, unconditionally, irrevocably and forever released and discharged each Debtor, the Wind-Down Debtor, and Released Party from any and all Claims and Causes of Action, whether known or unknown, including any derivative claims asserted or assertable on behalf of the Debtors, the Wind-Down Debtor, and their Estates (as applicable) that such Entity would have been legally entitled to assert (whether individually or collectively), based on or relating to, or in any manner arising from, in whole or in part, the Debtors' (including the management, ownership, or operation thereof or otherwise), the purchase, sale, or recission of any security of the Debtors or the Wind-Down Debtor, the subject matter of, or the transactions or events giving rise to, any Claim or Interest that is treated in the Plan, the business or contractual arrangements between any Debtor and any Released Party, the Debtors' in- or out-of-court restructuring efforts, intercompany transactions between or among the Debtors or between the Debtors and their non-Debtor Affiliates, the Existing First Lien Credit Agreement, the Existing Second Lien Credit Agreement, the Note Purchase Agreement, the DIP Facility, the DIP Documents, the Disclosure Statement Order, the Confirmation Order, the Sale Order, the First Day Pleadings, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Restructuring Support Agreement, the Disclosure Statement, the Plan, the Plan Supplement, or any Restructuring Transaction, contract, instrument, release, or other agreement or document created or entered into in connection with the Restructuring Support Agreement, the Disclosure Statement, the DIP Facility, the Plan, or the Plan Supplement, the filing of the Chapter 11 Cases, the pursuit of Confirmation, the pursuit of Consummation, the administration and implementation of the Plan, including the issuance or distribution of securities pursuant to the Plan, or the distribution of

	property under the Plan or any other related agreement, or upon any other related act or omission, transaction, agreement, event, or other occurrence taking place on or before the Plan Effective Date. Notwithstanding anything to the contrary in the foregoing, the releases set forth above do not release (i) any post-Plan Effective Date obligations of any party or Entity under the Plan, any Restructuring Transaction, or any document, instrument, or agreement (including those set forth in the Plan Supplement) executed to implement the Plan, (ii) any Causes of Action specifically retained by the Debtors pursuant to a schedule of retained Causes of Action to be attached as an exhibit to the Plan Supplement, or (iii) any Claims or Causes of Action arising out of, or related to, any act or omission of a Released Party that is determined by a final order of the Bankruptcy Court or any other court of competent jurisdiction to have constituted actual fraud, gross negligence, or willful misconduct (it being agreed that any Released Parties' consideration, approval, or receipt of any distribution did not arise from or relate to actual fraud, gross negligence, or willful misconduct). Entry of the Confirmation Order shall constitute the Bankruptcy Court's approval, pursuant to Bankruptcy Rule 9019, of the Third-Party Release, which includes by reference each of the related provisions and definitions contained in the Plan, and further, shall constitute the Bankruptcy Court's finding that the Third-Party Release is: (1) consensual; (2) essential to the Confirmation of the Plan; (3) given in exchange for the good and valuable consideration provided by the Released Parties; (4) a good faith settlement and compromise of the Claims released by the Third-Party Release; (5) in the best interests of the Debtors and their Estates; (6) fair, equitable, and reasonable; (7) given and made after due notice and opportunity for a hearing; and (8) a bar to any of the Releasing Parties asserting any Claim or Cause of Action released pursuant to the Third Party Release.
Exculpated Parties	Exculpated Parties means, collectively, and in each case solely in its capacity as such: (a) each of the Debtors; and (b) with respect to the Debtors each of their respective current and former directors, managers, officers, attorneys, financial advisors, consultants, or other professionals or advisors that served in such capacity between the Petition Date and Effective Date.
Exculpation	Except as otherwise expressly provided in the Plan or the Confirmation Order, to the fullest extent permitted by applicable law, no Exculpated Party shall have or incur, and each Exculpated Party is released and exculpated from any Cause of Action for any claim related to any act or omission in connection with, relating to, or arising out of, the Chapter 11 Cases, the formulation, preparation, dissemination, negotiation, or filing of the Disclosure Statement, the Plan, or any Restructuring Transaction, contract, instrument, release or other agreement or document created or entered into in connection with the Disclosure Statement or the Plan, the filing of the Chapter 11 Cases, the participation in the DIP Facility, the pursuit of Confirmation, the pursuit

	of Consummation, the administration and implementation of the Plan, including the issuance of securities pursuant to the Plan, or the distribution of property under the Plan or any other related agreement, except for claims related to any act or omission that is determined in a Final Order to have constituted actual fraud, willful misconduct, or gross negligence, but in all respects such Entities shall be entitled to reasonably rely upon the advice of counsel with respect to their duties and responsibilities pursuant to the Plan. The Exculpated Parties have, and upon consummation of the Plan shall be deemed to have, participated in good faith and in compliance with the applicable laws with regard to the solicitation of votes and distribution of consideration pursuant to the Plan and, therefore, are not, and on account of such distributions shall not be, liable at any time for the violation of any applicable law, rule, or regulation governing the solicitation of acceptances or rejections of the Plan or such distributions made pursuant to the Plan.
Injunction	Except as otherwise specifically provided in the Plan or for obligations issued or required to be paid pursuant to the Plan or the Confirmation Order, all Entities who have held, hold, or may hold Claims or Interests that have been released or are subject to exculpation are permanently enjoined, from and after the Plan Effective Date, from taking any of the following actions against, as applicable, the Debtors, the Wind-Down Debtor, the Exculpated Parties, or the Released Parties: (a) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests; (b) enforcing, attaching, collecting, or recovering by any manner or means any judgment, award, decree, or order against such Entities on account of or in connection with or with respect to any such Claims or Interests; (c) creating, perfecting, or enforcing any encumbrance of any kind against such Entities or the property or the estates of such Entities on account of or in connection with or with respect to any such Claims or Interests; (d) asserting any right of setoff, subrogation, or recoupment of any kind against any obligation due from such Entities or against the property of such Entities on account of or in connection with or with respect to any such Claims or Interests unless such Holder has Filed a motion requesting the right to perform such setoff on or before the Plan Effective Date, and notwithstanding an indication of a claim or interest or otherwise that such Holder asserts, has, or intends to preserve any right of setoff pursuant to applicable law or otherwise; and (e) commencing or continuing in any manner any action or other proceeding of any kind on account of or in connection with or with respect to any such Claims or Interests released or settled pursuant to the Plan. Upon entry of the Confirmation Order, all Holders of Claims and Interests and their respective current and former employees, agents, officers, directors, managers, principals, and direct and indirect Affiliates, in their capacities as such, shall be enjoined from taking any actions to interfere with the implementation or Consummation of the

	Plan. Each Holder of an Allowed Claim or Allowed Interest, as applicable, by accepting, or being eligible to accept, distributions under or Reinstatement of such Claim or Interest, as applicable, pursuant to the Plan, shall be deemed to have consented to the injunction provisions set forth in this [Article [●]]. No Person or Entity may commence or pursue a Claim or Cause of Action of any kind against the Debtors, the Wind-Down Debtor, the Exculpated Parties, or the Released Parties that relates to or is reasonably likely to relate to any act or omission in connection with, relating to, or arising out of a Claim or Cause of Action subject to [Article [●]] hereof, without the Bankruptcy Court (i) first determining, after notice and a hearing, that such Claim or Cause of Action represents a colorable Claim of any kind, and (ii) specifically authorizing such Person or Entity to bring such Claim or Cause of Action against any such Debtor, Wind-Down Debtor, Exculpated Party, or Released Party.

EXHIBIT C

Provision for Transfer Agreement

The undersigned ("**Transferee**") hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as of June 9, 2024 (the "**Agreement**"),[1] by and among Vyaire Holding Company and its affiliates and subsidiaries bound thereto and the Consenting Stakeholders, including the transferor to the Transferee of any Company Claims/ Interests (each such transferor, a "**Transferor**"), and agrees to be bound by the terms and conditions thereof to the extent the Transferor was thereby bound, and shall be deemed a "Consenting Stakeholder" under the terms of the Agreement.

The Transferee specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date of the Transfer, including the agreement to be bound by the vote of the Transferor if such vote was cast before the effectiveness of the Transfer discussed herein.

Date Executed:

____
Name:
Title:
Address:
E-mail address(es):

Aggregate Amounts Beneficially Owned or Managed on Account of:	
Existing First Lien Term Loans	
Existing Second Lien Term Loans	
Equity Interests	

[1] Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.

EXHIBIT D

Joinder Agreement

The undersigned ("**Joinder Party**") hereby acknowledges that it has read and understands the Restructuring Support Agreement, dated as June 9, 2024, by and among the Company Parties and the Consenting Stakeholders (as amended, amended and restated, supplemented, or otherwise modified from time to time in accordance with the terms thereof, the "**Agreement**"),[1] and agrees to be bound by the terms and conditions thereof to the extent that the other Parties are thereby bound, and shall be deemed a "Consenting Stakeholder" under the terms of the Agreement.

The Joinder Party specifically agrees to be bound by the terms and conditions of the Agreement and makes all representations and warranties contained therein as of the date this Joinder Agreement is executed and any further date specified in the Agreement.

Date Executed:

____

Name:
Title:
Address:
E-mail address(es):

Aggregate Amounts Beneficially Owned or Managed on Account of:	
Existing First Lien Term Loans	
Existing Second Lien Term Loans	
Equity Interests	

[1] Capitalized terms used but not otherwise defined herein shall having the meaning ascribed to such terms in the Agreement.