IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: VYAIRE MEDICAL, INC., *et al.*,[1] Debtors.	Chapter 11 Case No. 24-11217 (BLS) (Jointly Administered) **Re: D.I. 256, 462**

LIMITED OBJECTION OF SALESFORCE, INC. TO THE PROPOSED ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS AND CURE COSTS, IN CONNECTION WITH THE SALE AND RESERVATION OF RIGHTS

Salesforce, Inc. (f/k/a salesforce.com, inc.) ("**Salesforce"**), by and through their undersigned counsel, hereby files its limited objection and reservation of rights (the "**Assumption and Assignment Objection**")[2] to the assumption and assignment of the executory contracts (the "**Salesforce Contracts**")[3] by and between Salesforce and the above-captioned debtors and debtors-in-possession (the "**Debtors**") pursuant to (A) the applicable Assumption and Assignment Notices[4] filed by the Debtors; (B) any plan of reorganization and any supplemental pleadings filed

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

[2] Defined Terms used in this Assumption and Assignment Objection, but which are not specifically defined herein, shall have the meanings ascribed to them in the Ramirez Declaration filed concurrently herewith.

[3] The Salesforce Contract means (A) the agreements and orders identified on Exhibit "A" incorporated in the Ramirez Declaration filed concurrently herewith and (B) any and all additional agreements and orders that hereinafter are determined to be executory contracts that must be assumed by the Debtors pursuant to the Assumption and Assignment Notices, any other motion seeking to assume and/or assign executory contracts and/or any plan of reorganization and/or assigned by the Debtors to any third party in order for the Debtors or their assigns, as applicable, to realize the same Salesforce Services as currently enjoyed by the Debtors.

[4] *See First Notice to Contract Parties of Potentially Assumed and Assigned Executory Contracts and Unexpired Leases* [D.I. 256] ("**First Cure Notice**") and the *First Supplemental Notice of Contract Parties of Potentially*

in connection with any plan of reorganization; and/or (C) any motion otherwise filed in the bankruptcy cases seeking entry of an order approving and authorizing and/or assignment of the Salesforce Contracts.

This Assumption and Assignment Objection is based on the matters set forth herein, the *Declaration of Kevin Ramirez in Support of the Limited Objection of Salesforce, Inc. to the Proposed Assumption of Certain Executory Contracts and Cure Costs, and Reservation of Rights* (the "**Ramirez Declaration**") filed in support hereof, the files and the records in this case, and such other and further evidence as may be submitted at or before the trial on this matter.

Salesforce requests that the Court take judicial notice of the pleadings filed in this case and the facts set forth in the Court's orders, findings of fact and conclusions of law pursuant to Rule 201 of the Federal Rules of Evidence (as incorporated by Rule 9017 of the Federal Rules of Bankruptcy Procedure).

RELIEF REQUESTED

Salesforce seeks entry of an Assumption and Assignment Order (or, as applicable, a Confirmation Order or Sale Order) protecting its rights and interests that includes the following provisions and relief:

A. Findings of fact stating that: (1) the Salesforce Contracts include several related agreements that, taken together, constitute an integrated executory contract for purposes of assumption and assignment of such contract pursuant to 11 U.S.C. §365; (2) the Salesforce Contracts constitute an executory contract subject to assumption pursuant to any plan of reorganization, plan supplements, the cure notices filed, and/or any additional assumption , motion, as applicable; (3) an aggregate monetary default (the "**Salesforce Cure Amount**") exists pursuant

Assumed and Assigned Executory Contracts [D.I. 462] (the "**Supplemental Cure Notice**," and collectively, with the First Cure Notice, the "**Assumption and Assignment Notices**").

to the Salesforce Contract, which includes (i) not less than US $277,052.76 that is due and owing, but unpaid, as of September 6, 2024 (the "**Current Monetary Default**") and (ii) such further monetary default amounts (the "**Future Monetary Default**") that may accrue from and after September 6, 2024 through the date the assumption and assignment of the Salesforce Contract becomes effective (the "**Effective Assumption Date**") and (iii) any and all monetary defaults (collectively, the "**Additional Salesforce Contract Monetary Defaults**") that may accrue through the Effective Assumption Date, but which remain unpaid as of that date, with respect to any and all agreements and orders not currently listed on the Cure Notice but which hereafter are identified as executory contracts that may be assumed and assigned (the "**Additional Salesforce Contracts**") and any executory contracts subject to the reservation of rights provisions of this Assumption and Assignment Objection[5] (i.e. the Excluded Contracts, as defined herein).

B. The requirement that, as a condition of approving and authorizing the assumption of the Salesforce Contracts, an additional Salesforce Contract and/or an excluded contract (collectively, referred to as the "**Collective Salesforce Contracts**"), the Debtors shall: (1) prepare an updated schedule (the "**Revised Cure Notice**") identifying (a) any and all agreements and orders (including, without limitation, all of the Collective Salesforce Contracts) that they seek to assume pursuant to the Plan, the Cure Notice, and/or any Additional Assumption Motion and (b) the monetary defaults that must be cured with respect to each such contract; (2) file the Revised Cure Notice with the Court and serve a copy of such notice on Salesforce not later than five (5) business days prior to the initial hearing at which the Court will consider approval of the assumption of the Collective Salesforce Contracts; and (3) pay not less than the aggregate monetary defaults due and owing, but unpaid, with respect to all such contracts through the Effective Assumption Date.

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[5] *See* the *Reservation of Rights* in this Assumption and Assignment Objection concerning such contracts.

C. The requirement that, if the Salesforce Contract, any Additional Salesforce Contract and/or any Excluded Contract (1) are assumed pursuant to the Plan and/or an Additional Assumption Motion and, thereafter, (2) such assumed contract is assigned to a third party who is not identified in the Plan or the Cure Notice as the prospective assignee (the "**Prospective Assignee**") of such contract (an "**Assigned Salesforce Contract**"), the Debtors shall (1) identify the Prospective Assignee of each Assigned Salesforce Contract who will be obligated to perform all terms and conditions of each such contract and (2) not later than five (5) business days prior to the initial hearing set to consider approval of the assignment of such contract to such Prospective Assignee, provide adequate assurance of the ability of the Prospective Assignee to perform all terms and conditions of the Assigned Salesforce Contract (including, without limitation, payment of the Salesforce Cure Amount, the extension period fees (if any), the renewal contract fees (if any) and any and all other amounts due in conjunction with the Assigned Salesforce Contract).

D. The requirement that, in the event the Salesforce Contracts, any Additional Salesforce Contract and/or any Excluded Contract is not assumed, the Court shall enter an order (a "**Rejection Order**"): (1) approving the rejection of each such contract, as applicable, (individually, a "**Rejected Contract**" and, collectively, the "**Rejected Contracts**"); (2) specifying the date rejection of each Rejected Contract shall be effective (the "**Effective Rejection Date**"); (3) terminating the automatic stay imposed by 11 U.S.C. §362 (the "**Stay**") as it pertains to each Rejected Contract; (4) authorizing, but not requiring, Salesforce to terminate the each Rejected Contract, without further order of the Court; (5) terminating any and all obligations of Salesforce to provide any services to the Debtors (including, without limitation, the Salesforce Transition Services as identified hereinafter) pursuant to each Rejected Contract, from and after the Effective Rejection Date; and (6) ordering that all requested relief shall be effective with respect to each

Rejected Contract on the Effective Rejection Date without (i) Salesforce being required to file a separate motion seeking termination of the Stay and/or any of the Rejected Contracts or (ii) the Court entering any order (other than the Rejection Order).

E. The requirement that, pursuant 11 U.S.C. §§503 and 507, the Debtors and their respective bankruptcy estates (collectively, the "**Bankruptcy Estates**") shall pay all amounts due with respect to all services and/or goods (the "**Salesforce Administrative Expense**") provided to the Bankruptcy Estates from and after the Petition Date through the latter of, as applicable, (1) the Effective Assumption Date or (2) in the event the Salesforce Contract is rejected, through the Effective Rejection Date.

F. The requirement that, in the event the (1) the Debtors sell, convey and/or transfer some or all of their assets and/or business operation(s) (a "**Transaction**") to any third party (a "**Buyer**") pursuant to the Plan, a Confirmation Order, a Sale Order or any other order entered by the Court, as applicable, and (2) the Debtors and/or Buyers request that any services be provided by Salesforce (the **"Transition Services**") to the Debtors, their Bankruptcy Estates and/or the Buyer in connection with the Transaction pursuant to (a) an agreement (a "**Transition Services Agreement**") by and between the Debtors (as debtors in possession) or other authorized representative of the Bankruptcy Estates and the Buyer (the "**Transition Service Parties**") or (b) a Court order, (3) the Court shall enter an order (a **"Transition Services Order**"): (a) requiring Debtors and their Bankruptcy Estates or the Buyer, as applicable, to pay any and all amounts that are due and owing (the "**Transition Services Claim**") with respect to such Transition Services provided from and after Petition Date to the later of (i) the date the Transition Services Agreement expires or (ii) the date such Transition Services cease to be provided (each such date constitutes the "**Transition Services Expiration Date**") and (b) specifying the obligation to provide

Transition Services shall terminate on Transition Services Expiration Date *unless* the Transition Services Order specifically provides that: (i) Salesforce, in its sole discretion, may agree, but is not required, to provide such Transition Services after the Transition Services Expiration Date (the "**Extended Transition Service Period**") on such terms and conditions as required by Salesforce, (ii) the Debtors, the Bankruptcy Estates, or the Buyer, as applicable, are liable for payment of all amounts due for the Transition Services provided during the Extended Transition Service Period (the "**Post-Rejection Services Obligation**"), and (iii) payment of the Post-Rejection Services Obligation does not constitute a waiver or release of Salesforce's rights to payment of the Transition Services Claim or derogate Salesforce's right to payment of all amounts due with respect to any and all services and/or goods provided from and after the Petition Date through the end of either the Transition Services Expiration Date or the Extended Transition Services Period;

G. Approval of the Salesforce Reservation of Rights (as set forth hereinafter); and

H. Granting such other relief as may be just and proper under the facts and circumstances of the Bankruptcy Cases.

BACKGROUND

1. Salesforce is a Delaware corporation, and, among other activities, it provides on-demand customer relationship management and software application services (collectively, the "**Salesforce Services**") to Salesforce's business customers (individually, a "**Salesforce Customer**" and, collectively, "**Salesforce Customers**").

THE SALESFORCE CONTRACT

2. Salesforce provides the Salesforce Services pursuant to the agreements and orders identified on Exhibit "A" attached to the Ramirez Declaration (collectively, the "**Salesforce Contracts**") and Exhibit "A" is incorporated by referenced into this Assumption and Assignment Objection as if fully set forth herein.

3. The Debtors entered into those certain Salesforce Contracts and pursuant to the Salesforce Contracts: (i) the Debtors ordered certain Salesforce Services and became obligated to pay in full the aggregate amounts due pursuant to this contract with respect to such services; (ii) Salesforce became obligated to provide Salesforce Services to the Debtors; (iii) Salesforce have provided such services to the Debtors; and (iv) the Debtors accepted and utilized Salesforce Services provided pursuant to the Salesforce Contracts.

THE BANKRUPTCY CASE

4. On June 9, 2024, (the "**Petition Date**") Vyaire Medical, Inc. and the above captioned Debtors each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the "**Court**") and, thereby, commenced their individual cases under chapter 11 (collectively, the "**Bankruptcy Cases**"). On June 11, 2024, the Court entered the Joint Administration Order[6] directing the joint administration of the Debtors' cases.

5. On or about July 11, 2024, the Court entered an order (the "**Sale Procedures Order**")[7] authorizing the Debtors to establish procedures for sale of certain of the Debtors' assets and procedures related to the assumption, assumption and assignment, and/or transfer of executory contracts and unexpired leases in connection with a sale of the Debtors' assets.

6. On or about July 11, 2024, the Court entered an order (the "**Sale Order**")[8] authorizing

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6 *See, Order (I) Directing Joint Administration of Chapter 11 Cases And (II) Granting Related Relief* [D.I. 84] (the "**Joint Administration Order**").

7 *See, Order (I) Approving Bidding Procedures and Bid Protections, (II) Scheduling Certain Dates and Deadlines with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, (IV)Establishing Notice and Procedures for the Assumption and Assignment of Contracts and Leases, (V) Authorizing the Assumption and Assignment of Contracts and Leases, (VI) Authorizing the Sale of Assets; and (VII) Granting Related Relief* [D.I. 249] (the "**Sale Procedures Orde**r").

8 *See, Order (I) Authorizing and Approving Procedures to Reject Executory Contracts and Unexpired Leases and (II) Granting Related Relief* [D.I. 250]. (the "**Sale Order**").

the sale of certain of the Debtors' assets and the assumption, assumption and assignment, and/or transfer of executory contracts and unexpired leases in connection with a sale of the Debtors' assets.

7. On or about July 11, 2024, pursuant to the Sale Procedures Order, the Debtors filed the First Cure Notice. Salesforce informally objected to the First Cure Notice and the Debtors agreed to modify the contract descriptions, and the Debtors and Salesforce agreed upon the correct cure amount of US $277,052.76.

8. On August 24. 2024, the Debtors filed the Supplemental Cure Notice (collectively, with the First Cure Notice, the "**Assumption and Assignment Notices**").

9. The Assumption and Assignment Notices filed by the Debtors identify: (A) certain Contracts that the Debtors have designated for assumption and assignment including the following executory contracts to which Salesforce are counterparties (the "**Cure Notices Contracts**"), and (B) the amount of any monetary default (the "**Debtors' Proposed Cure Amount**") that it contends must be cured as a condition of the assumption of these Cure Notices Contracts:

First Cure Notice (D.I. 256, filed July 11, 2024).

NO.	CONSOLIDATE VENDOR NAME	VENDOR/ AGENCY/ COMPANY	DESCRIPTION	WORKS TREAM	PROPOSED CURE AMOUNT	ASSIGNEE	ASSUMPTION DATE
6235	SFDC	SFDC	SalesForce 2017-07-14 IT Master Service		$267,052.43		7/11/2024
6236	SFDC	SFDC	Salesforce.com, Inc. 2020-08-14-2020		$ 0.00		7/11/2024
6237	SFDC	SFDC	Salesforce.com, Inc. 2020-07-16 Order For		$ 0.00		7/11/2024
6238	SFDC	SFDC	Salesforce 2017-07-17 IT Order		$ 0.00		7/11/2024
6239	SFDC	SFDC	Purchase Order PO PS 070689		$ 0.00		7/11/2024
6240	SFDC	SFDC	Purchase Order PO PS 070690		$ 0.00		7/11/2024
6241	SFDC	SFDC	Purchase Order Quote Q-07416306		$ 0.00		7/11/2024
6242	SFDC	SFDC	Purchase Order Quote Q-07764587		$ 0.00		7/11/2024

Supplemental Cure Notice (D.I. 462, filed August 24, 2024).

NO.	CONSOLIDATE VENDOR NAME	VENDOR/ AGENCY/ COMPANY	DESCRIPTION	WORKS TREAM	PROPOSED CURE AMOUNT	ASSIGNEE	ASSUMPTION DATE
8265	SFDC	SFDC	Purchase Order Quote Q-07842041		$ 0.00		8/24/2024
8266	SFDC	SFDC	Purchase Order Quote Q-07187278		$ 0.00		8/24/2024
8267	SFDC	SFDC	Purchase Order Quote Q-07114790		$ 0.00		8/24/2024

10. The Supplemental Cure Notice states that counterparties to the Cure Notices Contracts must file an objection to the proposed assumption and assignment of the Cure Notices Contracts (including to the proposed Cure Amount) no later than September 6, 2024. The Debtors further extended Salesforce's objection deadline to September 13, 2024 (the "**Assumption and Assignment Objection Deadline**").

THE CURE AMOUNT

11. Salesforce submits that: (A) the Cure Notices Contracts scheduled on the Assumption and Assignment Notices do not match the description of the Salesforce Contracts as listed on Salesforce' records[9]; (B) the Salesforce Contracts are correctly identified on the Cure Amount Summary attached to the Ramirez Declaration as Exhibit "A" and incorporated herein by this reference; and (C) as of the filing date of the Assumption and Assignment Objection, Salesforce' records show that the Debtor has failed to pay all amounts due and owing pursuant to the Salesforce Contracts and, accordingly, the Debtor must cure the aggregate amount of not less than US $277,052.76 (the "**Salesforce Cure Amount**") with respect to Salesforce Services, and such amount must be paid by the Debtor as a condition of the assumption of the Salesforce Contracts.

12. Additionally, with respect to the Salesforce Services to be provided in the future, not less than an aggregate amount of US $19,327.03 (*i.e.*, the Future Payments) will become due and owing pursuant to the Salesforce Contracts.

13. Because the Assumption and Assignment Notices do not correctly identify all the potentially assumable contracts to which Salesforce is a counterparty, it is possible that the

[9] Accordingly, the Salesforce Assumption and Assumption Objection requests the Debtors provide further information concerning all of the Orders, and any professional service agreement and/or master subscription agreement that they propose may be assumed pursuant to the Sale.

Salesforce Contracts cure amount may be increased once all executory contracts to be assumed are determined by Salesforce and the Debtors. Further, it is possible that the Salesforce Cure Amount may be increased once executory contracts to be assumed are determined by Salesforce, the Debtor and the Buyer.[10]

GROUNDS FOR THE RELIEF REQUESTED

The Salesforce Contract Constitutes an Integrated Contract That Must Be Assumed in Its Entirety

14. Pursuant to the U.S. Bankruptcy Code, a debtor-in-possession has the power, with court approval, to assume or reject any executory contract or unexpired lease. 11 U.S.C. §365(b)(1)(A). As a practical matter, a commercial relationship often includes several agreements that, taken together, constitute an integrated contract. The threshold issue for a court in determining whether to approve the assumption of an executory contract is to identify all the agreements that constitute the "executory contract" at issue. *Lewis Bros. Bakeries, Inc. v. Interstate Brands Corp. (In re Interstate Bakeries Corp.)*, 751 F.3d 955, 961 (8th Cir.2014) (To determine the applicability of §365, the Court "must first identify what constitutes the agreements at issue.")

15. If, as is the situation with respect to the Salesforce Contracts, several agreements between the parties exist "it is well-settled that state law governs whether the agreements are separate or indivisible for purposes of §365." *In re New York Skyline, Inc.*, 432 B.R. 66, 77 (Bankr. S.D.N.Y. 2010) (applying New York state law); *In re Adelphia Bus. Solutions, Inc.*, 322 B.R. 51, 55 (Bankr. S.D.N.Y. 2005) (applying Missouri state law); *Fuentes v. TMCSF, Inc.*, 26 Cal. App.

[10] By the Salesforce Assumption and Assignment Objection, Salesforce reserves all rights with respect to each executory contract not identified in the Cure Notice but that, ultimately, the Debtors seek to assume and/or assign pursuant to the Sale and Assumption Motion, any other motion, or any plan of reorganization.

5th 541, 548, 237 Cal. Rptr. 3d 256, 261 (Ct. App. 2018) (applying California law).

16. In determining whether a series of agreements constitute an integrated contract or separate contracts, the intention of the parties is the first and foremost factor considered by a court. *See e.g., Pirinate Consulting Corp, LLC v. C.R. Meyer & Sons, Co. (In re Newpage Corporation),* 2017 WL 571478 (Bankr. Del., Feb. 13, 2017); *In re Buffets Holdings, Inc.,* 387 B.R. 115, 120 (Bankr. D. Del. 2008). This determination is made by analyzing the plain language of the Master Agreement between the parties. *Carlisle Corp. v. Uresco Const. Materials, Inc.*, 823 F. Supp. 271, 274 (M.D. Pa. 1993); *Fuentes v. TMCSF, Inc.*, 26 Cal. App. 5th at 548, 237 Cal. Rptr. 3d at 261 (Ct. App. 2018) *citing* (*Goodman v. Severin* (1969) 274 Cal.App.2d 885, 895, 79 Cal.Rptr. 555.) "[T]o determine and effectuate the intent of the parties, and the primary source for identifying this intent is the language of the contract itself." *Wash. Metro. Area Transit Auth. v. Potomac Inv. Props., Inc.*, 476 F.3d 231 (4th Cir. 2007).

17. Where multiple agreements are intended to comprise one contract or transaction, a party may not sever them for purposes of assumption or rejection. "[A]ll of the contracts that comprise an integrated agreement must be either assumed or rejected, since they all make up one contract." *In re LG Philips Displays USA, Inc.*, No. 06–10245(BLS), 2006 WL 1748671, at *4 (Bankr. D. Del. June 21, 2006).

18. In the matter before this Court, the MSAs that comprise part of the integrated Salesforce Contract, expressly provide that the governing law is California state law.[11] Salesforce submits that, pursuant to the applicable California law, the Salesforce Services are provided pursuant to the Order Forms and the MSA, and these agreements are intended to provide the

[11] *See* §12.9, §13.1, §23 and Clause 9 of the applicable MSAs. As previously noted, due to the confidentiality provisions of the MSAs, a copy of the Salesforce Contract is not attached to my declaration. However, subject to appropriate non-disclosure protections, a copy of the Salesforce Contract will be made available to the Debtors and the Committee.

Debtors with a comprehensive set of services and functionality. In short, Salesforce submits that all the agreements identified as the Salesforce Contract constitute an integrated contract under California law.

<u>All Defaults Under an Assumed Contract Must Be Cured</u>

19. Where (as in the case before the Court) the debtor has defaulted on an executory contract, the Bankruptcy Code prohibits the debtor from assuming the contract unless the debtor:

> (A) cures, or provides adequate assurance that the [debtor] will promptly cure, such default . . . .
>
> (B) compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the debtor to such contract or lease, for any actual pecuniary loss to such party resulting from such default; and
>
> (C) provides adequate assurance of future performance under such contract or lease.

See 11 U.S.C. §365(b)(1)(A).

20. "Once an assumption order is entered, the creditor must perform in accordance with the terms of the assumed agreements. . . In other words, *the debtor must cure all defaults, assure future performance, and make the other contracting party whole before it may be permitted to assume the agreement.*". *In re Kiwi Intern. Air Lines, Inc.*, 344 F.3d 311, 318 (3rd Cir. 2003) (emphasis added); *In re Columbia Gas System Inc.*, 50 F.3d 233, 238–39 (3d Cir.1995) ("[T]he Bankruptcy Code provides that the cost of performing the debtor's obligations is an administrative expense of the estate. . . .").

21. Salesforce submits that, with respect to the Salesforce Contract, the Debtors are obligated to cure all monetary defaults – that is, the Salesforce Cure Amount (in the amount of $277,052.76) – in full as a condition of assumption and assignment of the Salesforce Contract pursuant to 11 U.S.C. §365(b)(1)(A).

RESERVATION OF RIGHTS

22. Salesforce does not object to assumption and assignment of the Salesforce Contract *provided that* the Assumption and Assignment Order includes the provisions and relief requested by the Assumption and Assignment Objection.

23. Salesforce hereby expressly reserves (the "**Salesforce Reservation of Rights**") all rights, interests, claims, counterclaims, rights of setoff and recoupment and/or defenses pertaining to any or all such contracts including, without limitation: (1) with respect to any and all other Excluded Contracts: (a) the right to object to the assumption and/or assignment by the Debtors of any Excluded Contract, (b) the right to payment of all monetary defaults and the cure of all non-monetary defaults that exist with respect to each Excluded Contract, (c) the right to assert any Cure Costs due and owing with respect to each any Excluded Contract that hereinafter are designated for assumption and assignment by the Debtors, and/or (d) the right to have the assignment of any Excluded Contract specifically conditioned on the Court finding, based on competent evidence, that the actual assignee of each such contract is capable of performing all terms and conditions of such contract including, without limitation, payment of all amounts that will come due and owing subsequent to any such assignment; and (2) in the event the Salesforce Contract is assigned to a third party through a sale of assets, a plan of reorganization or otherwise: (a) the right to object to the assumption and/or assignment by the Debtors of any such contract, and/or (b) the right to have the assignment of any such contract specifically conditioned on the Court finding, based on competent evidence, that the actual assignee of such contract is capable of performing all terms and conditions of such contract including, without limitation, payment of all amounts that will come due and owing subsequent to any such assignment.

WHEREFORE, if the Court determines to approve assumption of any of the Salesforce Contracts, Salesforce requests entry of an Assumption and Assignment Order (or a Confirmation

Order and/or Sale Order, as applicable) protecting Salesforce's rights and interests by including the following findings of facts and relief in such order:

A. Findings of fact stating that: (1) the Salesforce Contracts includes several related agreements that, taken together, constitute an integrated executory contract for purposes of assumption and assignment of such contract pursuant to 11 U.S.C. §365; (2) the Salesforce Contracts constitutes an executory contract subject to assumption; (3) the Salesforce Cure Amount that must be paid as a condition of the assumption of the Salesforce Contracts includes (i) not less than $277,052.76 that is due and owing, but unpaid, as of September 6, 2024 and (ii) such Future Monetary Default that may accrue from and after September 6, 2024 through the Effective Assumption Date and (iii) any Additional Salesforce Contract Monetary Default that may accrue through the Effective Assumption Date of an Additional Salesforce Contract and/or Excluded Contract, but which remain unpaid as of that date, with respect to any and all such contracts that hereafter are assumed.

B. The requirement that, as a condition of approving and authorizing the assumption of any of the Salesforce Contracts, the Debtors shall: (1) prepare a Revised Cure Notice identifying (a) any and all agreements and orders that they seek to assume pursuant to the Plan, the Cure Notice, and/or any Additional Assumption Motion and (b) the monetary defaults that must be cured with respect to each such contract; (2) file the Revised Cure Notice with the Court and serve a copy of such notice on Salesforce not later than five (5) business days prior to the initial hearing at which the Court will consider approval of the assumption of the Collective Salesforce Contracts; and (3) pay not less than the aggregate monetary defaults due and owing, but unpaid, with respect to all such contracts through the Effective Assumption Date;

C. The requirement that, if any Salesforce Contract, any additional Salesforce Contract and/or any Excluded Contract is assumed pursuant to the Plan and/or an Additional Assumption Motion and, thereafter, such assumed contract is assigned to a third party who is not identified in the Plan or the Cure Notice as the Prospective Assignee of such Assigned Salesforce Contract, the Debtors shall (1) identify the Prospective Assignee of each Assigned Salesforce Contract who will be obligated to perform all terms and conditions of each such contract and (2) not later than five (5) business days prior to the initial hearing set to consider approval of the assignment of such contract to such Prospective Assignee, provide adequate assurance of the ability of the Prospective Assignee to perform all terms and conditions of the Assigned Salesforce Contract (including, without limitation, payment of the Salesforce Cure Amount, the extension period fees (if any), the renewal contract fees (if any) and any and all other amounts due in conjunction with the Assigned Salesforce Contract).

D. The requirement that, in the event the Salesforce Contract, any Additional Salesforce Contract and/or any Excluded Contract is not assumed, the Court shall enter a Rejection Order: (1) approving the rejection of each Rejected Contract; (2) specifying the Effective Rejection Date applicable to each Rejected Contract; (3) terminating the Stay as it pertains to each Rejected Contract; (4) authorizing, but not requiring, Salesforce to terminate the each Rejected Contract, without further order of the Court; (5) terminating any and all obligations of Salesforce to provide any services to the Debtors (including, without limitation, the Salesforce Transition Services) pursuant to each Rejected Contract, from and after the Effective Rejection Date; and (6) ordering that all requested relief shall be effective with respect to each Rejected Contract on the Effective Rejection Date without (i) Salesforce being required to file a separate motion seeking termination of the Stay and/or any of the Rejected Contracts or (ii) the Court entering any order (other than the Rejection Order);

E. The requirement that, pursuant 11 U.S.C. §§503 and 507, the Debtors and the Bankruptcy Estates shall pay all Salesforce Administrative Expense due with respect to all services and/or goods the provided to the Bankruptcy Estates from and after the Petition Date through the latter of, as applicable, (1) the Effective Assumption Date or (2) in the event the Salesforce Contract is rejected, through the Effective Rejection Date.

F. The requirement that, in the event the (1) the Debtors enter into a Transaction with any Buyer pursuant to the Plan, a Confirmation Order, Sale Order or other order entered by the Court, as applicable, and (2) the Debtors and/or Buyers request that any Transition Services be provided by Salesforce to the Debtors, their Bankruptcy Estates and/or the Buyer in connection with the Transaction pursuant to (a) a Transition Services Agreement by and between Transition Service Parties or (b) a Court order, (3) the Court shall enter its Transition Services Order: (a) requiring Debtors and their Bankruptcy Estates or the Buyer, as applicable, to pay in full the Transition Services Claim with respect to such Transition Services provided from and after Petition Date to the Transition Services Expiration Date and (b) specifying the obligation to provide Transition Services shall terminate on Transition Services Expiration Date *unless* the Transition Services Order specifically provides that: (i) Salesforce, in its sole discretion, may agree, but is not required, to provide such Transition Services during the Extended Transition Service Period on such terms and conditions as required by Salesforce, (ii) the Debtors, the Bankruptcy Estates, or the Buyer, as applicable, are liable for payment of the Post-Rejection Services Obligation, and (iii) payment of the Post-Rejection Services Obligation does not constitute a waiver or release of Salesforce's rights to payment of the Transition Services Claim or derogate Salesforce's right to payment of all amounts due with respect to any and all services and/or goods provided from and after the Petition Date through the end of either the Transition Services Expiration Date or the

Extended Transition Services Period;

G. Approval of the Salesforce Reservation of Rights; and

H. Granting such other relief as may be just and proper under the facts and circumstances of the Bankruptcy Cases.

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Dated: September 10, 2024
Wilmington, Delaware

Respectfully submitted,

WHITE AND WILLIAMS LLP

/s/ Michael Ingrassia
Michael Ingrassia (No. 7068)
600 North King Street, Suite 800
Wilmington, DE 19801
Phone: 302-467-4503
Fax: 302-467-4550
Email: ingrassiam@whiteandwilliams.com

-and-

WHITE AND WILLIAMS LLP
Amy E. Vulpio, Esquire
1650 Market Street, Suite 1800
One Liberty Place
Philadelphia, PA 19103-7395
Telephone: (215) 864-6250
Facsimile: (215) 789-7550
Email: vulpioa@whiteandwilliams.com

-and-

BIALSON, BERGEN & SCHWAB,
A Professional Corporation
Gaye Nell Heck, Esq.
Thomas M. Gaa, Esq.
830 Menlo Avenue, Suite 201
Menlo Park, CA 94025
Telephone: (650) 857-9500
Fax: (650) 494-2738
E-mail: Tgaa@bbslaw.com
Gheck@bbslaw.com

Attorneys for Creditor Salesforce, Inc.