EXHIBIT E

(I) The Identity of the Plan Administrator – David M. Barse

(II) Plan Adminstrator Agreement

(Provided in initial draft form and subject to ongoing negotiation, review, and revision with the DIP Lenders in accordance with terms of Plan, the Restructuring Support Agreement, and DIP Order)

PLAN ADMINISTRATOR AGREEMENT

This PLAN ADMINISTRATOR AGREEMENT (this "Agreement"), dated as of November [●], 2024 by and among (a) Vyaire Medical, Inc., on behalf of itself and its Debtor affiliates (collectively, the "Debtors") and (b) David Barse of DMB Holdings, LLC, to serve as (and who is deemed designated) the Plan Administrator under, as defined in, and for all purposes of the Plan, until the Plan Administrator ceases to be the Plan Administrator hereunder (the "Plan Administrator," and with the Debtors, the "Parties"), sets forth the terms and conditions under which the Plan Administrator shall effectuate the wind down, dissolution, and liquidation of the Debtors' Estates and to implement the terms and distributions under the *Joint Chapter 11 Plan of Vyaire Medical, Inc. and Its Debtor Affiliates* [Docket No. [●]] (as may be amended from time to time and including all supplements thereto, the "Plan").[1]

1. Appointment. The Plan Administrator has been selected by the Debtors with the consent of the Required DIP Lenders pursuant to the Plan.[2] Effective as of the Effective Date, the Plan Administrator is appointed to act as the Plan Administrator under the Plan to implement the Plan and wind down the business and affairs of the Debtors, subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order. The Debtors and the Plan Administrator acknowledge that the Plan Administrator shall be a fiduciary for the Debtors' Estates. The Plan Administrator, as Plan Administrator for all purposes of the Plan, shall act for the Debtors in the same fiduciary capacity as applicable to a board of managers, directors, officers, general partner, or other governing body (each, a "Governing Body"), subject to the provisions of the Plan (and all certificates of formation, membership agreements, partnership agreements, and related documents are deemed amended by the Plan to permit and authorize the same) and, on the Effective Date, shall succeed to the powers of the Governing Body of each of the Debtors. The Plan Administrator shall be deemed a "representative" of the Debtors' Estates as contemplated by section 1123(b)(3)(B) of the Bankruptcy Code and appointed to enforce, in its reasonable business judgment, all claims, interests, or Retained Causes of Action held by the Debtors' Estates on and after the Effective Date, unless any Retained Cause of Action against an Entity is expressly waived, relinquished, exculpated, released, compromised, or settled in the Plan or a Final Order, *provided* that the Debtors, in consultation with the Plan Administrator after the Effective Date, may prosecute any such Retained Cause of Action against any party only in connection with their objection (or counterclaim) to and resolution of any Claim asserted by such party, and *provided further* that, for the avoidance of doubt, Retained Causes of Action shall not include those causes of action transferred to the Purchasers pursuant to the Asset Purchase Agreements. The Plan Administrator shall be appointed the exclusive trustee of the Wind-Down Debtor Assets for the purposes of 31 U.S.C. § 3713(b) and 26 U.S.C. § 6012(b)(3). The Plan Administrator is hereby appointed to make (or cause to be made) any disbursements under the Plan on and after the Effective Date, subject to the terms and conditions set forth in this Agreement, the Plan, the

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[1] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Plan.

[2] Notwithstanding anything herein to the contrary, the Plan Administrator's Wind-Down of the Wind-Down Debtor Assets and any payments, distributions, or disbursements that the Plan Administrator seeks to make or (cause to be made) as part of the Wind-Down shall be subject in all respects to the Wind-Down Budget and the terms of and applicable consent rights set forth in the Plan and the Confirmation Order, including, for the avoidance of doubt and without limitation, any Distributable Value.

Confirmation Order, and the Wind-Down Budget. From and after the Effective Date, the Debtors' Estates shall be managed and administered through the Plan Administrator as Plan Administrator for all purposes of the Plan, who shall have full authority to administer the provisions of the Plan subject to the terms and conditions of this Agreement, the Plan, and the Confirmation Order and subject in all respects to the Wind-Down Budget. To the extent necessary, on and after the Effective Date, the Plan Administrator shall be deemed to be a substitute for the applicable Debtors as the party in interest in the Chapter 11 Cases, under the Plan, or in any judicial proceeding or appeal to which any of the Debtors is a Party. For the avoidance of doubt, the foregoing shall not limit the authority of the Plan Administrator to continue the employment of any former manager or officer, pursuant to any transition services agreement entered into on or after the Effective Date, by and between the Debtors and the Purchasers.

2. Scope of Services. The Plan Administrator is to provide post-Effective Date administration, wind down, dissolution, and liquidation services that are necessary, required, desirable, or advisable to effectuate the Wind Down and to make certain distributions under the Plan, in accordance with the Plan and Confirmation Order, and subject to the Wind-Down Budget. Without limiting the provisions of the Plan applicable to the Plan Administrator, the Plan Administrator will perform the following services for the Debtors' Estates (as such services may be further described in the Plan and/or Confirmation Order, together with any other or additional tasks required to be performed by the Plan Administrator as described in the Plan and/or the Confirmation Order):

(a) oversee the maintenance of the books, records, and accounts of the Debtors' Estates and the wind down and dissolution of the Debtors (or Wind-Down Debtors) and any non-debtor subsidiaries of the Debtors or Wind-Down Debtors, as applicable, after the Effective Date;

(b) be responsible for the ongoing administration of the Chapter 11 Cases, including but not limited to the claims reconciliation process, and shall have the authority to compromise or settle claims without the need for any further approval or order of the Bankruptcy Court;

(c) be responsible for all actions related to the closing of the Chapter 11 Cases;

(d) compromise, settle, or pursue the Retained Causes of Action in an efficacious manner and only to the extent the benefits of such enforcement or prosecution are reasonably believed to outweigh the costs associated therewith, subject to the terms and conditions set forth in this Agreement, the Plan, and the Confirmation Order;

(e) make (or cause to be made) distributions as contemplated under the Plan;

(f) in connection with making (or causing to be made) any distributions under the Plan, comply with all withholding and reporting requirements imposed by any federal, state, local, or foreign taxing authority;

(g) liquidate, receive, hold, invest, supervise, and protect the Wind-Down Debtor Assets in accordance with the Wind-Down Budget;

(h) take all steps to execute all instruments and documents appropriate to carry out the powers and duties enumerated in the Plan and to effectuate the distributions to be made under the Plan in accordance with the Wind-Down Budget;

(i) establish and maintain bank accounts in the name of the Wind-Down Debtor;

(j) subject to the terms set forth in the Plan, employ, retain, designate, terminate, or replace professionals, consultants, or employees to represent it with respect to its responsibilities or otherwise effectuate the Plan to the extent necessary; *provided* that subject to the Wind-Down Budget, the Plan Administrator shall be permitted to pay such professionals in the ordinary course of business from the Wind-Down Debtor Account and without any further notice to or action, approval, or order of the Bankruptcy Court;

(k) pay all reasonable fees, expenses, debts, charges, and liabilities of the Wind-Down Debtors on and after the Effective Date, subject to the Wind-Down Budget;

(l) administer and pay taxes of the Debtors and Wind-Down Debtors, including filing tax returns;

(m) represent the interests of the Debtors, Wind-Down Debtors, or the Estates before any taxing authority in all matters, including any action, suit, proceeding, or audit;

(n) oversee all other tax compliance matters, such as the filing of tax returns, payment of taxes, and pursuing tax refunds as necessary;

(o) make all necessary filings in accordance with any applicable law, statute, or regulation;

(p) prepare and file quarterly reports and other filings with the Bankruptcy Court; and

(q) without the need for further Bankruptcy Court approval or order, perform such other duties and exercise such other powers as may be vested in it pursuant to an order of the Bankruptcy Court or pursuant to the Plan, or as it reasonably deemed to be necessary and proper to carry out the provisions of the Plan, in each case of the forgoing clauses, strictly in accordance with the Wind-Down Budget.

3. <u>Timing and Fees</u>.

(a) The Plan Administrator will commence its responsibilities as the Plan Administrator for all purposes on the Effective Date.

(b) Subject to the terms of the Wind-Down Budget, the Plan Administrator shall be compensated for their services from the Wind-Down Debtor Account as set forth on <u>Exhibit 1</u> attached hereto.

© Any professionals retained by the Plan Administrator pursuant to the terms of this Agreement shall be paid as set forth in the applicable professional's engagement letter, which shall be payable from the Wind-Down Debtor Account, in accordance with the terms of this Agreement, the Plan, the Confirmation Order, and the Wind-Down Budget. Professionals retained by the Plan Administrator may include, without limitation and without further engagement documentation, approval or order of the Bankruptcy Court, [●], and one or more its affiliates (collectively, the "PA Firm"). The Plan Administrator is hereby expressly authorized to use the services of the PA Firm, its affiliates and personnel as professionals (rather than utilizing other similarly situated or available personnel or professional services firms) notwithstanding that (a) the Plan Administrator may benefit (directly or indirectly) from the compensation paid to the PA Firm and (b) other persons or entities may be available to provide the same or similar work at similar or more competitive prices. In no event shall the Plan Administrator, the PA Firm, or their affiliates be subject to a claim of a conflict of interest or breach of fiduciary duty or any other claim arising as a result of the appointment of any such person in accordance with this provision.

4. Relationship of the Parties. The Parties intend that an independent contractor relationship shall be created by this Agreement. The Plan Administrator shall not be entitled to receive from the Debtors or its Estates any vacation pay, sick leave, retirement, pension or social security benefits, workers' compensation, disability, unemployment insurance benefits, or any other employee benefits.

5. Confidentiality. The Plan Administrator shall treat confidentially all information not publicly available that is received by the Plan Administrator in connection with this engagement or that is developed during this engagement, and the Plan Administrator shall not disclose such information except as required to perform the duties set forth herein including, but not limited to, the professionals engaged by the Plan Administrator and as required by a Court order or other legal process.

6. Exculpation; Indemnification; Insurance; Liability Limitation. On and after the Effective Date, the Plan Administrator, the PA Firm, and all professionals retained by the Plan Administrator, each in their capacities as such, shall be deemed exculpated and shall be indemnified and held harmless by each of the Debtors and Wind-Down Debtors, jointly and severally, except for acts or omissions constituting fraud, willful misconduct, or gross negligence as determined by a Final Order of the Bankruptcy Court. The Plan Administrator may obtain at the expense of the Debtors and Wind-Down Debtors, but solely pursuant to the Wind-Down Budget, or if in excess of the Wind-Down Budget, with the consent of the Required DIP Lenders, from the Wind-Down Assets, commercially reasonable liability or other appropriate insurance with respect to the indemnification obligations of the Debtors. The Plan Administrator may rely upon written information previously generated by the Debtors. For the avoidance of doubt, notwithstanding anything to the contrary contained herein, the Plan Administrator, in its capacity as such, shall have no liability whatsoever to any party for the liabilities and/or obligations, however created, whether direct or indirect, in tort, contract, or otherwise, of the Debtors. For the avoidance of doubt, in no event shall the PA Firm be responsible or liable for the acts or omissions of the Plan Administrator.

No provision of this Agreement or the Plan shall require the Plan Administrator to expend or risk his own funds or those of the PA Firm or otherwise incur any financial liability in the performance of any of its duties as Plan Administrator hereunder or under the Plan, or in the exercise of any of its rights or powers, if the Plan Administrator shall have reasonable grounds for believing that repayment of funds or adequate indemnity or security satisfactory to the Plan Administrator against such risk or liability is not reasonably assured. For the avoidance of doubt, the Plan Administrator shall not be required to rely on the security, reimbursement, or indemnity of the PA Firm, its affiliates or their respective insurers in determining whether the assurances described in the preceding sentence are available.

7. Relationship to the Plan. The principal purpose of this Agreement is to aid in the implementation of the Plan and, therefore, this Agreement incorporates and is, in all respects, subject to the provisions of the Plan and the Confirmation Order. In the event that any provision of this Agreement is found to be inconsistent with a provision of the Plan or the Confirmation Order, the provisions of the Plan or the Confirmation Order, as applicable, shall control.

8. Retention of Jurisdiction. Notwithstanding the occurrence of the Effective Date, and to the fullest extent permitted by law, the Bankruptcy Court shall retain exclusive jurisdiction over the Debtors after the Effective Date, including, without limitation, jurisdiction to resolve any and all controversies, suits, and issues that may arise in connection therewith, including, without limitation, this Agreement, or any entity's obligations incurred in connection herewith, including, without limitation, any action against the Plan Administrator, the PA Firm or any professional retained by the Plan Administrator, in each case in its capacity as such. Each party to this Agreement hereby irrevocably consents to the exclusive jurisdiction of the Bankruptcy Court in any action to enforce, interpret, and/or construe any provision of this Agreement or of any other agreement or document delivered in connection with this Agreement and also hereby irrevocably waives any defense of improper venue, forum *non conveniens*, or lack of personal jurisdiction to any such action brought in the Bankruptcy Court. Each party further irrevocably agrees that any action to enforce, interpret, or construe any provision of this Agreement will be brought only in the Bankruptcy Court. Each party hereby irrevocably consents to the service by certified or registered mail, return receipt requested, of any process in any action to enforce, interpret, or construe any provision of this Agreement.

9. Termination; Effect of Termination. Except as provided below, this Agreement shall terminate when the Plan Administrator reasonably determines, with the reasonable consent of the Required DIP Lenders, that all duties assigned to the Plan Administrator under the Plan have been completed. The Plan Administrator may resign at any time upon 30-days' written notice delivered to the Wind-Down Debtors, the 1L Ad Hoc Group Advisors, and the Bankruptcy Court; *provided* that such resignation shall only become effective upon the appointment of a permanent or interim successor Plan Administrator in accordance with this Agreement and with the consent of the Required DIP Lenders, but in no event for a period longer than 45 days. In the event of a resignation, the resigning Plan Administrator shall render to the successor Plan Administrator and the DIP Lenders a full and complete accounting of monies and assets received, disbursed, and held during the term of office of the resigning Plan Administrator. Upon its appointment, the successor Plan Administrator, without any further act, shall become fully vested with all of the rights, powers, duties, and obligations of its predecessor (as set forth in this Agreement), and all

responsibilities of the predecessor Plan Administrator relating to the Debtors in this Agreement shall be terminated.

(a) This Agreement may be terminated for cause shown pursuant to a Final Order entered by the Bankruptcy Court after notice and a hearing; *provided* that, in the event that this Agreement is terminated before its automatic termination as provided herein, the Debtors, with the consent of the Required DIP Lenders, shall appoint a successor Plan Administrator to fill the vacancy left by the termination of this Agreement. During the pendency of any dispute before the Bankruptcy Court regarding termination for cause of the Plan Administrator and any appeals related thereto, the Plan Administrator shall (i) continue to discharge the rights, obligations, and duties of the Plan Administrator, and (ii) continue to receive payment of fees and reasonable and documented expenses incurred pursuant to this Agreement.

(b) Upon termination of this Agreement or resignation of the Plan Administrator, the Plan Administrator shall be entitled to all fees and reasonable and documented expenses accrued to that date pursuant to this Agreement, including any travel or related expenses incurred in returning from the location of the services being provided under this Agreement, prior to the earlier of the termination date or resignation date.

10. Effectiveness. This Agreement shall be effective upon the Effective Date.

11. Notice. All invoices, notices, requests, demands, and other communications permitted or required to be given or delivered under or by reason of the provisions of this Agreement shall be in writing and shall be deemed conclusively to have been given: (a) when personally delivered; (b) when sent by facsimile (with hard copy to follow) during a Business Day (or on the next Business Day if sent after the close of normal business hours or on any non-Business Day); (c) when sent by electronic mail (with hard copy to follow) during a Business Day (or on the next Business Day if sent after the close of normal business hours or on any non-Business Day); (d) one (1) Business Day after being sent by reputable overnight express courier (charges prepaid); or (e) three (3) Business Days following mailing by certified or registered mail, postage prepaid and return receipt requested. Unless another address is specified in writing, notices, requests, demands, and communications to the Parties hereto shall be sent to the addresses indicated below:

(a) if to the Debtors, to:

Vyaire Medical, Inc.
26126 N Riverwoods Blvd
Mettawa, IL 60045
Attention: Charles N. Braley, Chief Restructuring Officer

with copies to:

Kirkland & Ellis LLP
333 West Wolf Point Plaza
Chicago, Illinois 60654
Attention: Spencer Winters

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.
E-mail address: jsussberg@kirkland.com

-and-

Cole Schotz P.C.
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Attention: Patrick J. Reilley
Stacy L. Newman
Email address: preilley@coleschotz.com
snewman@coleschotz.com

(b) if to the Plan Administrator, to:

David Barse
DMB Holdings, LLC
230 Osborn Road
Harrison, New York 10528
Email address: dbarse@dmbholdings.com

(c) if to the 1L Ad Hoc Group Advisors / counsel to the Required DIP Lenders, to:

Gibson, Dunn & Crutcher LLP
200 Park Avenue
New York, NY 10166-0193
Email address: JGoldstein@gibsondunn.com
KLiang@gibsondunn.com

12. Miscellaneous.

(a) Sections 5, 6, and all other provisions necessary to the enforcement of the intent of this Agreement will survive the termination or expiration of this Agreement.

(b) If any portion of this Agreement shall be determined to be invalid or unenforceable, the remainder of this Agreement shall be valid and enforceable to the maximum extent provided by applicable law.

(c) Neither this Agreement nor any of the rights, interests, or obligations under this Agreement shall be assigned by any of the Parties (whether by operation of law or otherwise) without the prior written consent of the other Party.

(d) This Agreement is governed by and shall be construed in accordance with the laws of the State of Delaware without regard to choice of law or principles thereof. In any court proceeding arising out of or related to this Agreement, each of the Parties hereby waive any right to trial by jury. Each of the Parties hereby submits to the exclusive jurisdiction of the Bankruptcy Court for purposes of any proceeding arising from or related to this Agreement, and each of the Parties agrees not to commence any action, suit, or proceedings relating thereto except in the Bankruptcy Court.

(e) This Agreement, the Plan, and the Confirmation Order encompass all of the terms and conditions between the Debtors and the Plan Administrator concerning the subject matter hereof. This Agreement may not be amended or modified in any respect except in a writing signed by each of the Parties.

(f) This Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which together shall be deemed to be one and the same Agreement. A signed copy of this Agreement delivered by facsimile, e-mail, or other means of electronic transmission (.pdf) shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[SIGNATURE PAGES FOLLOW]

THE DEBTORS:

Vyaire Medical, Inc. on behalf of itself and its Debtor affiliates

By:____________________________________
Name: Charles N. Braley
Title: Chief Restructuring Officer

THE PLAN ADMINISTRATOR:

By:____________________________________
Name: David Barse

<u>**Exhibit 1**</u>

Compensation of Plan Administrator

The Plan Administrator will receive a flat fee of $35,000 per month for the first six (6) months, and $25,000 per month for months seven (7) through seventeen (17). In addition, the Plan Administrator shall receive reimbursement for all reasonable and documented out-of-pocket expenses actually incurred in performance of duties under the Plan Administrator Agreement.