IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NANOSTRING TECHNOLOGIES, INC., *et al.*,[1]	Case No. 24-10160 (CTG)
	(Jointly Administered)
Debtors.	***Proposed* Bidding Procedures Hearing Date:** **March 28, 2024 at 2:30 p.m. (ET)**
	***Proposed* Bidding Procedures Objection Deadline:** **March 22, 2024 at 4:00 p.m. (ET)**
	***Proposed* Sale Hearing Date:** **April 22, 2024 at 10:00 a.m. (ET)**
	***Proposed* Sale Objection Deadline:** **Fourteen (14) days after service of the Sale Notice and Assumption and Assignment Notice**

DEBTORS' MOTION FOR ENTRY OF ORDERS (I) (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE PURCHASE AGREEMENT AND TO PROVIDE THE STALKING HORSE BID PROTECTIONS THEREUNDER, (C) SCHEDULING AN AUCTION AND A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (E) GRANTING RELATED RELIEF; AND (II) (A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES, AND (C) GRANTING RELATED RELIEF

The debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") hereby file this motion (the "Motion") for the entry of (a) an order, substantially in

[1] The Debtors in the Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are NanoString Technologies, Inc. (4687), NanoString Technologies International, Inc. (2723), NanoString Netherlands BV, and NanoString Technologies Germany GmbH. The Debtors' headquarters is located at 530 Fairview Avenue North, Suite 2000, Seattle, WA 98109.

the form attached hereto as Exhibit A (the "Bidding Procedures Order"), (i) approving bidding procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 1 (the "Bidding Procedures"), to be used in connection with the sale (the "Sale") of substantially all of the Debtors' assets (collectively, the "Assets"), (ii) authorizing the Debtors to enter into the Stalking Horse Purchase Agreement (as defined herein) and to reimburse the Stalking Horse Bidder for reasonable and documented expenses in connection with the Stalking Horse Bid, not to exceed 1.5% of the cash component of the Purchase Price (the "Expense Reimbursement") and a breakup fee in an amount equal to 3% of the cash component of the Purchase Price (the "Breakup Fee," and together with the Expense Reimbursement, the "Bid Protections"), (iii) scheduling an auction for the Assets (the "Auction"), if necessary, and scheduling a hearing to approve the Sale (the "Sale Hearing"), and approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the "Sale Notice"), (iv) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the "Contracts") in connection with the Sale (the "Assumption Procedures"), and approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of (A) the Debtors' calculation of the amount necessary to cure any defaults under an applicable Contract (the "Cure Costs") and (B) certain other information regarding the potential assumption and assignment of Contracts in connection with the Sale, substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the "Assumption and Assignment Notice"), and (v) granting related relief; and (b) an order of the Court (the "Sale Order")[2] (i) authorizing the sale of the Debtors' Assets free and clear of all liens, claims, interests, and encumbrances, except as provided in the Sale Order,

[2] A proposed Sale Order will be filed in advance of the applicable Sale Hearing.

(ii) authorizing the assumption and assignment of certain Contracts in connection with the Sale(s), and (iii) granting related relief. In support of this Motion, the Debtors rely upon and incorporate by reference the *Declaration of R. Bradley Gray in Support of Debtors' Chapter 11 Petitions and First Day Pleadings* [Docket No. 26] (the "First Day Declaration"),[3] the declaration of Christopher O'Connor of Perella Weinberg Partners ("PWP") in support of the Motion (the "O'Connor Declaration"), and the declaration of John Cesarz of PWP in support of the Motion (the "Cesarz Declaration"), filed contemporaneously herewith. In further support of this Motion, the Debtors respectfully represent as follows:

JURISDICTION AND VENUE

1. The United States Bankruptcy Court for the District of Delaware (the "Court") has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b) and, pursuant to Rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent the consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory and legal predicates for the relief requested herein are sections 363, 365, 503, 507, and 105(a) of title 11 of the United States Code, 11 U.S.C. §§ 101–1532

[3] Capitalized terms used but otherwise not defined herein shall have the meanings ascribed to them in the First Day Declaration.

(the "Bankruptcy Code"), Rules 2002, 6004, 6006(a), and 9017 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1, 6004-1, and 9006-1.

BACKGROUND

I. General.

4. On February 4, 2024 (the "Petition Date"), each of the Debtors filed a voluntary petition under chapter 11 of the Bankruptcy Code (the "Chapter 11 Cases") in the Court. The Debtors are authorized to operate their business and manage their properties as debtors and debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

5. On February 15, 2024, the Office of the United States Trustee for the District of Delaware appointed an official committee of unsecured creditors [Docket No. 104] (the "Committee"). No request has been made for the appointment of a trustee or an examiner.

6. Additional information regarding the Debtors' business, capital structure, and the circumstances leading to the filing of these Chapter 11 Cases is set forth in the First Day Declaration.

II. Events Leading to the Sale.

7. As set forth in greater detail in the First Day Declaration and the O'Connor Declaration, the Debtors develop, manufacture, and market different technologies that empower scientists to analyze biological samples. In the months prior to the Petition Date, the Debtors faced increasingly tight liquidity, necessitating the commencement of these Chapter 11 Cases and the sale of the Debtors' assets on the timeline contemplated by the Bidding Procedures.

8. Among other efforts the Debtors made to address the challenges facing their business, the Debtors retained Perella Weinberg Partners LP ("PWP") in November 2023. Since that time, PWP has assisted the Debtors in pursuing a range of strategic alternatives. Their engagement initially focused on identifying sources of additional debt financing. After refinancing

efforts were unsuccessful, and following the Debtors' operational restructuring in October 2023, the Debtors entered into the 2026 Indenture in November 2023. At that point, due to the ongoing headwinds impacting the Debtors, PWP started to focus their efforts on a marketing process for a sale of substantially all of the company's assets in chapter 11. As part of this process, the Debtors and PWP reached out to over 55 potential bidders, of which 28 signed confidentiality agreements and received financial and operational diligence materials through the Debtors' virtual data room. The Debtors, with the assistance of PWP, also held 21 first round diligence meetings in January 2024 (16 of which were held in person). While the Debtors received significant interest, the Debtors, in consultation with PWP, determined it was not feasible to transact quickly enough with any of these parties to avoid these Chapter 11 Cases.

9. The Debtors' prepetition marketing efforts have laid the foundation for the Debtors to efficiently negotiate and consummate a value-maximizing transaction within these Chapter 11 Cases for the benefit of their creditors and all stakeholders. Following the Petition Date, PWP continued to engage with a range of strategic and financial parties, including the Stalking Horse Bidder (as defined below). On February 27, 2024, the Debtors received multiple second round bids for substantially all of their assets, including a bid from the Stalking Horse Bidder that memorialized the preliminary terms under which the Stalking Horse Bidder was willing to pursue a transaction pursuant to section 363 of the Bankruptcy Code.

10. On March 10, 2024, following good faith, arm's-length negotiations, the Debtors and the Stalking Horse Bidder entered into that certain *Asset Purchase Agreement*, annexed to the Bidding Procedures Order as Exhibit 4 (together with the schedules and related documents thereto, and as may be amended, supplemented, or otherwise modified from time to time, the "Stalking Horse Purchase Agreement"), under which the Debtors agreed to sell the Purchased Assets (as

defined in the Stalking Horse Purchase Agreement) to Nucleus Buyer, LLC (the "Stalking Horse Bidder") for a total aggregate cash consideration of $220,000,000 plus the assumption of certain liabilities as set forth in the Stalking Horse Purchase Agreement (the "Stalking Horse Bid"), free and clear of all liens, claims, and encumbrances (other than Assumed Liabilities and Permitted Encumbrances, as defined in the Stalking Horse Purchase Agreement).

11. The Stalking Horse Bid represents the highest or otherwise best executable bid the Debtors received through the Debtors' marketing process. The Stalking Horse Bid benefits the Debtors by establishing a floor for the purchase of substantially all of the Debtors' Assets. Any Qualified Bid (as defined below) that tops the Stalking Horse Bid will inure to the benefit of the Debtors' creditors and other stakeholders. The DIP Lenders' advisors are aware of the Stalking Horse Purchase Agreement and have not raised an objection to the Debtors' entry into such agreement.

III. Need for an Expedited Process.

12. Time is of the essence for the Debtors, who simply cannot afford a longer process than the one contemplated by these Bidding Procedures. Any delay in consummation of a sale jeopardizes the Debtors' ability to conduct these Chapter 11 Cases and operate their businesses in an efficient manner for the benefit of all creditors, particularly because the Debtors have limited access to postpetition financing. The Bidding Procedures balance the Debtors' need to efficiently consummate a sale of their business while providing adequate notice to parties in interest of the Debtors' postpetition marketing process for obtaining bids in excess of the Stalking Horse Bid.

13. Under the proposed Bidding Procedures, in the event the Debtors receive a Qualified Bid other than the Stalking Horse Bid or a Credit Bid, they will conduct an Auction to yield the most value-maximizing sale of the Assets. If the Debtors do not receive any competing bids other than a Credit Bid, they will immediately seek approval of the Stalking Horse Bid. This

process is more than sufficient when viewed in the context of the Debtors' extensive and robust marketing process. The Debtors marketed their Assets to a wide range of potential strategic buyers and financial investors, and a substantial amount of information regarding the Debtors' business has been available to potential bidders throughout the prepetition and subsequent postpetition marketing process. In light of such robust prepetition and postpetition marketing process, a longer in-court process than that set forth in the proposed Bidding Procedures is neither necessary nor the most effective use of the Debtors' limited resources.

14. Accordingly, the Debtors have determined that the Bidding Procedures are in the best interests of their estates and creditors, as they will enable the Debtors to market test the Stalking Horse Bid, establish a uniform process in which interested bidders can participate in a competitive auction, and facilitate one or more value-maximizing sales of the Assets on a timeline that balances the need for a swift transaction with the need to provide all potential bidders sufficient opportunity to participate.

IV. The Stalking Horse Bid and Material Terms of the Stalking Horse Purchase Agreement.

15. The Stalking Horse Bidder is seeking to acquire substantially all of the Debtors' Assets in exchange for a cash purchase price of $220,000,000. The Stalking Horse Bid also provides material additional value to the Debtors' estates through the assumption of liabilities, including, among other things, the Debtors' patent infringement litigation and related intellectual property litigation. The Stalking Horse Bidder's agreement to assume such liabilities serves to significantly reduce the existing unsecured claim pool, eliminate future contingent liabilities, and save the Debtors' estates from any expense and operational distraction that could be associated with ongoing litigation. The Debtors are now seeking approval of the Stalking Horse Purchase Agreement, which will be consummated absent higher or otherwise better bids at the Auction, and

will be subject to the closing conditions under the Stalking Horse Purchase Agreement being satisfied. The Stalking Horse Purchase Agreement is conditioned on the transfer of the Assets free and clear of any Encumbrances and Liabilities (except for Assumed Liabilities and Permitted Encumbrances, each as defined in the Stalking Horse Purchase Agreement) against the Debtors. The Stalking Horse Purchase Agreement is not conditioned on financing or the completion of due diligence.

16. The following chart summarizes the terms and conditions of the Stalking Horse Purchase Agreement and discloses certain information required pursuant to Local Rule 6004-1:[4]

Stalking Horse Purchase Agreement Provision	Summary Description
Stalking Horse Purchase Agreement Parties **See Preamble**	NanoString Technologies, Inc. and Nucleus Buyer, LLC
Purchase Price **See § 2.3.1**	$220,000,000
Breakup Fee and Expense Reimbursement **Local Bankr. R. 6004-1(c)(i)(C)(2)** **See § 1.1**	Expense Reimbursement: up to $3,300,000 Breakup Fee: $6,600,000 (3%) of the Purchase Price, provided that the Break-Up Fee and Expense reimbursement, in the aggregate, shall not exceed an amount equal to four and a half percent (4.5%) of the Purchase Price.
Assets **See § 2.1.1**	The assets of the Debtors shall include each of the following of the Sellers: (a) all rights and interests of Seller or its Subsidiaries under the Contracts set forth in Section 2.1.1(a) of the Seller Disclosure Schedules, which Section of the Seller Disclosure Schedules may be modified (unless otherwise indicated in the Seller Disclosure Letter) from the date hereof through five (5) Business Days prior to the

[4] This summary is provided for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Stalking Horse Purchase Agreement, the Stalking Horse Purchase Agreement shall govern in all respects. All references to schedules or sections in the following summary shall refer to schedules or sections of the Stalking Horse Purchase Agreement.

Stalking Horse Purchase Agreement Provision	Summary Description
	Closing Date in accordance with Section 4.3.1 (the "Purchased Contracts"); (b) the Purchased Product Records; (c) the Purchased Intellectual Property and Purchased Technology, including all rights to sue for past, present, and future infringement, misappropriation, or violation thereof; (d) all Permits that are listed on Section 2.1.1(d) of the Seller Disclosure Schedule, to the extent assignable or transferable (the "Purchased Permits"); (e) all Finished Goods Inventory owned by and in the possession or custody of Seller and its Subsidiaries; (f) all raw materials, work-in-process, demonstration equipment, components, packaging material or similar items used by third-party contract manufacturers, in each case, in the production or distribution of the Products and in the possession or custody of Seller and its Subsidiaries; (g) all advertising, marketing, sales and promotional materials relating to the Products; (h) all URLs, websites, website content, fax numbers and telephone numbers; (i) all pre-paid expenses and security deposits; (j) all rights and interests of Seller or its Subsidiaries under Purchased Contracts for the lease, sublease, license, or other right to use or occupy real property, as set forth in Section 2.1.1(a) of the Seller Disclosure Schedules (such real property, the "Leased Real Property"); (k) all Purchased Regulatory Approvals to the extent transferable under law; (l) copies of the Personnel Records; (m) all Employee Equipment; (n) the sponsorship of all Assumed Plans and any assets or property in respect of any Assumed Plan; (o) all Accounts Receivable; (p) all insurance policies (other than the D&O Policies and those funding a Plan that is not an Assumed Plan), to the extent

Stalking Horse Purchase Agreement Provision	Summary Description
	transferable, including all insurance recoveries thereunder and all rights to assert claims thereunder; (q) all goodwill of Seller as a going concern and any goodwill related to the Business, the Purchased Assets and the Assumed Liabilities; (r) all rights of Seller under any non-disclosure or confidentiality, non-compete, non-interference or non-solicitation agreements with current and former employees and agents of Seller or Acquired Entities or with third parties, in each case, related to the Purchased Assets or the Business (or any portion thereof); (s) all refunds, overpayments, credits or rebates with respect to Taxes that are Assumed Liabilities; (t) all Avoidance Actions against any of Seller's vendors, suppliers, customers or trade creditors with whom Buyer continues to conduct business in regard to the Purchased Assets after the Closing and any of their Affiliates; (u) all bank accounts of Seller and its Subsidiaries set forth on Section 2.1.1(u) of the Seller Disclosure Schedules; and (v) the Equity Securities of the Acquired Entities (and, for the avoidance of doubt, thereby indirectly all of the assets, rights, Contracts and Liabilities of the Acquired Entities).
Assumed Liabilities **See § 2.2.1**	The liabilities of the Debtors shall include each of the following of the Sellers: (a) all Liabilities arising under the Purchased Contracts; (b) all Liabilities arising from the ownership of the Purchased Assets or the conduct or operation of the Business; (c) all Liabilities relating to the ownership of the Equity Securities of the Acquired Entities (and, for the avoidance of doubt, thereby indirectly, the Liabilities of the Acquired Entities whether arising prior to or after the Closing); (d) all Liabilities for Transfer Taxes allocated to Buyer as provided in Section 5.3.2; (e) all Liabilities directly relating to the sponsorship of any Assumed Plans and all Liabilities relating to the employment in respect of the Continuing Employees by Buyer or one of Buyer's Affiliates following the Closing (other than Liabilities arising as a consequence of any breach of representation or warranty or covenant by Seller hereunder); and

Stalking Horse Purchase Agreement Provision	Summary Description
	(f) all Liabilities related to the litigation matters set forth on Section 3.1.6 of the Seller Disclosure Schedules.
Excluded Assets **See § 2.1.2**	Buyer shall not acquire, (a) the Excluded Assets, including any Contract not set forth on Section 2.1.1(a) of the Seller Disclosure Schedules, which Section of the Seller Disclosure Schedules may be modified (unless otherwise indicated in the Seller Disclosure Letter) from the Execution Date through five (5) Business Days prior to the Closing Date in accordance with Section 4.3.1, (b) the Purchased Assets shall not include the Excluded Assets, and (c) Seller shall retain the Excluded Assets following the Closing.
Excluded Liabilities **See § 2.2.2**	The Buyer nor any of its Affiliates shall assume, nor shall they be or become responsible for, any Liabilities of Seller or any of its Subsidiaries, other than the Assumed Liabilities.
Bankruptcy Court Approval **See § 5.7.4**	The sale of the Purchased Assets pursuant to the Stalking Horse Purchase Agreement is subject to approval by the Bankruptcy Court.
Sale to Insider **Local Bankr. R. 6004-1(b)(iv)(A)**	Not applicable.
Agreements with Management **Local Bankr. R. 6004-1(b)(iv)(B)** **See § 5.12.3**	The Buyer will assume the unpaid portion with respect to the NanoString Technologies, Inc. 2024 Key Employee Retention Plan and the Retention Bonus Letters.
Releases **Local Bankr. R. 6004-1(b)(iv)(C)**	Not applicable.
Private Sale/No Competitive Bidding **Local Bankr. R. 6004-1(b)(iv)(D)**	From the date of the Stalking Horse Purchase Agreement (and any prior time) until the completion of the Auction, the Debtors and their Affiliates are permitted to, and are permitted to cause their Representatives and Affiliates to respond to any inquiries or offers to purchase any or all of the Purchased Assets in accordance with the terms and conditions of the Bidding Procedures.
Closing and Other Deadlines **Local Bankr. R. 6004-1(b)(iv)(E)** **See § 2.4**	The Closing shall take place at the New York, New York offices of Willkie Farr & Gallagher LLP, at 10:00 a.m. local time, on the third (3rd) Business Day following satisfaction of all conditions (other than those that by their terms are to be satisfied or taken at the Closing) set forth in Article 6 (or, to the extent permitted by applicable Law, waived by the Party entitled to the benefits thereof), or such other time and place as the Parties may mutually agree to in writing.

Stalking Horse Purchase Agreement Provision	Summary Description
Good Faith Deposit **Local Bankr. R. 6004-1(b)(iv)(F)** **See Recitals**	$22,000,000
Interim Arrangements with Stalking Horse Bidder **Local Bankr. R. 6004-1(b)(iv)(G)**	Not applicable.
Use of Proceeds **Local Bankr. R. 6004-1(b)(iv)(H)**	Not applicable.
Tax Exemption **Local Bankr. R. 6004-1(b)(iv)(I)**	Not applicable
Record Retention **Local Bankr. R. 6004-1(b)(iv)(J)** **See § 5.9**	For a period of six (6) years after the Closing, Buyer shall: (a) retain all books and records related to the Purchased Assets, the Assumed Liabilities and the Business; and (b) upon reasonable notice and during normal business hours, cooperate with and provide Seller, any of Seller's Affiliates, and the officers, employees, agents and Representatives of Seller and Seller's Affiliates reasonable access (including the right to make copies at Seller's expense or the expense of any Affiliate of Seller) to such books and records and to Buyer's Representatives, to the extent necessary for a reasonable business purpose, including as may be necessary for the preparation of financial statements, Regulatory Filings related to the Products, Tax Returns, in connection with any Litigation, or in connection with the administration of the Chapter 11 Cases, and to any and all books and records relating to any Purchase Price payments or any related reports, including all documents, work papers, schedules, memoranda, and records used by or prepared by Buyer or its Representatives in preparing any such reports, together with any other information related thereto which Seller may reasonably request. Notwithstanding the foregoing, Buyer shall not be required by this Section 5.9 to provide Seller, any of Seller's Affiliates, and the officers, employees, agents and Representatives of Seller and Seller's Affiliates with access to or to disclose information (i) the disclosure of which would violate applicable Law, (ii) that in the reasonable judgment of Buyer would result in the disclosure of any Trade Secrets of third parties or violate any of its obligations with respect to confidentiality or (iii) the disclosure of which would cause the loss of any attorney-client, attorney work product or other legal privilege.
Sale of Avoidance Actions **Local Bankr. R. 6004-1(b)(iv)(K)** **See § 2.1.1**	The Purchased Assets shall include all claims and causes of action arising under sections 502(d) and 544 through 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or any analogous state law, but only to the extent that such actions are against any of Seller's vendors, suppliers, customers or trade creditors with whom Buyer continues to conduct

Stalking Horse Purchase Agreement Provision	Summary Description
	business in regard to the Purchased Assets after the Closing and any of their Affiliates.
Requested Findings as to Successor Liability **Local Bankr. R. 6004-1(b)(iv)(L)** **See § 5.7.1(b)**	The Buyer shall have no Liability or responsibility for any Liability or other obligation of Seller arising under or related to the Purchased Assets other than as expressly set forth in the Stalking Horse Purchase Agreement, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, environmental, successor, or transferee Liability, labor law, de facto merger, or substantial continuity.
Sale of Unexpired Leases Free and Clear **Local Bankr. R. 6004-1(b)(iv)(M)** **See § 2.1.1**	The Purchased Assets includes rights and interests of Seller or its Subsidiaries under Purchased Contracts for the lease, sublease, license, or other right to use or occupy real property, as set forth in Section 2.1.1(a) of the Seller Disclosure Schedules, which shall be transferred to the Stalking Horse Bidder free and clear of all Encumbrances and Liabilities (other than Assumed Liabilities and Permitted Encumbrances).
Credit Bid **Local Bankr. R. 6004-1(b)(iv)(N)**	Not applicable.
Relief from Bankruptcy Rule 6004(h) **Local Bankr. R. 6004-1(b)(iv)(O)**	The Motion seeks relief from the stay imposed by Bankruptcy Rule 6004(h).

THE BIDDING PROCEDURES

I. Overview.

17. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtors have developed and proposed the Bidding Procedures. The proposed Bidding Procedures are designed to permit a fair, efficient, competitive, and value-maximizing auction process for the Debtors' Assets, consistent with the timeline of these Chapter 11 Cases. The Bidding Procedures will enable the Debtors to confirm that the Stalking Horse Bid is the best offer for the Assets, or promptly identify the alternative bid that is higher or otherwise better. The Bidding Procedures are designed to encourage all prospective bidders to put their best

bid forward, bring finality to the Debtors' sale process, and create a path towards consummation of a Sale that provides the highest or otherwise best available recoveries to the Debtors' stakeholders. Pursuant to Local Rule 6004, certain of the key terms of the Bidding Procedures (which are attached to the Bidding Procedures Order) are highlighted in the chart presented below:[5]

MATERIAL TERMS OF THE BIDDING PROCEDURES AND BIDDING PROCEDURES ORDER[6]	
Provisions Governing Qualification of Bidders and Qualified Bids Local Rule 6004-1(c)(i)(A)-(B)	Qualified Bid and Qualified Bidder Requirements are set forth in Sections III.A and IV of the Bidding Procedures. Requirements to Participate and Obtain Due Diligence To participate in the bidding process, a Potential Bidder must deliver to each of the Debtors' advisors the following documents and information: 1. an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"); and 2. proof by the Potential Bidder of its financial capacity to close the proposed Sale, which may include audited financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the desired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and their advisors after consultation with the DIP Lenders and the Committee. Any Bid will be considered a qualified bid only if the Bid is submitted in writing by an Acceptable Bidder by the Bid Deadline and is determined to comply with all of the following in the Debtors' reasonable business judgment (after consultation with the Committee and with the consent (not to be unreasonably, withheld, conditioned, or delayed) of the DIP Lenders) (such bid, a "Qualified Bid," and such bidder, a "Qualified Bidder"): 1. *Identity*. The bid must fully disclose the identity of each person or entity that (a) is bidding for all or any portion of the Assets; (b) is sponsoring or financing the bid (including through the issuance of debt in connection with such bid); (c) is participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such bid) the Auction in connection with such bid and the complete terms of any such participation; and/or (d) will directly or indirectly own and/or control any amount of equity and/or voting securities of the Qualified Bidder; in each case, including its full legal name, jurisdiction of incorporation or

[5] This summary is qualified in its entirety by the provisions of the Bidding Procedures. To the extent that there is any inconsistency between the terms of the Bidding Procedures and this summary, the terms of the Bidding Procedures shall control. Capitalized terms used but not defined prior to or in this summary shall have the respective meanings given to them later in this Motion or in the Bidding Procedures, as applicable.

MATERIAL TERMS OF THE BIDDING PROCEDURES AND BIDDING PROCEDURES ORDER[6]		
		formation, and its location in the Qualified Bidder's corporate structure. The bid must also disclose any past or present connection or agreement with any Debtor, any other prospective bidder for all or any portion of the Assets, or any officer, director, or equity security holder of any Debtor.
	2.	*Purpose; Assets and Liabilities*. Each Qualified Bidder must state that the Bid includes an irrevocable and binding offer by the Qualified Bidder to purchase some or all of the Assets (identified with specificity). The Bid must clearly identify the following: (a) the Assets, or the portion thereof, to be purchased; and (b) the Liabilities and obligations to be assumed, including any indebtedness and applicable Cure Costs to be assumed, if any.
	3.	*Purchase Price*. The Bid must clearly set forth the cash purchase price, assumed Liabilities, and any other non-cash consideration (with the form of such consideration specified), to be paid for the Assets to be purchased; provided that the proposed purchase price shall satisfy the Minimum Bid requirement set forth below. A Bid that contemplates a Sale for less than all of the Assets but includes multiple segments or groups of Assets must contain sufficient information as to allow the Debtors to determine an allocation of value among each segment or group of Assets (including, as applicable, by allocating the purchase price among each of the Assets that the Qualified Bidder intends to acquire).
	4.	*Deposit*. Each Bid must be accompanied by a good faith deposit in the form of cash (or other form acceptable to the Debtors after consultation with the Committee and the DIP Lenders) in an amount equal to ten (10) percent (10%) of the maximum cash component of the purchase price of the Bid (the "Deposit") to be held in an escrow account to be established by the Debtors until no later than five (5) Business Days after the conclusion of the Auction and thereafter returned to the respective Qualified Bidders (except for the Deposit of any bidder who is selected at the Auction as a Successful Bidder or as a Backup Bidder (as defined below)); provided that, for the avoidance of doubt, in the event of the exercise of the Credit Bid Right, a Deposit must only be made with respect to the cash component of the purchase price, and not to any actual Credit Bid amount.
	5.	*Minimum Bid*. If at least one Qualified Bid (in addition to the (i) Stalking Horse Bid; and (ii) any Credit Bid) is received by the Bid Deadline with regard to the Assets, the Debtors will conduct an Auction with respect to such Assets and shall determine, in their reasonable discretion (after consultation with (i) the Committee and (ii) the DIP Lenders), which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction (the "Minimum Bid"). The Minimum Bid must have a value to the Debtors, as determined by the Debtors in their reasonable business judgment, that: (a) is greater than or equal to the value of the Stalking Horse Bid, taking into account the aggregate

MATERIAL TERMS OF THE BIDDING PROCEDURES AND BIDDING PROCEDURES ORDER[6]		
		cash consideration, assumption of liabilities (including, for the avoidance of doubt, the assumption of litigation liabilities, including currently outstanding litigation liabilities, contingent future litigation liabilities, and the operational savings to the Debtors' estates on account of the buyer's assumption of such litigation), and other non-cash consideration contemplated by the Stalking Horse Bid; and (b) includes cash consideration in an amount equal to or greater than (i) the sum of the Purchase Price under the Stalking Horse Purchase Agreement, plus (ii) the amount of the Bid Protections, plus (iii) $2,500,000. For the avoidance of doubt, if the Debtors receive one or more Bids that do not each independently constitute a "Minimum Bid," but otherwise meet all requirements set forth herein for a "Qualified Bid," then the Debtors may aggregate two or more such Qualified Bids and treat them as a single Qualified Bid for purposes of constituting the Minimum Bid. 6. *Marked Agreement.* Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the "Bid Documents"). The Bid Documents shall include a schedule of Assigned Contracts and a clearly marked version of (a) the form Sale Order provided by the Debtors to the Acceptable Bidder, in each case, showing all changes requested by the Acceptable Bidder, and (b) the Stalking Horse Purchase Agreement, as well as all other material documents integral to such Bid. 7. *Committed Financing*. Each Bid must include evidence of (a) the Acceptable Bidder's capacity to consummate the proposed transactions set forth in its Bid with cash on hand or (b) committed financing documented to the satisfaction of the Debtors (after consultation with the Committee and the DIP Lenders) that demonstrates that the Acceptable Bidder has received sufficient unconditional debt and/or equity funding commitments to satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid, including providing adequate assurance of future performance under all contracts proposed to be Assigned Contracts by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors. 8. *Contingencies; No Financing or Diligence Outs*. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence. 9. *Governmental, Licensing, and Regulatory Approvals*. Each Bid must describe all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors, after consultation with the Committee and the DIP Lenders, of the ability to obtain such

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		approvals or consents as soon as reasonably practicable, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents.
	10.	*Irrevocable*. Each Bid must be irrevocable and binding; provided that if the Bid is not selected as the Successful Bid or Backup Bid, the Bid may be revoked after the Auction if such Acceptable Bidder's Bid is not selected as the Successful Bid or Backup Bid.
	11.	*Backup Bidder*. Each Bid must contain an agreement for the Acceptable Bidder to be a Backup Bidder if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid; provided that, notwithstanding anything to the contrary herein, the Stalking Horse Bidder is not required to serve as the Backup Bidder.
	12.	*As-Is, Where-Is*. The Bid must include the following representations and warranties: (a) expressly state that the Acceptable Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors' business and the Assets such Acceptable Bidder proposes to acquire prior to submitting its Bid; and (b) a statement that the Acceptable Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets such Acceptable Bidder proposes to acquire in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the Assets such Acceptable Bidder proposes to acquire or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Acceptable Bidder's proposed purchase agreement ultimately accepted and executed by the Debtors.
	13.	*Authorization*. The Bid must include evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or comparable governing body) acceptable to the Debtors, in consultation with the Committee and the DIP Lenders, with respect to the submission, execution, and delivery of its Bid and Bid Documents, participation in the Auction, and closing of the proposed Sale contemplated in such Bid. The Bid shall further state that any necessary filings under applicable regulatory, antitrust, and other laws will be made in a timely manner and that payment of the fees associated therewith shall be made by the Acceptable Bidder.
	14.	*Disclaimer of Fees*. Each Bid (other than the Stalking Horse Bid, subject to the terms of the Bidding Procedures Order) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, "topping" or termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder) will be permitted to

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		request, nor will be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and, by submitting its Bid, the Qualified Bidder is deemed to have agreed to waive any request for any such fee, costs, or reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.
	15.	*Time Frame for Closing*. A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations in the Debtors' reasonable business judgment, after consultation with (i) the Committee and (ii) the DIP Lenders) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors. The Acceptable Bidder must commit to closing the proposed Sale contemplated by the Bid as soon as practicable, and in no event later than June 30, 2024, and must expressly set forth any potential regulatory issues or approvals that might arise in connection with such Acceptable Bidder's acquisition of the Assets, including such Acceptable Bidder's anticipated timing and proposed approach for resolving any such regulatory issues and obtaining any potential regulatory approvals. Each Bid must include a commitment to close the proposed Sale as soon as practicable, and must state the expected date of (and timeline and any milestones to) closing of the proposed Sale.
	16.	*Employees*. Each Bid must include a statement regarding whether the Acceptable Bidder intends to offer future employment to any of the Debtors' employees. Each Bid must also expressly propose the treatment of the Debtors' prepetition compensation, incentive, retention, bonus or other compensatory arrangements, plans, or agreements, including offer letters, employment agreements, consulting agreements, severance arrangements, retention bonus agreements, change in control arrangements, retiree benefits, and any other employment related agreements.
	17.	*Adherence to Bidding Procedures*. Each Bid must include a statement that (a) the Acceptable Bidder has acted in good faith consistent with section 363(m) of the Bankruptcy Code; and (b) the Bid constitutes a *bona fide* offer to consummate the proposed Sale embodied therein, and the Acceptable Bidder agrees to be bound by these Bidding Procedures.
	18.	*Cooperation*. The Acceptable Bidder must covenant to cooperate with the Debtors to provide factual information regarding such Bidder's operations upon the Debtors' request to analyze issues arising with respect to any applicable laws or regulatory or licensing requirements.
	19.	*No Collusion*. The Acceptable Bidder must acknowledge in writing that (a) in connection with submitting its Bid, it has not engaged in any collusion that would be subject to section 363(n) of the

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	Bankruptcy Code with respect to any Bids or the Sale, specifying that it did not agree with any Potential Bidders, Acceptable Bidders, or Qualified Bidders to control price; and (b) it agrees not to engage in any collusion that would be subject to section 363(n) of the Bankruptcy Code with respect to any Bids, the Auction, or the Sale. 20. *Other Information*. The Bid contains such other information as may be reasonably requested by the Debtors, the Committee, and the DIP Lenders (with such requests made through the Debtors). 21. *Consent to Jurisdiction*. Each Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the qualification of the Bids, the Auction (if held), the construction and enforcement of these Bidding Procedures and the relevant documents, and the consummation of any Sale.
Provisions Providing Bid Protections to Stalking Horse Bidder Local Rule 6004-1(c)(i)(C)	As set forth in Section I.B of the Bidding Procedures, the Debtors have agreed to provide the Stalking Horse Bidder with the Breakup Fee and Expense Reimbursement on the terms set forth in the Stalking Horse Purchase Agreement.
Modification of Bidding Procedures Local Rule 6004-1(c)(i)(D)	Section VII.B of the Bidding Procedures sets forth the Debtors' reservation of rights to (a) announce, at the Auction, modified or additional procedures for conducting the Auction, and (b) otherwise modify these Bidding Procedures; provided that, for the avoidance of doubt, the Debtors may not modify (i) the Bid Protections afforded to the Stalking Horse Bidder, unless the Stalking Horse Bidder agrees to such modification in writing in its sole discretion, (ii) the rules, procedures, or deadlines set forth herein, or adopt new rules, procedures, or deadlines that would impair in any material respect the Stalking Horse Bidder's right to payment of the Break-Up Fee or the Expense Reimbursement or the Stalking Horse Bidder's right to receive a credit for its Bid Protections as set forth in paragraph B.2, immediately above without the express written consent of the Stalking Horse Bidder in its sole discretion, or (iii) the consent and consultation rights set forth herein. All such modifications and additional rules will be communicated to each of the Acceptable Bidders and Qualified Bidders in advance to the extent reasonably practicable; provided that, to the extent such modifications occur at the Auction, disclosure of such modifications shall be limited to those in attendance at the Auction.
Closing with Alternative Back-up Bidders Local Rule 6004-1(c)(i)(E)	Section VIII of the Bidding Procedures sets forth the primary requirements with respect to Backup Bids. Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder (other than the Stalking Horse Bidder) with the next-highest or otherwise second-best Qualified Bid as compared to the Successful Bid at the Auction for the Assets, as determined by the Debtors in the exercise of their reasonable business judgment after consultation with the Committee and, other than with respect to a Credit Bid, with the consent (not to be unreasonably withheld, conditioned or delayed) of the DIP Lenders (the "Backup Bid"), shall be required to serve as a backup bidder (the "Backup Bidder"), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated. For the avoidance of doubt, in the event either Agent exercises the Credit Bid Right (consistent with Section III.C. above), such Agent shall agree to serve as a Backup Bidder. As a condition to

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	remaining the Backup Bidder, any Backup Bidder (other than the Stalking Horse Bidder) shall wire to the Debtors, in immediately available funds, the incremental amount of its Deposit, if applicable, calculated based on the increased cash component of the Purchase Price of the Backup Bid, no later than one (1) Business Day following the date on which the Notice of Winning Bidder is served. The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder. The Backup Bid(s) shall remain binding on the Backup Bidder until the earlier of (a) the closing of a Sale for the Assets pursuant to the Successful Bid and (b) 90 days after the date of the Sale Hearing, unless otherwise agreed. If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes. The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of a Backup Bidder without further order of the Court or notice to any party. For the avoidance of doubt, and notwithstanding anything to the contrary herein, the Stalking Horse Bidder is not required to serve as the Backup Bidder and the Stalking Horse Bid shall not be deemed the Backup Bid unless and until the Stalking Horse Bidder separately agrees in writing to serve as the Backup Bidder.
Provisions Governing the Auction Local Rule 6004-1(c)(ii)	Section VII of the Bidding Procedures sets forth the procedures governing the Auction. If the Debtors receive no Qualified Bid other than the Stalking Horse Bid or if the only other Qualified Bid the Debtors receive is a Credit Bid with regard to the Assets, (a) the Debtors shall not hold an Auction with respect to such Assets; (b) the Stalking Horse Bid will be deemed the Successful Bid with respect to such Assets; (c) the Stalking Horse Bidder will be named the Successful Bidder with respect to such Assets; and (d) if the Agents submit a Credit Bid, the Debtors, in consultation with the Committee, shall have the right to select such Credit Bid as the Backup Bid. If the Debtors receive more than one Qualified Bid (other than the Stalking Horse Bid and a Credit Bid) for the Assets, the Debtors, in consultation with the Committee and the DIP Lenders, shall conduct the Auction to determine the Successful Bidder(s) with respect to the Assets. As soon as practicable after the Debtors have determined the Baseline Bid, and in any event no later than twenty-four (24) hours prior to the commencement of the Auction, the Debtors will notify all Qualified Bidders and the DIP Lenders of the highest or otherwise best Qualified Bid for the Assets, as determined in the Debtors' reasonable business judgment (after consultation with the Committee and the DIP Lenders) (the "Baseline Bid"), and provide copies of the Bid Documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors, in their reasonable business judgment and in consultation with the Committee and the DIP Lenders, reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (a) the number, type, and nature of any changes to the Stalking Horse Purchase Agreement requested by the Qualified Bidder, including the Assets sought and Assumed Liabilities to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close the proposed Sale, the conditions thereto, and the timing thereof; (d) the net economic

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	effect of any changes to the value to be received by the Debtors' estates from the transactions contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid. The Auction shall take place at 10:00 a.m. (prevailing Eastern Time) on April 16, 2024, (i) via a virtual meeting, (ii) at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, or (iii) at such later date, time, and location as designated by the Debtors (after consultation with the Committee and the DIP Lenders), after providing notice to the Notice Parties. The Debtors shall have the right to conduct any number of Auctions on that date, if the Debtors determine, in their reasonable business judgment (in consultation with the Committee and the DIP Lenders), that conducting such Auctions would be in the best interests of the Debtors' estates. 1. ***Baseline Bid***. Bidding shall commence at the amount of the Baseline Bid. 2. ***Minimum Overbid***. Qualified Bidders may submit successive bids higher than the previous bid, based on and increased from the Baseline Bid for the Assets (each such bid, an "Overbid"). Any Qualified Bidder's initial Overbid shall be made in increments of at least $250,000 in cash, cash equivalents, the Credit Bid, or such other consideration that the Debtors (after consultation with the Committee) deem equivalent; provided that no bid may qualify as an Overbid unless such bid provides for cash consideration in an amount equal to or greater than the Bid Protections granted to the Stalking Horse Bidder. The Debtors may, in their reasonable business judgment (and after consultation with the Committee and the DIP Lenders), announce increases or reductions to initial or subsequent minimum incremental bids at any time during the Auction. If the Stalking Horse Bidder submits an Overbid, it will receive a credit equal to the value of the Bid Protections granted to it when bidding during the Auction. 3. ***Highest or Best Offer***. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe in their reasonable business judgment (and after consultation with the Committee and the DIP Lenders) to be the highest or otherwise best offer for the Assets (the "Leading Bid") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid. To the extent not previously provided (as determined by the Debtors), a Qualified Bidder submitting a subsequent bid must submit, as part of its subsequent bid, written evidence (in the form of financial disclosure or credit quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the Purchase Price contemplated by such subsequent bid. 4. ***Incremental Deposit***. Upon the declaration by a Qualified Bidder of its Bid at the Auction, it must commit on the record to pay promptly following the Auction, if such Bid were to be the Successful Bid or the Backup Bid, the incremental amount of its Deposit calculated based on the increased purchase price of such bid, if applicable (the

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		"Incremental Deposit Amount"); provided that the foregoing requirement shall not apply to the Stalking Horse Bidder.
	5.	***Rejection of Bids***. The Debtors may, in their reasonable business judgment after consultation with the Committee and DIP Lenders, at any time before entry of an order of the Court approving a Qualified Bid, reject any bid that the Debtors determine is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders. For the avoidance of doubt, the Debtors may not reject the Stalking Horse Bid on any such grounds.
	6.	***No Late Bids***. The Debtors shall not consider any bids submitted after the conclusion of the Auction, and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.
	7.	***No Round-Skipping***. Round-skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit a Bid before the end of such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding and (ii) to the extent a Qualified Bidder fails to bid in such round of bidding or to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors in their reasonable business judgment (and after consultation with the Committee and the DIP Lenders), such Qualified Bidder shall be disqualified from continuing to participate in the Auction for such Assets without the consent of the Debtors; provided that, notwithstanding anything to the contrary herein, a Qualified Bidder that is bidding on all or substantially all of the Assets shall not be required to participate in any Auction or round thereof for less than all or substantially all of the Assets.
	8.	***Auction Sequence***. In the event the Debtors receive Qualified Bids for less than all or substantially all of the Assets (such bids, "Partial Asset Bids"), the Debtors shall start the Auction with such Partial Asset Bids (and, for the avoidance of doubt, the Stalking Horse Bidder and any other bidder for all or substantially all the Assets shall not be required to participate in such Auction) to determine which Partial Asset Bid is the highest or otherwise best bid for the Assets in question (such bid, the "Prevailing Partial Asset Bid"). Upon determination of the Prevailing Partial Asset Bid, the Debtors shall determine whether such Prevailing Partial Asset Bid is a higher or otherwise better bid than the Stalking Horse Bid or other highest or otherwise best bid for all or substantially all of the Assets (such bids, "All Asset Bids," and the highest or otherwise best such bid, the "Prevailing All Asset Bid"). To the extent the Debtors determine that the Prevailing Partial Asset Bid is not higher or otherwise better

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	than the Prevailing All Asset Bid, then no other Partial Asset Bids shall be accepted at the Auction and the Partial Asset Bid bidders shall not be entitled to participate in the Auction for all or substantially all of the Assets. To the extent the Debtors determine that the Prevailing Partial Asset Bid is higher or otherwise better than the Prevailing All Asset Bid, then the All Asset Bid bidders shall be required to submit bids that are higher or otherwise better than the Prevailing Partial Asset Bid. 9. ***Additional Information***. The Debtors shall have the right to request any additional financial information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's (other than either Agent's and the Stalking Horse Bidder's) financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any bid made by a Qualified Bidder during the Auction. 10. ***Modification of Procedures***. The Debtors may, after consultation with (i) the Committee and (ii) the DIP Lenders, and in their reasonable business judgment, (a) announce, at the Auction, modified or additional procedures for conducting the Auction, and (b) otherwise modify these Bidding Procedures; *provided that*, for the avoidance of doubt, the Debtors may not modify (i) the Bid Protections afforded to the Stalking Horse Bidder, unless the Stalking Horse Bidder agrees to such modification in writing in its sole discretion, (ii) the rules, procedures, or deadlines set forth herein, or adopt new rules, procedures, or deadlines that would impair in any material respect the Stalking Horse Bidder's right to payment of the Break-Up Fee or the Expense Reimbursement or the Stalking Horse Bidder's right to receive a credit for its Bid Protections as set forth in paragraph B.2, immediately above without the express written consent of the Stalking Horse Bidder in its sole discretion, or (iii) the consent and consultation rights set forth herein. All such modifications and additional rules will be communicated to each of the Acceptable Bidders and Qualified Bidders in advance to the extent reasonably practicable; provided that, to the extent such modifications occur at the Auction, disclosure of such modifications shall be limited to those in attendance at the Auction.

18. Importantly, the Bidding Procedures recognize and comply with the Debtors' fiduciary obligations to maximize sale value, and, as such, do not impair the Debtors' ability to consider all Qualified Bid proposals. The Bidding Procedures preserve the Debtors' right to modify the Bidding Procedures as necessary or appropriate to maximize value for the Debtors' estates.

II. Key Dates and Deadlines.

19. Pursuant to the Bidding Procedures, the Debtors will solicit any higher or otherwise better proposals according to the following proposed schedule, subject to Court approval and availability, which the Debtors believe is appropriate in light of the circumstances of the Chapter 11 Cases.

Deadline	Event
Two Business Days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Hearing Notice and Assumption and Assignment Notice
As soon as practicable after the entry of the Bidding Procedures Order	Deadline for Debtors to publish Sale Hearing Notice
4:00 p.m. (ET) on the date that is fourteen (14) days after service of the Sale Notice and Assumption and Assignment Notice	Sale Objection Deadline (including objections to Assumption and Assignment of Contracts)
April 12, 2024 at 5:00 p.m. (ET)	Bid Deadline
No later than 24 hours prior to Auction, if applicable	Deadline to Designate Qualified Bidders
April 16, 2024 at 10:00 a.m. (ET)	Auction, solely in the event the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Bid
As soon as practicable after the Auction, if applicable	Deadline for Debtors to file and serve Notice of Winning Bidder
April 17, 2024 at 4:00 p.m. (ET)	Deadline to object to (i) conduct at Auction and (ii) adequate assurance of future performance under Assigned Contracts if Successful Bidder is not the Stalking Horse Bidder
April 19, 2024 at 12:00 p.m. (ET)	Deadline to Reply to Sale Objections

Deadline	Event
April 22, 2024 at 10:00 a.m. (ET), subject to the availability of the Court	Sale Hearing

III. Sale Noticing and Objection Procedures.

20. The Debtors seek approval of the following sale noticing and objection procedures, which the Debtors respectfully submit are reasonably calculated to provide interested parties with notice of the Sale and Sale Hearing and an opportunity to respond accordingly.

Service of Sale Hearing Notice	Within two (2) Business Days after entry of the Bidding Procedures Order, the Debtors shall serve a notice of the Auction and Sale (the "Sale Hearing Notice") on: (a) the Notice Parties; (b) all parties to executory contracts and leases to be assumed, assigned, or rejected as part of the proposed Sale; (c) all parties who have expressed a written interest in some or all of the Debtors' Assets in the 12 months prior to entry of the Bidding Procedures Order, which service may be sent by email, if a mailing address for any of such parties is unknown; (d) all known holders of liens, encumbrances, and other claims secured by the Debtors' Assets; (e) the Internal Revenue Service; (f) all applicable state and local taxing authorities; (g) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.
Publication of Sale Hearing Notice	In addition, as soon as reasonably practicable after the entry of the Bidding Procedures Order, the Debtors will provide notice of the Sale Hearing through the publication of the Sale Hearing Notice, with any modifications necessary for ease of publication, in *The New York Times* (national edition) and on the website of the Debtors' proposed noticing and claims agent in these Chapter 11 Cases, Kroll Restructuring Administration, LLC: https://cases.ra.kroll.com/NanoString (the "Case Website").

IV. Assumption Procedures.

21. The Debtors seek approval of the Assumption Procedures to facilitate the fair and orderly assumption and assignment of the Assigned Contracts (as defined below) in connection with the Sale.

Assumption and Assignment Notice	Within two (2) Business Days after entry of this Order (the "Assumption and Assignment Service Deadline"), the Debtors shall serve the Assumption and Assignment Notice by first class mail or email on each counterparty to the Assigned Contracts to be assumed and assigned as part of the proposed Sale (or their respective counsel, if known). The Assumption and Assignment Notice shall inform each recipient of (i) the timing and procedures relating to such assumption and assignment, (ii) the title

	(or an appropriate description) and date of the Assigned Contract (if available), (iii) the name of the non-Debtor counterparty to the Assigned Contract, (iv) the Debtors' good faith estimates of the Cure Costs (if any) required in connection with the Assigned Contract, (v) the identity of the Stalking Horse Bidder or other Successful Bidder to whom the Assigned Contract is to be assigned, and (vi) the Cure Objection Deadline; provided, however, that service of an Assumption and Assignment Notice does not constitute an admission that such contract is an executory contract or that any stated Cure Cost constitutes a claim against the Debtors or a right against any Stalking Horse Bidder or other Successful Bidder, and all rights with respect thereto are expressly reserved. Service of an Assumption and Assignment Notice does not constitute an admission that such contract is an executory contract or that any stated Cure Cost constitutes a claim against the Debtors or a right against any Stalking Horse Bidder or other Successful Bidder, and all rights with respect thereto are expressly reserved. Further, the inclusion of a contract on the Assumption and Assignment Notice is not a guarantee that such contract will ultimately be assumed and assigned. Any determination of whether such contract is an executory contract or can be rejected will be made in accordance with the Bankruptcy Code, the Bankruptcy Rules, and all applicable orders of this Court.
Cure Costs	On or prior to the Closing, Seller shall pay the Cure Costs under the Purchased Contracts on the terms set forth in the Stalking Horse Purchase Agreement. The payment of the applicable Cure Costs shall (i) effect a cure of all defaults existing thereunder, (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default, and (iii) together with the assumption of the Assigned Contracts by the Debtors and the assignment of the Assigned Contracts to the Stalking Horse Bidder or other Successful Bidder, constitute adequate assurance of future performance thereof. In the event the Successful Bidder is not the Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by the Successful Bidder must be filed with the Court and served on the Objection Notice Parties no later than April 17, 2024 at 4:00 p.m. (ET).
Supplemental Contract Assumption Notice	To the extent the Debtors, at any time after the Assumption and Assignment Service Deadline (i) identify additional Assigned Contracts to be assumed and assigned to the Stalking Horse Bidder or other Successful Bidder (the "Additional Assigned Contracts"), (ii) remove Assigned Contracts from the list of executory contracts and leases proposed to be assumed and assigned in connection with a Sale, (iii) and/or modify the previously stated Cure Cost associated with any Assigned Contracts, the Debtors will promptly file with this Court and serve by first-class mail or email a supplemental notice of contract assumption (a "Supplemental Assumption Notice") on each of the counterparties to such Assigned Contracts and their counsel of record, if any. Each Supplemental Assumption Notice will include the same information with respect to listed Assigned Contracts as was included in the Contract Assumption Notice. The Stalking Horse Bidder may designate Additional Assigned Contracts to be assumed and assigned at any time until five (5) Business Days prior to the Closing Date (as defined in the Stalking Horse Purchase Agreement), and may remove Assigned Contracts from the list of Assigned Contracts at any time until

	five (5) Business Days prior to the Closing Date. Counterparties to Additional Assigned Contracts or that otherwise receive a Supplemental Assumption Notice shall have until 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) days after the filing and service of the Supplemental Assumption Notice by the Debtors to the Counterparty to file a Cure Objection (as defined herein).
Objections	Objections, if any, to the proposed assumption and assignment or the Cure Cost proposed with respect thereto (each, a "Cure Objection"), must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served upon the Objection Notice Parties, so as actually to be received on or before the Sale Objection Deadline or deadline set forth in the Supplemental Assumption Notice, as applicable (each, a "Cure Objection Deadline").
Dispute Resolution	In the event that a non-Debtor contract counterparty files a timely Cure Objection and the Debtors and such counterparty cannot resolve such objection, the objection shall be heard at the Sale Hearing or such later date that the Debtors determine in consultation with the Successful Bidder, subject to the Court's calendar. If such objection has not been resolved prior to the Closing Date (whether by an order of the Court or by agreement with the counterparty), the Successful Bidder may elect, in its sole discretion, to: (i) treat such counterparty's contract (the "Disputed Contract") as an Excluded Contract (as defined in the Stalking Horse Purchase Agreement) or (ii) temporarily treat such counterparty's contract as an Excluded Contract, proceed to Closing of the Sale, and determine whether to treat the Disputed Contract as an Assigned Contract or Excluded Contract within five (5) business days after resolution of such objection (whether by order of the Court or by agreement with the counterparty).
Contract Assumption	No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming and assigning such Assigned Contracts or (ii) the date the Sale has closed.

RELIEF REQUESTED

22. The Debtors seek entry of the Bidding Procedures Order, substantially in the form attached hereto as Exhibit A:

(a) authorizing and approving the Bidding Procedures;

(b) authorizing the Debtors to enter into the Stalking Horse Purchase Agreement, and to designate the Stalking Horse Bidder as the stalking horse for the Purchased Assets (as such term is defined in the Stalking Horse Purchase Agreement);

(c) scheduling (i) one or more Auction(s) of the Assets, and (ii) one or more sale hearing(s) to consider approval of the proposed Sale(s), and approving the Sale Hearing Notice;

(d) approving the Assumption Procedures, and approving the Assumption and Assignment Notice; and

(e) granting related relief.

BASIS FOR RELIEF REQUESTED

I. The Bidding Procedures Are in the Best Interests of the Debtors and Their Stakeholders.

23. The Bidding Procedures were formulated with the goal of maximizing the value of the Debtors' estates for the benefit of their creditors. Courts have made clear that a debtor has a "fiduciary duty to maximize the value of the estate at hand." In re Food Barn Stores, Inc., 107 F.3d 558, 564–65 (8th Cir. 1997) (citing In re Midway Airlines, Inc., 6 F.3d 492, 494 (7th Cir. 1993)); see In re Mushroom Transp. Co., 382 F.3d 325, 339 (3d Cir 2004) (debtor-in-possession "had a fiduciary duty to protect and maximize the estate's assets"). To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by a debtor's estate. See, e.g., In re Integrated Res., Inc., 147 B.R. 650, 659 (S.D.N.Y. 1990) (bidding procedures "are important tools to encourage bidding and to maximize the value of the debtor's assets"); In re Fin. News Network, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) ("court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates"); In re Dura Auto. Sys., No. 06-11202 (KJC), 2007 Bankr. LEXIS 2764, at *253 (Bankr. D. Del. Aug. 15, 2007) ("Bidding procedures should be approved when they provide a benefit to the estate by maximizing the value of the assets.").

24. The Bidding Procedures provide for an appropriately competitive process that will promote active bidding and will elicit the highest or otherwise best offers available for the Debtors'

Assets. The Bidding Procedures will establish a controlled, fair, and open sale process that encourages consummation of a Sale in a timely manner. Specifically, the Bidding Procedures contemplate an open auction process with minimum barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid. They provide the Debtors with a robust opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the Sale. This is particularly true in these Chapter 11 Cases, where entering into the Stalking Horse Purchase Agreement ensures that the Debtors obtain fair market value by setting a minimum purchase price for the Assets.

25. Accordingly, the Bidding Procedures should be approved. Not only do they appropriately encourage competitive bidding under the standards governing auction proceedings and bidding incentives in bankruptcy cases, but they also are aligned with the circumstances of these Chapter 11 Cases and will result in a sale on fair and reasonable terms for at or above market value. The Bidding Procedures are otherwise reasonable and in the best interests of the Debtors, their estates, and all parties in interest.

A. The Proposed Bid Protections Are Necessary, Reasonable, and Appropriate.

26. As noted above and in the Cesarz Declaration, the Bidding Procedures provide for appropriate and fair Bid Protections for the Stalking Horse Bidder, which include (a) a Break-up Fee in the amount of 3% of the Purchase Price and (b) an Expense Reimbursement not to exceed 1.5% of the Purchase Price. The Bid Protections are necessary for the Stalking Horse Bidder to enter into the Stalking Horse Purchase Agreement, and the presence of the Stalking Horse Bidder sets a floor price for the sale of the Assets. The presence of the Stalking Horse Bidder will attract other potential buyers to bid for the Assets, thereby maximizing the realizable value of the Assets for the benefit of the Debtors' estates, their creditors, and all other parties in interest.

27. Approval of the Bid Protections is governed by standards for determining the appropriateness of bid protections in the bankruptcy context. Courts have identified at least two instances in which bid protections may benefit the estate. First, a breakup fee may be necessary to preserve the value of a debtor's estate if assurance of the fee "promote[s] more competitive bidding, such as by inducing a bid that otherwise would not have been made and without which bidding would have been limited." In re O'Brien Envtl. Energy, Inc., 181 F.3d 527, 537 (3d Cir. 1999). Second, "if the availability of a breakup fee [was] to induce a bidder to research the value of the debtor and convert [the] value to a dollar figure on which other bidders can rely, the bidder may have provided a benefit to the estate by increasing the likelihood that the price at which the debtor is sold will reflect its true worth." Id.; see also In re Reliant Energy Channelview LP, 594 F.3d 200, 206–08 (3d Cir. 2010) (reasoning that a breakup fee should be approved if it is necessary to entice a party to make the first bid or if it would induce a stalking horse bidder to remain committed to a purchase).

28. In O'Brien, the Third Circuit reviewed the following nine factors set forth by the lower court as relevant in deciding whether to award a breakup fee:

(a) the presence of self-dealing or manipulation in negotiating the breakup fee;

(b) whether the fee hampers, rather than encourages, bidding;

(c) the reasonableness of the breakup fee relative to the purchase price;

(d) whether the unsuccessful bidder placed the estate property in a "sale configuration mode" to attract other bidders to the auction;

(e) the ability of the request for a breakup fee to serve to attract or retain a potentially successful bid, establish a bid standard or minimum for other bidders or attract additional bidders;

(f) the correlation of the fee to a maximum value of the debtor's estate;

(g) the support of the principal secured creditors and creditors' committees of the breakup fee;

(h) the benefits of the safeguards to the debtor's estate; and

(i) the substantial adverse impact of the breakup fee on unsecured creditors, where such creditors are in opposition to the breakup fee.

O'Brien, 181 F.3d at 536.

29. While none of the factors are dispositive, several of the factors support approval of the Bid Protections here. In particular, the Bid Protections are necessary to preserve the value of the Debtors' estates because they enable the Debtors to secure an adequate floor price for the Assets and to therefore insist that competing bids be materially higher or otherwise better than the Stalking Horse Purchase Agreement—a clear benefit to the Debtors' estates. Further, the Stalking Horse Bidder would not agree to act as a "stalking horse" without the Bid Protections, given the substantial time and expense that would be incurred in connection with entering into definitive documentation and the risk that it will be outbid at the Auction. Without the Bid Protections, the Debtors might lose the opportunity to obtain the highest or otherwise best offer for the Assets and would certainly lose any downside protection that would be afforded by the existence of the Stalking Horse Bidder. The Stalking Horse Bid sends a message to all potential bidders that the Assets are worth at least as much as the Stalking Horse Bid. Therefore, without the benefit of the Stalking Horse Bid, the bids received at auction for the Assets could be substantially lower than any bid offered by the Stalking Horse Bidder.

30. "The usual rule is that if breakup fees encourage bidding, they are enforceable; if they stifle bidding, they are not enforceable." In re Integrated Res., Inc., 147 B.R. at 659. The Debtors do not believe that the Bid Protections will stifle bidding. To the contrary, the Debtors believe that such bid protections will encourage bidding by serving "any of three possible useful functions: (1) to attract or retain a potentially successful bid, (2) to establish a bid standard or minimum for other bidders to follow, or (3) to attract additional bidders." Id. at 662.

31. Here, the Stalking Horse Bid would serve all three functions. First, the Stalking Horse Bidder has indicated that it will not enter into the Stalking Horse Purchase Agreement without the Bid Protections. Second, pursuant to the Bidding Procedures, any bidder that wishes to participate in the Auction must submit an offer that is higher or otherwise better than the Stalking Horse Bid. Third, the Stalking Horse Bid could attract additional bidders because, among other things, subsequent bidders would be able to save considerable time and expense by relying on documentation negotiated by the Stalking Horse Bidder. In sum, if the Assets are sold to a Successful Bidder other than the Stalking Horse Bidder, the Sale likely will be the result of the Stalking Horse Bidder's crucial role as an initial bidder generating interest in the Assets and establishing a minimum acceptable price and offer against which other parties can bid for such Assets.

32. In addition, "[a] breakup fee should constitute a fair and reasonable percentage of the proposed purchase price, and should be reasonably related to the risk, effort, and expenses of the prospective purchaser. 'When reasonable in relation to the bidder's efforts and to the magnitude of the transaction, breakup fees are generally permissible.'" Id. (citation omitted).

33. Here, the Bid Protections are appropriate under the circumstances. As an initial matter, the Stalking Horse Bidder required the Bid Protections as a condition to entering into the Stalking Horse Purchase Agreement. Further, the Stalking Horse Purchase Agreement provides a commitment to purchase the Purchased Assets for a cash purchase price of $220,000,000, plus the assumption of material liabilities, which represents the best value available following the Debtors' robust marketing efforts, while providing for an opportunity to improve on that value through a postpetition auction process. Further, the Bid Protections are reasonable. The Breakup Fee and Expense Reimbursement represent 3% and up to 1.5%, respectively, of the Purchase Price. This

amount is consistent with the range of bid protections typically paid in sale transactions that have been recently approved by this Court. See, e.g., In re Williams Indus. Servs. Grp. Inc., Case No. 23-10961 (BLS) (Bankr. D. Del. Aug. 19, 2023) [Docket No. 196] (authorizing potential stalking horse agreements to include expense reimbursements and breakup fees not exceeding 4.7% of the qualified bid); In re Plastiq Inc., Case No. 23-10671 (BLS) (Bankr. D. Del. June 21, 2023) [Docket. No. 127] (authorizing potential stalking horse agreements to include expense reimbursements and breakup fees not exceeding 5% of the qualified bid); In re Nova Wildcat Shur-Line Holdings, Inc., Case No. 23-10114 (CTG) (Bankr. D. Del. Mar. 3, 2023) [Docket No. 142] (authorizing potential stalking horse agreements to include expense reimbursements and breakup fees not exceeding 4% of the qualified bid).

II. The Form and Manner of the Sale Hearing Notice Should Be Approved.

34. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21 days' notice of the Sale Hearing. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested herein.

35. As noted above, within two (2) business days of entry of the Bidding Procedures Order, the Debtors will serve the Sale Hearing Notice upon the following parties or their respective counsel, if known: (a) the Notice Parties (as defined in the Bidding Procedures); (b) all parties to executory contracts and leases to be assumed, assigned, or rejected as part of the proposed Sale; (c) all parties who have expressed a written interest in some or all of the Assets in the 12 months prior to entry of the Bidding Procedures Order, which service may be sent by email, if a mailing address for any of such parties is unknown; (d) all known holders of liens, encumbrances, and other claims secured by the Debtors' Assets; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) all applicable state and local taxing authorities; (h) each

governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (i) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002.

36. In addition, as soon as reasonably practicable thereafter, the Debtors will provide notice of the Sale Hearing through the publication of the Sale Hearing Notice in *The New York Times* (national edition) and on the Case Website.

37. The Debtors submit that notice of this Motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Sale Hearing Notice and the Assumption and Assignment Notice, as provided for herein, constitutes good and adequate notice of the Sale and the proceedings with respect thereto in compliance with, and in satisfaction of, the applicable requirements of Bankruptcy Rule 2002. Accordingly, the Debtors request that this Court approve the form and manner of the Sale Hearing Notice.

III. The Sale Should Be Approved as an Exercise of Sound Business Judgment.

38. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." 11 U.S.C. § 363(b)(1). A sale of a debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for the proposed transaction. See, e.g., In re Martin, 91 F.3d 389, 395 (3d. Cir. 1996) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification' . . ."); see also In re Schipper, 933 F.2d 513, 515 (7th Cir. 1991) (same); Comm. Of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1070 (2d Cir. 1983); In re Telesphere Commc's, Inc., 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999).

39. Once a debtor articulates a valid business justification, "[t]he business judgment rule is a presumption that in making the business decision the directors of a corporation acted on

an informed basis, in good faith, and in the honest belief that the action was in the best interests of the company." In re S.N.A. Nut Co., 186 B.R. 98, 102 (Bankr. N.D. Ill 1995) (citations omitted); In re Filene's Basement, LLC, 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate") (citations omitted); Integrated Res., 147 B.R. at 656; In re Johns-Manville Corp., 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a Debtor's management decisions.").

A. A Sound Business Purpose Exists for the Sale to the Stalking Horse Bidder

40. As set forth above and in the O'Connor Declaration, the Debtors have a sound business justification for selling the Purchased Assets to the Stalking Horse Bidder. First, the Debtors believe the Sale will maximize asset value by allowing a party to bid on the Assets, while such Assets would have substantially less value on a stand-alone basis. Moreover, because the Stalking Horse Purchase Agreement contemplates the assumption of certain contracts and other obligations in connection with the acquisition of the Purchased Assets, it will result in payment in full for a number of creditors.

41. Second, the sale of the Assets will be subject to competing bids, enhancing the Debtors' ability to receive the highest or otherwise best value for the Assets. Consequently, the ultimately successful bid, after being subject to an overbid process in the form of the Auction, will constitute, in the Debtors' reasonable business judgment, the highest or otherwise best offer for the Assets and will provide a greater recovery for their estates than any known or practicably available alternative. See, e.g., In re Trans World Airlines, Inc., No. 01-00056, 2001 WL 1820326, at *4 (Bankr. D. Del. Apr. 2, 2001) (while a "section 363(b) sale transaction does not require an

auction procedure," "the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction").

42. As such, the Debtors' determination to sell their Assets through one or more Auction processes and subsequently to enter into one or more purchase agreements with any Successful Bidder(s) will be a valid and sound exercise of the Debtors' business judgment. The Debtors will submit evidence at the Sale Hearing to support these conclusions. Therefore, the Debtors request that the Court make a finding that the proposed sale of the Assets is a proper exercise of the Debtors' business judgment and is rightly authorized.

B. Adequate and Reasonable Notice of the Sale Will Be Provided.

43. The Sale Hearing Notice: (a) will be served in a manner that provides parties in interest notice of the date, time, and location of the Sale Hearing; (b) informs parties in interest of the deadlines for objecting to the sale or the assumption and assignment of Assigned Contracts; and (c) otherwise includes all information relevant to parties interested in or affected by the Sale. Significantly, the form and manner of the Sale Hearing Notice will have been approved by this Court pursuant to the Bidding Procedures Order, after notice and a hearing, before it is served on parties in interest.

C. The Sale and Purchase Price Reflects a Fair Value Transaction.

44. It is well settled that where there is a court-approved auction process, a full and fair price is presumed to have been obtained for the assets sold, as the best way to determine value is exposure to the market. See Bank of Am. Nat'l Trust & Sav. Ass'n. v. 203 N. LaSalle St. P'ship, 526 U.S. 434, 457 (1999); see also In re Trans World Airlines, Inc., No. 01-00056, 2001 WL 1820326, at *4 (while a "section 363(b) sale transaction does not require an auction procedure," "the auction procedure has developed over the years as an effective means for producing an arm's length fair value transaction").

45. Moreover, as described herein and in the O'Connor Declaration, even as the Debtors move forward with the Stalking Horse Purchase Agreement, PWP will continue to market the Debtors' business and solicit other offers for the Assets, consistent with the Bidding Procedures. The marketing process will include, for example, contacting previously solicited parties, continuing to provide Acceptable Bidders with data room access and requested information, considering a variety of alternative transaction structures, and otherwise assisting the Debtors with all efforts to increase transaction value. In this way, the number of bidders that are eligible to participate in a competitive Auction process for the Debtors' Assets will be maximized, or, if no Auction is held because no Auction is necessary, the purchase price in the Stalking Horse Purchase Agreement will, conclusively, be fair value.

D. The Sale Has Been Proposed in Good Faith and Without Collusion, and the Stalking Horse Bidder and/or Successful Bidder Is a "Good-Faith Purchaser."

46. The Debtors request that the Court find the Stalking Horse Bidder and/or other Successful Bidder arising from the Auction, if any, are entitled to the benefits and protections provided by section 363(m) of the Bankruptcy Code in connection with the sale of the Assets.

47. Section 363(m) of the Bankruptcy Code provides in pertinent part:

> [t]he reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease or property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. 11. U.S.C. § 363(m).

48. Section 363(m) of the Bankruptcy Code thus protects the purchaser of assets sold pursuant to section 363 of the Bankruptcy Code from the risk that it will lose its interest in the purchased assets if the order allowing the sale is reversed on appeal, as long as such purchaser leased or purchased the assets in "good faith." While the Bankruptcy Code does not define "good

faith," courts have held that a purchaser shows its good faith through the integrity of its conduct during the course of the sale proceedings, finding that where there is a lack of such integrity, a good-faith finding may not be made. See, e.g., In re Abbotts Dairies of Pa., Inc. ("Typically, the misconduct that would destroy a [buyer's] good faith status at a judicial sale involves fraud, collusion between the [proposed buyer] and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders."); In the Matter of Andy Frain Servs., Inc., 798 F.2d 1113 (7th Cir. 1986) (same); In re Sasson Jeans, Inc., 90 B.R. 608, 610 (S.D.N.Y. 1988) (same).

49. The Debtors submit that the Stalking Horse Bidder or any other Successful Bidder arising from the Auction, is or would be a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code, and the Stalking Horse Purchase Agreement or any respective marked versions thereof, are or would be good-faith agreements entitled to the protections of section 363(m) of the Bankruptcy Code.[7] First, as set forth in more detail above, the consideration to be received by the Debtors pursuant to the Stalking Horse Purchase Agreement is substantial, fair, and reasonable. Second, the parties entered into the Stalking Horse Purchase Agreement in good faith and after extensive arm's-length negotiations, during which all parties were represented by competent counsel, and any sale agreement with a Successful Bidder will be the culmination of a competitive Auction process in which all parties will presumably be represented by counsel and all negotiations will be conducted on an arm's-length, good faith basis. Third, there is no indication of any "fraud, collusion between the purchaser and other bidders or the trustee, or an

[7] The Debtors believe that a finding of good faith within the meaning of section 363(m) of the Bankruptcy Code will be appropriate for any Successful Bidder arising from the Auction. Pursuant to the Bidding Procedures, any Successful Bidder will have had to present a proposal in accordance with the Bidding Procedures. In addition, the Debtors will not choose as a Successful Bidder or Backup Bidder (as defined in the Bidding Procedures) any entity whose good faith under section 363(m) of the Bankruptcy Code can reasonably be doubted, and will be prepared to present the Court with sufficient evidence to allow the Court to find that the "good faith" standard of section 363(m) of the Bankruptcy Code has been satisfied.

attempt to take grossly unfair advantage of other bidders." Cumberland Farms Dairy, Inc. v. Abbotts Dairies of Penn., Inc. (In re Abbotts Diaries of Penn., Inc.), 788 F.2d 143, 147 (3d. Cir. 1986) (quoting In re Rock Indus. Mach. Corp., 572 F.2d 1195, 1198 (7th Cir. 1978)); see also Kabro Assoc. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997). The Bidding Procedures are designed to ensure that no party is able to exert undue influence over the process.

50. Finally, the Debtors evaluated and approved the Stalking Horse Bidder's offer in consultation with their advisors, and any other bids that the Debtors ultimately determine to be a successful bid will have been evaluated in a similar fashion. Accordingly, the Debtors believe that the Stalking Horse Bidder and/or other Successful Bidder arising from the Auction, if any, as well as the Stalking Horse Purchase Agreement (or marked version(s) thereof) should be entitled to the full protections of section 363(m) of the Bankruptcy Code.

E. The Sale of the Assets Should be Approved "Free and Clear" Under Section 363(f).

51. Section 363(f) of the Bankruptcy Code permits a debtor to sell property free and clear of another party's interest in the property if: (a) applicable nonbankruptcy law permits such a free and clear sale; (b) the holder of the interest consents; (c) the interest is a lien and the sale price of the property exceeds the value of all liens on the property; (d) the interest is the subject of a bona fide dispute; or (e) the holder of the interest could be compelled in a legal or equitable proceeding to accept a monetary satisfaction of its interest. See 11 U.S.C. § 363(f).

52. Section 363(f) of the Bankruptcy Code is drafted in the disjunctive. Thus, satisfaction of any of the requirements enumerated therein will suffice to warrant the Debtors' sale of the Assets free and clear of all interests (i.e., all liens, claims, rights, interests, charges, or encumbrances), except with respect to any interests that may be assumed liabilities under the

applicable purchase agreement. See In re Kellstrom Indus., Inc., 282 B.R. 787, 793 (Bankr. D. Del. 2002) ("[I]f any of the five conditions are met, the debtor has the authority to conduct the sale free and clear of all liens.").

53. The Debtors submit that any interest that will not be an assumed liability satisfies or will satisfy at least one of the five conditions of section 363(f) of the Bankruptcy Code, and that any such interest will be adequately protected by either being paid in full at the time of closing, or by having it attach to the net proceeds of the Sale, subject to any claims and defenses the Debtors may possess with respect thereto. The Debtors accordingly request authority to convey the Assets to the Stalking Horse Bidder or other Successful Bidder, if any, free and clear of all liens, claims, rights, interests, charges, and encumbrances, with any such liens, claims, rights, interests, charges, and encumbrances to attach to the proceeds of the Sale.

IV. The Assumption and Assignment of the Assigned Contracts Should Be Approved.

A. The Assumption and Assignment of the Assigned Contracts Reflects the Debtors' Reasonable Business Judgment.

54. To facilitate and effectuate the sale of the Assets, the Debtors are seeking authority to assign or transfer executory contracts to the Stalking Horse Bidder or other Successful Bidder arising from any Auction, to the extent required by such bidders. In connection with this process, the Debtors believe it is necessary to establish the Assumption Procedures by which: (a) the Debtors and contract counterparties can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code; and (b) such counterparties can object to the assumption and assignment of the Assigned Contracts and/or related cure amounts.

55. Section 365 of the Bankruptcy Code authorizes a debtor to assume and/or assign its executory contracts and unexpired leases, subject to the approval of the court, provided that the defaults under such contracts and leases are cured and adequate assurance of future performance

is provided. The Debtors' decision to assume or reject an executory contract or unexpired lease must only satisfy the "business judgment rule" and will not be subject to review unless such decision is clearly an unreasonable exercise of such judgment. See, e.g., Grp. of Inst'l Invrs. v. Chicago, Milwaukee, St. Paul & Pacific Ry. Co., 318 U.S. 523 (1943) (applying Bankr. Act section 77(b), predecessor to Bankruptcy Code section 365, and rejecting test of whether executory contract was burdensome in favor of whether rejection is within debtor's business judgment); Sharon Steel Corp. v. Nat'l Fuel Gas Distrib. Corp., 872 F.2d 36, 40 (3d Cir. 1989) (describing deference to a debtor's business judgment as "breathing space afforded [to] the debtor to consider whether to reject or assume executory contracts under the Code."); In re Network Access Sols., Corp., 330 B.R. 67, 75 (Bankr. D. Del. 2005) ("The standard for approving the assumption of an executory contract is the business judgment rule."); In re Exide Techs., 340 B.R. 222, 239 (Bankr. D. Del. 2006) ("The propriety of a decision to reject an executory contract is governed by the business judgment standard.").

56. Here, the Court should approve the decision to assume and assign the Assigned Contracts in connection with the Sale as a sound exercise of the Debtors' business judgment. First, the Assigned Contracts are necessary to operate the Assets and, as such, they are essential to inducing the best offer for the Assets. Second, it is unlikely that any purchaser would want to acquire the Assets unless a significant number of the contracts and leases needed to manage the day-to-day operations were included in the transaction. Third, the Stalking Horse Purchase Agreement provides that the assumption and assignment of the Assigned Contracts is integral to, and inextricably integrated in, the Sale. Finally, the Assigned Contracts will be assumed and assigned through the process approved by the Court pursuant to the Bidding Procedures Order and, thus, will be reviewed by key constituents in these Chapter 11 Cases.

57. As set forth in the Bidding Procedures Order, the Debtors also request that any party that fails to object to the proposed assumption and assignment of any contract be deemed to consent to the assumption and assignment of the applicable contract pursuant to section 365 of the Bankruptcy Code on the terms set forth in the Sale Order, along with the cure amounts identified in the contract notice. See, e.g., In re Tabone, Inc., 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (by not objecting to sale motion, creditor deemed to consent); Pelican Homestead v. Wooten (In re Gabel), 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

58. The Debtors believe that the Assumption Procedures are fair and reasonable, provide sufficient notice to parties to the executory contracts and leases, and provide certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors submit that the assumption and assignment of the Assigned Contracts by way of the Assumption Procedures should be approved as an exercise of their business judgment.

B. Defaults Under the Assigned Contracts Will Be Cured Through the Sale.

59. Upon finding that a debtor has exercised its business judgment in determining that assuming an executory contract is in the best interest of its estate, courts must then evaluate whether the assumption meets the requirements of section 365(b) of the Bankruptcy Code, specifically that a debtor (a) cure, or provide adequate assurance of promptly curing, prepetition defaults in the executory contract, (b) compensate parties for pecuniary losses arising therefrom, and (c) provide adequate assurance of future performance thereunder. This section "attempts to strike a balance between two sometimes competing interests, the right of the contracting non-debtor to get the performance it bargained for and the right of the debtor's creditors to get the benefit of the debtor's bargain." In re Fleming Cos., 499 F.3d 300, 306 (3d Cir. 2007) (citation omitted).

60. The Debtors' assumption and assignment of any Contracts will be contingent upon payment of cure costs and effective only upon the closing of the Sale. As set forth above, subject to the Court's approval, the Debtors will file with the Court and serve on each counterparty an Assumption and Assignment Notice setting forth the Debtors' good-faith calculation of relevant cure costs for each contract that could be assumed in connection with the Sale. Counterparties will have an opportunity to raise any assignment and cure objection in advance of the Sale Hearing. Because the Assumption Procedures (once approved) provide a clear process by which to resolve disputes over cure amounts or other defaults, the Debtors are confident that if defaults exist that must be cured, such cures will be achieved fairly, efficiently, and properly, consistent with the Bankruptcy Code and with due respect to the rights of non-debtor parties.

C. Non-Debtor Parties Will Be Adequately Assured of Future Performance.

61. Similarly, the Debtors submit that the third requirement of section 365(b) of the Bankruptcy Code—adequate assurance of future performance—is also satisfied given the facts and circumstances present here. "The phrase 'adequate assurance of future performance' adopted from section 2-609(1) of the Uniform Commercial Code, is to be given a practical, pragmatic construction based upon the facts and circumstances of each case." In re U.L. Radio Corp., 19 B.R. 537, 542 (Bankr. S.D.N.Y. 1982). Although no single solution will satisfy every case, "the required assurance will fall considerably short of an absolute guarantee of performance." In re Prime Motor Inns, Inc., 166 B.R. 993, 997 (Bankr. S.D. Fla. 1994). Among other things, adequate assurance may be given by demonstrating the assignee's financial health and experience in managing the type of enterprise or property assigned. See In re Bygaph, Inc., 56 B.R. 596, 605−06 (Bankr. S.D.N.Y. 1986) (adequate assurance of future performance present where a prospective assignee has financial resources and has expressed a willingness to devote sufficient funding to a business to give it a strong likelihood of succeeding).

62. The Debtors believe that they can and will demonstrate that the requirements for assumption and assignment of the Assigned Contracts will be satisfied whether their Assets are sold to the Stalking Horse Bidder or other Successful Bidders arising from the Auction, as the Bidding Procedures require all bidders to provide adequate assurance of their ability to perform under any assigned contract. As required by the Bidding Procedures, the Debtors will evaluate the financial wherewithal of potential bidders before designating such party a Qualified Bidder (e.g., financial credibility, willingness, and ability of the interested party to perform under the Assigned Contracts) and will demonstrate such financial wherewithal, willingness, and ability to perform under the Assigned Contracts assigned to the Stalking Horse Bidder or any Successful Bidder arising from the Auction. Further, the Assumption Procedures provide the Court and other interested parties ample opportunity to evaluate and, if necessary, challenge the ability of the Stalking Horse Bidder or any Successful Bidder arising from the Auction to provide adequate assurance of future performance and object to the assumption of the Assigned Contracts or proposed cure amounts. The Court therefore should have a sufficient basis to authorize the Debtors to reject or assume and assign the Assigned Contracts as set forth in the Stalking Horse Purchase Agreement.

D. Relief Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate.

63. Bankruptcy Rule 6004(h) provides that an "order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise." Additionally, Bankruptcy Rule 6006(d) provides that an "order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise." The Debtors request that the Sale Order be effective immediately upon its entry by providing that the fourteen-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

64. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. See Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should "order otherwise" and eliminate or reduce the fourteen-day stay period, the leading treatise on bankruptcy suggests that the fourteen-day stay should be eliminated to allow a sale or other transaction to close immediately "where there has been no objection to procedure." 10 Collier on Bankruptcy ¶ 6004.10 (15th rev. ed. 2006). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. Id.

65. To maximize the value received for the Assets, the Debtors seek to close the Sale as soon as possible after the Sale Hearing. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

66. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) counsel to the Committee; (iii) counsel to the Prepetition 2025 Note Trustee; (iv) counsel to the Prepetition Trustee and Collateral Agent; (v) counsel to the DIP Agent; (vi) counsel to the DIP Lenders; (vii) counsel to the Stalking Horse Bidder; and (viii) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary. No previous motion for the relief sought herein has been made to this Court or any other court.

[Remainder of Page Left Intentionally Blank]

WHEREFORE, the Debtors respectfully request that the Court enter the Bidding Procedures Order, attached hereto as Exhibit A and such other and further relief as may be just and proper.

Dated: March 10, 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Allison S. Mielke
Edmon L. Morton (Del. No. 3856)
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Proposed Co-Counsel to the Debtors and Debtors in Possession

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NANOSTRING TECHNOLOGIES, INC., *et al.*,[1]	Case No. 24-10160 (CTG)
	(Jointly Administered)
Debtors.	***Proposed* Bidding Procedures Hearing Date:** **March 28, 2024 at 2:30 p.m. (ET)**
	***Proposed* Bidding Procedures Objection Deadline:** **March 22, 2024 at 4:00 p.m. (ET)**
	***Proposed* Sale Hearing Date:** **April 22, 2024 at 10:00 a.m. (ET)**
	***Proposed* Sale Objection Deadline:** **Fourteen (14) days after service of the Sale Notice and Assumption and Assignment Notice**

NOTICE OF MOTION

PLEASE TAKE NOTICE that the above-captioned debtors and debtors in possession (collectively, the "Debtors") filed the attached *Debtors' Motion for Entry of Orders (I) (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Enter into the Stalking Horse Purchase Agreement and to Provide the Stalking Horse Bid Protections Thereunder, (C) Scheduling an Auction and a Sale Hearing and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Granting Related Relief; and (II) (A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases, and (C) Granting Related Relief* (the "Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court").

PLEASE TAKE FURTHER NOTICE that the Debtors have requested that any objections to the Motion be filed on or before **March 22, 2024 at 4:00 p.m. (ET)** (the "Objection Deadline") with the United States Bankruptcy Court for the District of Delaware, 3rd Floor, 824 North Market Street, Wilmington, Delaware 19801. At the same time, you must serve a copy of the objection upon the undersigned counsel to the Debtors so as to be received on or before the Objection Deadline.

[1] The Debtors in these Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are NanoString Technologies, Inc. (4687), NanoString Technologies International, Inc. (2723), NanoString Technologies Netherlands B.V., and NanoString Technologies Germany GmbH. The Debtors' headquarters is located at 530 Fairview Avenue North, Suite 2000, Seattle, WA 98109.

PLEASE TAKE FURTHER NOTICE THAT THE DEBTORS HAVE REQUESTED THAT A HEARING TO CONSIDER THE MOTION WILL BE HELD ON **MARCH 28, 2024 AT 2:30 P.M. (ET)** BEFORE THE HONORABLE CRAIG T. GOLDBLATT IN THE UNITED STATES BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, 824 N. MARKET STREET, 3RD FLOOR, COURTROOM NO. 7, WILMINGTON, DELAWARE 19801.

PLEASE TAKE FURTHER NOTICE THAT, IF YOU FAIL TO RESPOND IN ACCORDANCE WITH THIS NOTICE, THE COURT MAY GRANT THE RELIEF REQUESTED IN THE MOTION WITHOUT FURTHER NOTICE OR A HEARING.

[Signature Page Follows]

Dated: March 10, 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Allison S. Mielke

Edmon L. Morton (Del. No. 3856)
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Proposed Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT A

Bidding Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NANOSTRING TECHNOLOGIES, INC., *et al*.,[1]	Case No. 24-10160 (CTG)
	(Jointly Administered)
Debtors.	**Ref. Docket No. ___**

ORDER (I) (A) APPROVING BIDDING PROCEDURES FOR THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (B) AUTHORIZING THE DEBTORS TO ENTER INTO THE STALKING HORSE PURCHASE AGREEMENT AND TO PROVIDE THE STALKING HORSE BID PROTECTIONS THEREUNDER, (C) SCHEDULING AN AUCTION AND A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (E) GRANTING RELATED RELIEF; AND (II) (A) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS AND ENCUMBRANCES, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (C) GRANTING RELATED RELIEF

Upon the motion (the "Motion")[2] of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of an order (this "Order"), (I) (a) authorizing and approving the bidding procedures attached hereto as Exhibit 1 (the "Bidding Procedures") for the sale of substantially all of the Debtors' Assets, (b) authorizing the Debtors to enter into the Stalking Horse Purchase Agreement for the Purchased Assets (as such term is defined in the Stalking Horse Purchase Agreement), attached hereto as Exhibit 4, and to provide the Bid Protections;

[1] The Debtors in the Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are NanoString Technologies, Inc. (4687), NanoString Technologies International, Inc. (2723), NanoString Technologies Netherlands B.V., and NanoString Technologies Germany GmbH. The Debtors' headquarters is located at 530 Fairview Avenue North, Suite 2000, Seattle, WA 98109.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

(c) scheduling an Auction and a Sale Hearing and approving the form and manner of notice of the Auction, the Sale, and the Sale Hearing, (d) establishing procedures for the assumption and assignment of Contracts and approving the form and manner of notice to each relevant non-debtor counterparty to a Contract of (i) the Debtors' calculation of the amount necessary to cure any defaults under an applicable Contract (the "Cure Costs") and (ii) certain other information regarding the potential assumption and assignment of Contracts in connection with the Sale, and (e) granting related relief, and (II) (a) approving the sale of the Debtors' assets free and clear of liens, claims, interests, and encumbrances, (b) approving the assumption and assignment of executory contracts and unexpired leases, and (c) granting related relief; and upon the *Declaration of R. Bradley Gray in Support of Debtors' Chapter 11 Petitions and First Day Pleadings*; and upon the *Declaration of Christopher O'Connor* in further support of the Motion; and upon the record of the hearing of the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334; and consideration of the Motion and the relief requested therein being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and notice of the Motion having been adequate and appropriate under the circumstances; and it appearing that the relief requested is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and after due deliberation and sufficient cause appearing therefor,

THE COURT FINDS THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact

constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Good and sufficient notice of the Motion, the Bidding Procedures, and the relief sought in the Motion has been given under the circumstances, and no other or further notice is required except as set forth herein. A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

C. The bases for the relief requested in the Motion are: (i) sections 105, 363, 365, 503, and 507 of the Bankruptcy Code; (ii) Bankruptcy Rules 2002(a)(2), 6004, 6006, 9007, and 9014; and (iii) Local Rule 6004-1.

D. The Debtors have articulated good and sufficient reasons for this Court to: (i) approve the Bidding Procedures; (ii) approve the Stalking Horse Purchase Agreement and the Bid Protections; (iii) schedule the Auction and Sale Hearing (to consider granting the other relief requested in the Motion); (iv) approve the forms and manner of notice of the Auction, Sale, and Sale Hearing; and (v) approve the procedures for the assumption and assignment of the Contracts, including notice of proposed Cure Costs. The best interests of the Debtors, their estates, creditors, and other parties in interest will be served by such approval and authorization.

E. The Bidding Procedures, the Stalking Horse Purchase Agreement, and the Bid Protections were negotiated at arm's length and in good faith by the Debtors and the Stalking Horse Bidder. The Bidding Procedures are fair, appropriate, and reasonably designed to promote active bidding at and participation in the Auction to ensure that the highest or otherwise best value is generated for the Assets. The Debtors and their advisors engaged in a robust and extensive marketing and sale process prior to the commencement of these Chapter 11 Cases. The Bidding Procedures are designed to continue that robust and extensive marketing and sale process

following entry of this Order in order to solicit the highest or otherwise best value for the Assets. The Bidding Procedures represent the best method for maximizing the realizable value of the Assets for the benefit of the Debtors' estates.

F. The Bid Protections to be paid in accordance with the Stalking Horse Purchase Agreement are: (i) an actual and necessary cost of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a) of the Bankruptcy Code; (ii) commensurate to the real and substantial benefits conferred upon the Debtors' estates by the Stalking Horse Bidder; (iii) reasonable and appropriate in light of the size and nature of the proposed Sale embodied in the Stalking Horse Purchase Agreement and comparable transactions, the commitments that have been made by the Stalking Horse Bidder for the benefit of the Debtors' estates, the Stalking Horse Bidder's lost opportunities resulting from the time spent pursuing the Sale and the commitment of capital in connection therewith, the condition of the Purchased Assets, and the efforts that have been and will be expended by the Stalking Horse Bidder; (iv) reasonably tailored to encourage bidding for the Assets by providing a baseline of value, increasing the likelihood of competitive bidding at the Auction, and facilitating participation of other bidders in the sale process, thereby increasing the likelihood that the Debtors will receive the best possible price and terms for the Assets; and (v) a condition to and necessary to induce the Stalking Horse Bidder to continue to pursue the Sale and to continue to be bound by the Stalking Horse Purchase Agreement.

G. The Stalking Horse Bid represents the highest and best offer the Debtors have received to date to purchase the Purchased Assets. The Stalking Horse Purchase Agreement provides the Debtors the opportunity to sell the Purchased Assets in a manner designed to preserve and maximize their value and provide a floor for a further marketing and auction process, to the benefit of the Debtors' estates, their creditors, and all other parties in interest. Designation of the

Stalking Horse Bidder as a "stalking horse bidder" and the Stalking Horse Purchase Agreement as a "stalking horse agreement" is in the best interests of the Debtors' estates and their creditors and reflects a sound exercise of their business judgment. The Stalking Horse Bidder has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible purchase price for the Purchased Assets will be realized.

H. The Bid Protections are an essential inducement and condition of the Stalking Horse Bidder's entry into, and continuing obligations under, the Stalking Horse Purchase Agreement. Unless it is assured that the Bid Protections will be available, the Stalking Horse Bidder is unwilling to remain obligated to consummate the Sale or otherwise be bound under the Stalking Horse Purchase Agreement (including the obligations to maintain its committed offer while such offer is subject to higher or otherwise better offers). The Bid Protections induced the Stalking Horse Bidder to submit a bid that will serve as a minimum floor bid for the Purchased Assets on which the Debtors, their creditors and other bidders can rely, and which encourages and facilitates the Auction process. The Stalking Horse Bidder has provided a material benefit to the Debtors and their creditors by increasing the likelihood that the best possible purchase price for the Purchased Assets will be realized. Accordingly, the Bid Protections are reasonable and appropriate and represent the best method for maximizing the value of the Purchased Assets.

I. The Stalking Horse Bidder is a third-party purchaser and is unrelated to any of the Debtors. Neither the Stalking Horse Bidder, nor any of its affiliates, subsidiaries, officers, directors, members, partners, or principals, or any of their respective representatives, successors, or assigns is an "insider" of the Debtors, as that term is defined in section 101(31) of the Bankruptcy Code.

J. The Sale Notice, substantially in the form attached hereto as Exhibit 2, is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale, including, without limitation: (i) the date, time, and place of the Auction (if one is held); (ii) the Bidding Procedures; (iii) the deadline for filing objections to the Sale and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (iv) reasonably specific identification of the Assets to be sold; (v) instructions for obtaining copies of the Stalking Horse Purchase Agreement; and (vi) a description of the Sale as being free and clear of liens, claims, encumbrances, and other interests (except as set forth in the Stalking Horse Purchase Agreement or another Successful Bidder's purchase agreement, if any), with all such liens, claims, encumbrances, and other interests attaching with the same validity and priority to the Sale proceeds. No other or further notice of the Sale shall be required.

K. The Assumption and Assignment Notice, substantially in the form attached hereto as Exhibit 3, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the assumption and assignment of the Assigned Contracts to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement (or to another Successful Bidder arising from the Auction, if any), including with respect to Cure Costs. No other or further notice of the Assumption and Assignment of the Assigned Contracts shall be required.

L. The Assumption and Assignment Procedures set forth herein are fair, reasonable, appropriate, and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

M. The Motion and this Order are reasonable and appropriate, and the Bidding Procedures comply with the requirements set forth by Local Rule 6004-(1)(c).

N. The legal and factual bases set forth in the Motion establish just cause for the relief granted herein. Entry of this Order is in the best interests of the Debtors and their estates, creditors, interest holders, and all other parties in interest.

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled as announced to the Court at the hearing on the Motion or by stipulation filed with the Court, are hereby overruled.

I. Important Dates and Deadlines.

3. The Debtors are authorized to proceed with the Sale in accordance with the Bidding Procedures and are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures (subject to the terms thereof) in accordance with the following timeline:

Deadline	Event
Two (2) Business Days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Hearing Notice and Assumption and Assignment Notice
As soon as practicable after the entry of the Bidding Procedures Order	Deadline for Debtors to publish Sale Hearing Notice
4:00 p.m. (ET) on the date that is fourteen (14) days after service of the Sale Notice and Assumption and Assignment Notice	Sale Objection Deadline (including objections to Assumption and Assignment of Contracts)
April 12, 2024 at 4:00 p.m. (ET)	Bid Deadline
No later than 24 hours prior to Auction, if applicable	Deadline to Designate Qualified Bidders

Deadline	Event
April 16, 2024 at 10:00 a.m. (ET)	Auction, solely in the event the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Bid
As soon as practicable after the Auction, if applicable	Deadline for Debtors to file and serve Notice of Winning Bidder
April 17, 2024 at 4:00 p.m. (ET)	Deadline to object to (i) conduct at Auction and (ii) adequate assurance of future performance under Assigned Contracts if Successful Bidder is not the Stalking Horse Bidder
April 19, 2024 at 12:00 p.m. (ET)	Deadline to Reply to Sale Objections
April 22, 2024 at 10:00 a.m. (ET), subject to the availability of the Court	Sale Hearing

II. Bidding Procedures, Bid Protections, and Related Relief

4. The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to the proposed sale of the Assets. Any party desiring to bid on the Assets (other than the Stalking Horse Bidder, who shall automatically be deemed a Qualified Bidder under the Bidding Procedures) or a portion thereof shall comply with the Bidding Procedures and this Order in all respects. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures (subject in all respects to the terms thereof). The failure to specifically include or reference any particular provision of the Bidding Procedures in the Motion or this Order shall not diminish or otherwise impair the effectiveness of such procedures.

5. The Debtors are authorized to enter into the Stalking Horse Purchase Agreement (including all schedules, exhibits, and other ancillary documents thereto), subject to higher and

better offers at the Auction in accordance with the Bidding Procedures. The Debtors are authorized to perform all obligations of the Debtors set forth in the Stalking Horse Purchase Agreement that are intended to be performed prior to the Sale Hearing and prior to entry of the Sale Order, subject to the terms of the Bidding Procedures. The Stalking Horse Bidder is deemed a Qualified Bidder, and the Stalking Horse Bid as set forth in the Stalking Horse Purchase Agreement is deemed a Qualified Bid.

6. In connection with any Sale pursuant to Bidding Procedures, and subject to the Financing Order[3] and section 363(k) of the Bankruptcy Code, the Prepetition First Lien Agent and the DIP Agent (each as defined in the operative Financing Order, and collectively "Agents") may, as determined by the Agents (at the direction of the applicable required lenders or holders), credit bid any portion and up to the full amount of the underlying lenders' or holders' respective secured claims and/or the DIP Obligations (as defined in the operative Financing Order), as applicable, on any individual Asset, portion of the Assets, or all Assets, in each case constituting Prepetition First Lien Collateral or DIP Collateral (each as defined in the operative Financing Order), as applicable (the "Credit Bid Right" and such bid, the "Credit Bid"); *provided,* that the Credit Bid Right shall only be exercised as a Backup Bid to the extent either no other Qualified Bid (other than the Stalking Horse Bid) is submitted or no other Backup Bid is selected at the completion of an Auction, each in conformity with these Bidding Procedures, and any such Credit Bid (if any) shall be submitted prior to the conclusion of the Auction.[4]

7. In the event an Agent exercises the Credit Bid Right, such Agent shall be deemed a Qualified Bidder (as defined herein) in all respects, and the Credit Bid shall be deemed a

[3] "Financing Order" shall mean the order then in effect authorizing the use of cash collateral and/or approving DIP financing.

Qualified Bid (as defined herein) in all respects. For the avoidance of doubt, notwithstanding anything to the contrary, the Credit Bid must contain a cash component sufficient to pay the Break-Up Fee and/or Expense Reimbursement required to be paid by the Debtors to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement, which cash component shall be used solely to pay such Break-Up Fee and Expense Reimbursement subject to the terms provided in the Stalking Horse Purchase Agreement.

8. Upon exercise of the Credit Bid Right, neither the Prepetition First Lien Agent nor the DIP Agent shall be required to take title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), or be deemed to have taken title to or ownership of, or have any obligation in connection with (in each case, legal equitable, or otherwise), any individual Asset, portion of the Assets, or all of the Assets, and the Prepetition First Lien Agent and the DIP Agent shall each have the right to designate any person or entity that shall take title to the individual Asset, portion of the Assets, or all of the Assets that are subject to the Credit Bid Right. Subject to the preservation of rights provided in the Financing Order with respect to the Prepetition First Lien Obligations, no other person may credit bid on the Prepetition First Lien Collateral or the DIP Collateral unless the entire amount of the Prepetition First Lien Secured Obligations (as defined in the applicable Financing Order) and the DIP Obligations will be paid in full in cash on the closing of the proposed Sale; ***provided however*** that the Stalking Horse Bidder shall receive a credit in connection with any Overbid equal to the value of the Bid Protections granted to it pursuant to the terms of the Stalking Horse Purchase Agreement (as set forth in Section VII.B.2. of the Bidding Procedures).

9. For the avoidance of doubt, and notwithstanding anything to the contrary herein or in the Bidding Procedures, the Credit Bid Right shall be subject in all respects to any conditions

or limitations on such right set forth in the operative Financing Order and section 363(k) of the Bankruptcy Code.

10. The deadline by which all Bids for all or any portion of the Debtors' Assets must be ***actually received*** by the parties specified in the Bidding Procedures is 4:00 p.m. (prevailing Eastern Time), on **April 12, 2024** (the "Bid Deadline"); provided that such deadline shall not apply to a Credit Bid.

11. The Bid Protections are approved as follows: a Break-Up Fee in the amount of 3% of the Purchase Price (as defined in the Stalking Horse Purchase Agreement) of the Stalking Horse Bid and Expense Reimbursement not to exceed 1.5% of the Purchase Price; *provided* that the Bid Protections shall not exceed 4.5% of the Purchase Price. The Bid Protections shall survive any termination of the Stalking Horse Purchase Agreement, dismissal or conversion of any of the Chapter 11 Cases, and confirmation of any plan of reorganization or liquidation, and shall be joint and several obligations binding and enforceable against each Debtor and its respective estates, any trustee, examiner or other representative of the Debtors' estates and any successors thereto. The Bid Protections shall be allowed as superpriority administrative expense claims in the Chapter 11 Cases under sections 364(c)(1), 503(b), 507(a)(2), and 105(a) of the Bankruptcy Code with priority over any and all administrative expenses of any kind, including those specified under sections 503(b) and 507(a)(2) of the Bankruptcy Code. The Debtors are authorized to pay any and all amounts owing to the Stalking Horse Bidder on account of the Bid Protections solely on the terms set forth in the Stalking Horse Purchase Agreement. The Bid Protections for the Stalking Horse Bidder shall be payable at the time required under the Stalking Horse Purchase Agreement, pursuant to the terms and conditions thereof, free and clear of all liens, claims, encumbrances and other interests, without further order of this Court. Nothing in this Order shall be construed as

authorizing and directing the payment of the Bid Protections to the Stalking Horse Bidder in the event that it is the Successful Bidder with respect to the Purchased Assets.

12. No person or entity other than the Stalking Horse Bidder shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this court any request for expense reimbursement or any fee of any nature, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

III. Auction.

13. If the Debtors receive one or more Qualified Bids (other than the Stalking Horse Bid and the Credit Bid), the Auction will take place on **April 16, 2024 at 10:00 a.m.** (prevailing Eastern Time), or such later time as the Debtors (after consultation with the Committee and the DIP Agent) shall notify all Qualified Bidders who have submitted Qualified Bids. No later than 24 hours prior to the commencement of the Auction, the Debtors shall notify each Acceptable Bidder whether such party is a Qualified Bidder. Such Auction will be held either (i) via a virtual meeting, (ii) at the offices of proposed co-counsel to the Debtors, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, New York 10019, or (iii) at such other location as designated by the Debtors (after consultation with the Committee and the DIP Agent). As soon as practicable after the Auction, the Debtors shall file a notice identifying the Successful Bidder and Backup Bidder (if selected), and in any event not more than 24 hours following closing the Auction.

14. If the Debtors do not receive any Qualified Bids other than the Stalking Horse Bid by the Bid Deadline, or if the only Qualified Bid the Debtors receive other than the Stalking Horse Bid is the Credit Bid, the Debtors shall not hold an Auction, and the Stalking Horse Bidder shall be named the Successful Bidder immediately following the Bid Deadline. In the event the Debtors do not hold an Auction, the Debtors shall file with the Court, serve on the Sale Notice Parties (as

defined below), and cause to be published on the website maintained by Kroll Restructuring Administration LLC, the Debtors' claims and noticing agent in these Chapter 11 Cases, located at https://cases.ra.kroll.com/NanoString (the "Case Website"), a notice containing the following information (as applicable): (a) a statement that the Auction has been canceled; (b) the identity of the Successful Bidder; (c) either include a copy of the Successful Bid or a summary of the material terms of such bid, including any assumption and assignment of Contracts contemplated thereby, or provide instructions for accessing the Successful Bid free of charge from the Case Website; and (d) the date, time, and location of the Sale Hearing.

15. Pursuant to Local Rule 6004-1(c)(ii): (a) each bidder participating at the Auction shall be required to confirm on the record that it has not engaged in any collusion with respect to the bidding or the Sale, as set forth in the Bidding Procedures; (b) the Auction shall be conducted openly and all creditors will be permitted to attend (but, unless such creditor is a Qualified Bidder or Consultation Party, not participate in) the Auction; and (c) the Auction shall be transcribed by a court reporter or videotaped.

16. The Debtors will evaluate all Bids that are timely submitted by the Bid Deadline and may engage in negotiations with Acceptable Bidders who submitted Bids as the Debtors deem appropriate, in the exercise of their reasonable judgment and after consultation with the Committee and the DIP Agent. The Debtors may, in their reasonable business judgment (after consultation with the Committee and the DIP Lenders (as defined in the Financing Order)), (a) determine which Acceptable Bidders are Qualified Bidders (other than the Stalking Horse Bidder, who shall automatically be deemed a Qualified Bidder); (b) determine which Bids are Qualified Bids (other than the Stalking Horse Bid and any Credit Bid, which shall automatically be deemed a Qualified Bid); (c) determine which Qualified Bid is the highest or otherwise best offer, the "Successful

Bid," and which is the next highest or otherwise best proposal, the "Backup Bid"; (d) reject, at any time before entry of an Order of the Bankruptcy Court approving the Successful Bid, any Bid (other than the Stalking Horse Bid) that, in the discretion of the Debtors (after consultation with the Committee and the DIP Agent), is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (iii) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders; (e) at or before the conclusion of the Auction, may impose additional terms and conditions upon Qualified Bidders as the Debtors determine to be in the best interests of the Debtors' estates in these Chapter 11 Cases; and (f) in consultation with the Consultation Parties, modify the Bidding Procedures, as applicable, at any time with or without prejudice; *provided that*, for the avoidance of doubt, the Debtors may not (i) modify the Bid Protections, unless the Stalking Horse Bidder agrees to such modification in writing in its sole discretion, or (ii) modify the rules, procedures, or deadlines set forth herein, or adopt new rules, procedures, or deadlines that would impair in any material respect (x) the Stalking Horse Bidder's right to payment of the Break-Up Fee or the Expense Reimbursement or the Stalking Horse Bidder's right to receive a credit for its Bid Protections as set forth in the Bidding Procedures, in each case, without the express written consent of the Stalking Horse Bidder in its sole discretion.

IV. The Sale Hearing.

17. Any party wishing to do so shall file a reply to any Sale Objections and/or Cure Objections (each as defined herein) by no later than 12:00 p.m. (prevailing Eastern Time) on **April 19, 2024**, and the Sale Hearing shall take place on **April 22, 2024 at 10:00 a.m.** (prevailing Eastern Time).

18. The form of the Sale Notice attached to this Order as Exhibit 2 is approved. Within two (2) Business Days after entry of this Order, the Debtors shall serve the Sale Hearing Notice

on the following parties (or their respective counsel, if known) by first class mail or email: (a) the Notice Parties; (b) all parties to executory contracts and leases to be assumed, assigned, or rejected as part of the proposed Sale; (c) all parties who have expressed a written interest in some or all of the Debtors' Assets; (d) all known holders of liens, encumbrances, and other claims secured by the Debtors' Assets; (e) the Internal Revenue Service; (f) all applicable state and local taxing authorities; (g) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002 (collectively, the "Sale Notice Parties").

19. As soon as reasonably practicable after entry of this Order, the Debtors shall publish the Sale Notice in *The New York Times* (national edition) and on the Case Website.

20. Objections, if any, to the Sale, including on the basis of the identity of the Stalking Horse Bidder (each, a "Sale Objection") must be made no later than 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) days after service of the Sale Notice and Assumption and Assignment Notice (the "Sale Objection Deadline"). Objections must: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules; (c) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received*** no later than the Sale Objection Deadline by the following parties (the "Objection Notice Parties"):

Counsel to the Debtors	**Co-Counsel to the Debtors**
Willkie Farr & Gallagher LLP 787 Seventh Avenue New York, NY 10019 Attn.: Rachel C. Strickland Debra M. Sinclair Betsy L. Feldman	Young Conaway Stargatt & Taylor, LLP Rodney Square 1000 North King Street Wilmington, DE 19801 Attn.: Edmon L. Morton Matthew B. Lunn Allison S. Mielke

Counsel to the Committee	**The United States Trustee**
Akin Gump Strauss Hauer & Feld LLP One Bryant Park, Bank of America Tower New York, New York 10036 Attn: Philip C. Dublin, Esq. Meredith A. Lahaie, Esq. Troutman Pepper Hamilton Sanders LLP 1313 N. Market Street, P.O. Box 1709 Wilmington, Delaware 19899 Attn: David M. Fournier Evelyn J. Meltzer	Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35 Wilmington, Delaware 19801 Attn.: Timothy J. Fox, Esq
Counsel to the Stalking Horse Bidder	**Counsel to the DIP Lenders and the Prepetition First Lien Holders**
Kirkland & Ellis LLP 601 Lexington Avenue New York, New York 10022 Attn: Brian Schartz, Esq. Jordan E. Elkin, Esq.	Gibson Dunn & Crutcher LLP 200 Park Avenue New York, New York 10166 Attn: David M. Feldman, Esq. Jonathan Dunworth, Esq. Gibson Dunn & Crutcher LLP 333 S. Grand Avenue Los Angeles, CA 90071 Attn: Michael S. Neumeister, Esq. Sullivan & Cromwell LLP 125 Broad Street New York, New York 10004 Attn: Ari Blaut, Esq. Benjamin Beller, Esq. Landis Rath & Cobb LLP 919 N. Market Street, Suite 1800 Wilmington, Delaware 19801 Attn: Adam G. Landis, Esq. Matthew B. McGuire, Esq.

21. All parties-in-interest shall have an opportunity to object to the conduct of the Auction and, if the Successful Bidder is not the Stalking Horse Bidder, counterparties to Assigned

Contracts shall have an opportunity to object to the adequate assurance of future performance under Assigned Contracts (each such objection, a "Supplemental Sale Objection"). Any Supplemental Objection must (i) be in writing and state, with specificity, the legal and factual bases thereof and include any appropriate documentation in support thereof; (ii) be filed with the Court by no later than 4:00 p.m. on April 17, 2024 (the "Supplemental Sale Objection Deadline"); and (iii) served on the Objection Notice Parties.

22. Any party failing to timely file a Sale Objection shall be forever barred from objecting and shall be deemed to have consented to each Sale, including the transfer of the Debtors' right, title and interest in, to and under the Purchased Assets free and clear of any and all liens, claims, interests, and encumbrances in accordance with the Stalking Horse Purchase Agreement or Successful Bidder's purchase agreement.

23. The Sale Hearing may be adjourned by the Debtors, in consultation with the DIP Agent, the Committee, and the Successful Bidder, from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing.

V. Assumption and Assignment Procedures.

24. The procedures set forth below regarding the assumption and assignment of the Contracts (each, an "Assigned Contract," and collectively, the "Assigned Contracts") proposed to be assumed by the Debtors pursuant to section 365(b) of the Bankruptcy Code and assigned to the Stalking Horse Bidder or other Successful Bidder, if any, pursuant to section 365(f) of the Bankruptcy Code in connection with the Sale (the "Assumption Procedures") are hereby approved to the extent set forth herein and shall govern the assumption and assignment of all of the Debtors' Assigned Contracts to be assumed and assigned in connection with the Sale, subject to the payment

of any amounts necessary to cure any defaults arising under any Assigned Contract (the "Cure Costs"):

(a) **Assumption and Assignment Notice**. The form of the Assumption and Assignment Notice attached to this Order as Exhibit 3 is approved. Within two (2) Business Days after entry of this Order (the "Assumption and Assignment Service Deadline"), the Debtors shall serve the Assumption and Assignment Notice by first class mail or email on each counterparty to the Assigned Contracts to be assumed and assigned as part of the proposed Sale (or their respective counsel, if known). The Assumption and Assignment Notice shall inform each recipient of (i) the timing and procedures relating to such assumption and assignment, (ii) the title (or an appropriate description) and date of the Assigned Contract (if available), (iii) the name of the non-Debtor counterparty to the Assigned Contract, (iv) the Debtors' good faith estimates of the Cure Costs (if any) required in connection with the Assigned Contract, (v) the identity of the Stalking Horse Bidder or other Successful Bidder to whom the Assigned Contract is to be assigned, and (vi) the Cure Objection Deadline; provided, however, that service of an Assumption and Assignment Notice does not constitute an admission that such contract is an executory contract or that any stated Cure Cost constitutes a claim against the Debtors or a right against any Stalking Horse Bidder or other Successful Bidder, and all rights with respect thereto are expressly reserved. Further, the inclusion of a contract on the Assumption and Assignment Notice is not a guarantee that such contract will ultimately be assumed and assigned. Any determination of whether such contract is an executory contract or can be rejected will be made in accordance with the Bankruptcy Code, the Bankruptcy Rules, and all applicable orders of this Court.

(b) **Cure Costs**. The payment of the applicable Cure Costs shall (i) effect a cure of all defaults existing thereunder, (ii) compensate for any actual pecuniary loss to such counterparty resulting from such default, and (iii) together with the assumption of the Assigned Contracts by the Debtors and the assignment of the Assigned Contracts to the Stalking Horse Bidder or other Successful Bidder, constitute adequate assurance of future performance thereof. In the event the Successful Bidder is not the Stalking Horse Bidder, objections to adequate assurance of future performance of the Assigned Contracts by the Successful Bidder must be filed with the Court and served on the Objection Notice Parties no later than April 17, 2024 at 4:00 p.m. (ET).

(c) **Supplemental Contract Assumption Notice**. To the extent the Debtors, at any time after the Assumption and Assignment Service Deadline (i) identify additional Assigned Contracts to be assumed and assigned to the Stalking Horse Bidder or other Successful Bidder (the "Additional Assigned Contracts"), (ii) remove Assigned Contracts from the list of executory

contracts and leases proposed to be assumed and assigned in connection with a Sale, (iii) and/or modify the previously stated Cure Cost associated with any Assigned Contracts, the Debtors will promptly file with this Court and serve by first-class mail or email a supplemental notice of contract assumption (a "Supplemental Assumption Notice") on each of the counterparties to such Assigned Contracts and their counsel of record, if any. Each Supplemental Assumption Notice will include the same information with respect to listed Assigned Contracts as was included in the Contract Assumption Notice. The Stalking Horse Bidder may designate Additional Assigned Contracts to be assumed and assigned at any time until five (5) Business Days prior to the Closing Date (as defined in the Stalking Horse Purchase Agreement), and may remove Assigned Contracts from the list of Assigned Contracts at any time until five (5) Business Days prior to the Closing Date. Counterparties to Additional Assigned Contracts or that otherwise receive a Supplemental Assumption Notice shall have until 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) days after the filing and service of the Supplemental Assumption Notice by the Debtors to the Counterparty to file a Cure Objection (as defined herein).

(d) **Objections**. Objections, if any, to the proposed assumption and assignment or the Cure Cost proposed with respect thereto (each, a "Cure Objection"), must (i) be in writing, (ii) comply with the applicable provisions of the Bankruptcy Code, Bankruptcy Rules, and the Local Rules, (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed cure amount, the correct cure amount alleged by the objecting counterparty, together with any applicable and appropriate documentation in support thereof, and (iv) be filed with the Court and served upon the Objection Notice Parties, so as actually to be received on or before the Sale Objection Deadline or deadline set forth in the Supplemental Assumption Notice, as applicable (each, a "Cure Objection Deadline").

(e) **Dispute Resolution**. In the event that a non-Debtor contract counterparty files a timely Cure Objection and the Debtors and such counterparty cannot resolve such objection, the objection shall be heard at the Sale Hearing or such later date that the Debtors determine in consultation with the Successful Bidder, subject to the Court's calendar. If such objection has not been resolved prior to the Closing Date (whether by an order of the Court or by agreement with the counterparty), the Successful Bidder may elect, in its sole discretion, to: (i) treat such counterparty's contract (the "Disputed Contract") as an Excluded Contract (as defined in the Stalking Horse Purchase Agreement) or (ii) temporarily treat such counterparty's contract as an Excluded Contract, proceed to Closing of the Sale, and determine whether to treat the Disputed Contract as an Assigned Contract or Excluded Contract within five (5) business days after resolution of such objection (whether by order of the Court or by agreement with the counterparty).

(f) **Contract Assumption**. No Assigned Contract shall be deemed assumed and assigned pursuant to section 365 of the Bankruptcy Code until the later of (i) the date the Court has entered an order assuming and assigning such Assigned Contracts or (ii) the date the Sale has closed.

25. Any party failing to timely file an objection to the Cure Cost or the proposed assumption and assignment of an Assigned Contract or Additional Assigned Contract listed on the Assumption and Assignment Notice or any Supplemental Assumption Notice is deemed to have consented to (a) such Cure Cost, (b) the assumption and assignment of such Assigned Contract or additional Assigned Contract, (c) the related relief requested in the Motion, and (d) the Sale. Such party shall be forever barred and estopped from objecting to the Cure Costs, the assumption and assignment of the Assigned Contract, or additional Assigned Contract, adequate assurance of future performance, the relief requested in the Motion, whether applicable law excuses such counterparty from accepting performance by, or rendering performance to, the Stalking Horse Bidder or Successful Bidder, as applicable, for purposes of section 365(c)(1) of the Bankruptcy Code and from asserting any additional cure or other amounts against the Debtors and the Stalking Horse Bidder or Successful Bidder, as applicable, with respect to such party's Assigned Contract or Additional Assigned Contract.

26. The Assumption Procedures are appropriate and fair to all counterparties and comply in all respects with the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. The Contract Assumption Notice is: (a) reasonably calculated to (i) provide sufficient, effective notice to all counterparties and any other affected parties of the Debtors' intent to assume and assign to any Successful Bidder some or all of the Assumed Contracts and (ii) afford the counterparties the opportunity to exercise any rights affected by the Motion and the relief granted by this Order pursuant to Bankruptcy Rules 2002(a)(2), 6004, and 6006; and (b) hereby approved.

V. Miscellaneous.

27. For the avoidance of doubt and notwithstanding anything to the contrary herein, nothing in this Order, the Bidding Procedures, or the Motion shall be construed to in any way amend, impair, prejudice, alter, or otherwise modify the terms of the Stalking Horse Purchase Agreement or the Stalking Horse Bidder's rights thereunder. The Stalking Horse Bidder shall have standing to appear and be heard on all issues related to the Auction, the sale of the Assets, and related matters, including the right to object to the sale of the Assets or any portion thereof.

28. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby modified with respect to the Debtors to the extent necessary, without further order of the Court, to allow the Stalking Horse Bidder to (i) deliver any notice provided for in the Stalking Horse Purchase Agreement, including, without limitation, a notice terminating the Stalking Horse Purchase Agreement in accordance with the terms thereof, and (ii) take any and all actions permitted under the Stalking Horse Purchase Agreement in accordance with the terms and conditions thereof.

29. All persons and entities that participate in the Auction or bidding for the Assets during the Sale process shall be deemed to have knowingly and voluntarily (i) consented to the core jurisdiction of the Court to enter any order related to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; (ii) waived any right to a jury trial in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order; and (iii) consented to the entry of a final order or judgment in connection with any disputes relating to the Bidding Procedures, the Auction, or any other relief requested in the Motion or granted in this Order, if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the relevant parties.

30. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

31. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

32. The terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

33. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation of this Order.

EXHIBIT 1

Bidding Procedures

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NANOSTRING TECHNOLOGIES, INC., *et al*.,[1]	Case No. 24-10160 (CTG)
	(Jointly Administered)
Debtors.	

BIDDING PROCEDURES

On February 4, 2024, NanoString Technologies, Inc. and its affiliated debtors and debtors in possession (the "Debtors") filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

On [●], 2024, the Court entered an order [Docket No. [●]] (the "Bidding Procedures Order"),[2] authorizing the Debtors to solicit bids for a sale or disposition (the "Sale") of all or substantially all of the Debtors' assets (collectively, the "Assets"), free and clear of all liens, claims, encumbrances, and other interests and in accordance with the following procedures (the "Bidding Procedures") and to conduct a related auction if needed (the "Auction").

These Bidding Procedures set forth the process through which a person or entity interested in all or substantially all of the Assets or a material portion of the Assets (each, a "Potential Bidder") may submit a binding proposal or offer (each, a "Bid") pursuant to which the Potential Bidder proposes to, among other things, purchase, acquire, and take assignment and delivery of the Assets and assume certain liabilities (the "Liabilities") of the Debtors. This process is intended to obtain a sale proposal that is in the best interests of the Debtors, their creditors, and their equity holders.

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[1] The Debtors in the Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are NanoString Technologies, Inc. (4687), NanoString Technologies International, Inc. (2723), NanoString Technologies Netherlands B.V., and NanoString Technologies Germany GmbH. The Debtors' headquarters is located at 530 Fairview Avenue North, Suite 2000, Seattle, WA 98109.

[2] Terms used but not otherwise defined herein shall have the meanings ascribed to them in the *Motion of the Debtors for Entry of Orders (I) (A) Approving Bidding Procedures for the Sale of Substantially All of the Debtors' Assets, (B) Authorizing the Debtors to Enter Into the Stalking Horse Purchase Agreement and to Provide the Stalking Horse Bid Protections Thereunder, (C) Scheduling an Auction and a Sale Hearing and Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Granting Related Relief; and (II) (A) Approving the Sale of the Debtors' Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases and (C) Granting Related Relief* (the "Motion") or the Bidding Procedures Order, as applicable.

ANY PARTY INTERESTED IN BIDDING ON ALL OR ANY PORTION OF THE DEBTORS' ASSETS SHOULD CONTACT THE DEBTORS' ADVISORS, AS FOLLOWS:

Perella Weinberg Partners
767 Fifth Avenue
New York, NY 10153
Attn: John Cesarz
(jcesarz@pwpartner.com);
Christopher O'Connor
(coconnor@pwpartners.com;
Chad Porter
(cporter@pwpartners.com); and
Jason Forschler
(jforschler@pwpartners.com

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, New York 10019
Attn: Rachel C. Strickland
(rstrickland@willkie.com);
Debra M. Sinclair
(dsinclair@willkie.com);
Betsy L. Feldman
(bfeldman@willkie.com); and
Jessica D. Graber
(jgraber@willkie.com)

Young Conaway Stargatt & Taylor, LLP
1000 North King Street
Wilmington, Delaware 19801
Attn: Edmon L. Morton
(emorton@ycst.com);
Matthew B. Lunn
(mlunn@ycst.com);
Allison S. Mielke
(amielke@ycst.com); and
Kristin L McElroy
(kmcelroy@ycst.com

I. DESCRIPTION OF THE ASSETS AND STALKING HORSE BID.

A. The Assets.

The Debtors intend to sell all or substantially all of the Assets.

Any Potential Bidder may bid on all or substantially all of the Assets or a material portion of the Assets, subject to the conditions set forth herein.

The ability to undertake and consummate a sale of the Assets shall be subject to competitive bidding, as set forth herein, and approval by the Court.

B. The Stalking Horse Purchase Agreement.

On March 10, 2024, the Debtors entered into that certain Asset Purchase Agreement (the "Stalking Horse Purchase Agreement") with Nucleus Buyer, LLC (the "Stalking Horse Bidder," and such bid, the "Stalking Horse Bid"). Subject to court approval, pursuant to the Stalking Horse Purchase Agreement, the Stalking Horse Bidder has committed to pay a Purchase Price worth a total aggregate consideration as set forth in the Stalking Horse Purchase Agreement, free and clear of all claims or encumbrances (other than Assumed Liabilities and Permitted Liens, as defined in the Stalking Horse Purchase Agreement). In the event that the Stalking Horse Purchase Agreement is terminated, pursuant to the conditions thereunder, or in the event that the purchase of the Assets is ultimately consummated by any person other than the Stalking Horse Bidder, the Debtors will pay the Stalking Horse Bidder (at the time required under the Stalking Horse Purchase Agreement) a break-up fee in the amount equal to $6,600,000 (three (3) percent of the Purchase Price) (the "Break-Up Fee")[3] and reimburse the Stalking Horse Bidder for its reasonable and documented expenses in conjunction with the Stalking Horse Bid up to a maximum amount of $3,300,000 (one and a half (1.5) percent of the Purchase Price) (the "Expense Reimbursement," and together with

[3] For the avoidance of doubt, the Break-Up Fee is referred to as the Termination Fee in the Stalking Horse Purchase Agreement.

the Break-Up Fee, the "Bid Protections"); provided, however, that the Break-Up Fee and Expense Reimbursement, in the aggregate, shall not exceed an amount equal to $9,900,000 (four and a half (4.5) percent of the Purchase Price).

II. KEY DATES AND DEADLINES.

Deadline	Event
Two Business Days after the entry of the Bidding Procedures Order	Deadline for Debtors to file and serve Sale Hearing Notice and Assumption and Assignment Notice
As soon as practicable after the entry of the Bidding Procedures Order	Deadline for Debtors to publish Sale Hearing Notice
4:00 p.m. (ET) on the date that is fourteen (14) days after service of the Sale Notice and Assumption and Assignment Notice	Sale Objection Deadline (including objections to Assumption and Assignment of Contracts)
April 12, 2024 at 5:00 p.m. (ET)	Bid Deadline
No later than 24 hours prior to Auction, if applicable	Deadline to Designate Qualified Bidders
April 16, 2024 at 10:00 a.m. (ET)	Auction, solely in the event the Debtors receive one or more Qualified Bids in addition to the Stalking Horse Bid
As soon as practicable after the Auction, if applicable	Deadline for Debtors to file and serve Notice of Winning Bidder
April 17, 2024 at 4:00 p.m. (ET)	Deadline to object to (i) conduct at Auction and (ii) adequate assurance of future performance under Assigned Contracts if Successful Bidder is not the Stalking Horse Bidder
April 19, 2024 at 12:00 p.m. (ET)	Deadline to Reply to Sale Objections
April 22, 2024 at 10:00 a.m. (ET), subject to the availability of the Court	Sale Hearing

III. PARTICIPATION REQUIREMENTS.

A. Potential Bidders.

To participate in the bidding process, a Potential Bidder must deliver to each of the Debtors' advisors the following documents and information:

1. an executed confidentiality agreement on terms acceptable to the Debtors (a "Confidentiality Agreement"); and

2. proof by the Potential Bidder of its financial capacity to close the proposed Sale, which may include audited financial statements of, or verified financial commitments obtained by, the Potential Bidder (or, if the Potential Bidder is an entity formed for the purpose of acquiring the desired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors and their advisors after consultation with the DIP Lenders and the Committee.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtors and their advisors regarding the ability of such Potential Bidder, as applicable, to consummate its contemplated transaction; provided that the Consultation Parties (as defined herein) and their respective advisors shall be permitted to submit reasonable requests for information from Potential Bidders only through the Debtors and their advisors and, for the avoidance of doubt, shall not be permitted, without the advance consent of the Debtors, to directly contact any Potential Bidder and/or its respective advisor(s) prior to the Auction regarding the Sale. The Debtors will provide copies of material delivered by any Potential Bidder to (i) the Committee and its advisors, and (ii) the DIP Lenders and their counsel, regardless of whether received prior or subsequent to the date of the Court's entry of these Bidding Procedures, as promptly as practicable upon receipt by the Debtors and/or their counsel of such materials, but in no event later than one (1) day after the receipt thereof.

B. Obtaining Due Diligence.

Only Potential Bidders that have executed confidentiality agreements and have provided evidence satisfactory to the Debtors (in the Debtors' discretion, after consultation with the Committee and the DIP Lenders) of their financial capacity to close the proposed Sale (such Potential Bidders, an "Acceptable Bidder") shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and any additional non-public information regarding the Debtors and the Assets.

The Debtors and their advisors shall coordinate responses to all reasonable requests from Acceptable Bidders for additional information and due diligence access; provided that (i) the Debtors shall have the right, in consultation with the Committee and the DIP Lenders, to limit the information and due diligence provided to competitors and (ii) the Debtors may decline (after consultation with the Committee and the DIP Lenders) to provide such information to any Acceptable Bidder (other than the DIP Agent or the Prepetition First Lien Agent (each as defined

in the operative Financing Order, and collectively, the "Agents")[4] with respect to the Credit Bid Right) who, at such time and in the Debtors' reasonable business judgment and after consultation with the Committee and the DIP Lenders, has not established, or who has raised significant doubt, that such Acceptable Bidder intends in good faith to, or has the capacity (financial or otherwise) to timely consummate the proposed Sale in accordance with these Bidding Procedures. The Debtors will promptly provide any due diligence that has been made available to any other Acceptable Bidder to the Stalking Horse Bidder to the extent such information has not previously been provided to or is not simultaneously provided to the Stalking Horse Bidder.

The due diligence period will end on the Bid Deadline and, subsequent to the Bid Deadline, the Debtors shall have no obligation to furnish any due diligence information. Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed appropriate by the Debtors after consultation with the DIP Lenders and the Committee. The Debtors and their representatives and advisors are not responsible for, and will bear no liability with respect to, any information obtained by any Acceptable Bidder in connection with the Sale.

C. Right to Credit Bid.

In connection with any Sale pursuant to these Bidding Procedures and subject to the Financing Order and section 363(k) of the Bankruptcy Code, each Agent may, as determined by the Agents with the requisite consent of the applicable lenders, credit bid any portion and up to the full amount of the underlying lenders' or holders' respective secured claims and/or the DIP Obligations (as defined in the operative Financing Order), as applicable, on any individual Asset, portion of the Assets, or all Assets, in each case constituting Prepetition First Lien Collateral or DIP Collateral (each as defined in the operative Financing Order), as applicable (the "Credit Bid Right" and such bid, the "Credit Bid"); *provided,* however, the Credit Bid Right shall only be exercised as a Backup Bid to the extent either no other Qualified Bid (other than the Stalking Horse Bid) is submitted or no other Backup Bid is selected at the completion of an Auction, each in conformity with these Bidding Procedures, and any such Credit Bid (if any) shall be submitted prior to the conclusion of the Auction. For the avoidance of doubt, notwithstanding anything herein to the contrary, the Agents are under no obligation to submit a Credit Bid or to participate as a Backup Bidder.

Each Agent shall be deemed a Qualified Bidder (as defined herein) in all respects, and any Credit Bid shall be deemed a Qualified Bid (as defined herein) in all respects. For the avoidance of doubt, notwithstanding anything to the contrary, the Credit Bid must contain a cash component sufficient to pay the Break-Up Fees and/or Expense Reimbursements required to be paid by the Debtors to the Stalking Horse Bidder pursuant to the Stalking Horse Purchase Agreement, if any, which cash component shall be used solely to pay such Break-Up Fees and Expense Reimbursements subject to the terms provided in the Stalking Horse Purchase Agreement and the Bidding Procedures Order.

[4] "Financing Order" shall mean the order then in effect authorizing the use of cash collateral and/or approving DIP financing.

Upon exercise of the Credit Bid Right, neither Agent shall be required to take title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), or be deemed to have taken title to or ownership of, or have any obligation in connection with (in each case, legal, equitable, or otherwise), any individual Asset, portion of the Assets, or all of the Assets, and each Agent shall have the right to designate any person or entity that shall take title to the individual Asset, portion of the Assets, or all of the Assets that are subject to the Credit Bid Right. Subject to the preservation of rights provided in the Financing Order with respect to the Prepetition First Lien Secured Obligations, no other person may credit bid on the Prepetition First Lien Collateral or the DIP Collateral unless the entire amount of the Prepetition First Lien Secured Obligations and the DIP Obligations will be paid in full in cash on the closing of the proposed Sale; *provided* that the Stalking Horse Bidder shall receive a credit in connection with such Overbid equal to the value of the Bid Protections granted to it pursuant to the terms of the Stalking Horse Purchase Agreement (as set forth in Section VII.B.2 of these Bidding Procedures) and the Bidding Procedures Order.

For the avoidance of doubt, and notwithstanding anything to the contrary herein or in the Bidding Procedures Order, the Credit Bid Right shall be subject in all respects to any conditions or limitations on such right set forth in the operative Financing Order and section 363(k) of the Bankruptcy Code.

IV. REQUIREMENTS FOR QUALIFIED BIDS.

Any Bid will be considered a qualified bid only if the Bid is submitted in writing by an Acceptable Bidder by the Bid Deadline and is determined to comply with all of the following in the Debtors' reasonable business judgment (after consultation with the Committee and with the consent (not to be unreasonably, withheld, conditioned, or delayed) of the DIP Lenders) (such bid, a "Qualified Bid," and such bidder, a "Qualified Bidder"):

1. ***Identity***. The bid must fully disclose the identity of each person or entity that (a) is bidding for all or any portion of the Assets; (b) is sponsoring or financing the bid (including through the issuance of debt in connection with such bid); (c) is participating in (including through license or similar arrangement with respect to the Assets to be acquired in connection with such bid) the Auction in connection with such bid and the complete terms of any such participation; and/or (d) will directly or indirectly own and/or control any amount of equity and/or voting securities of the Qualified Bidder; in each case, including its full legal name, jurisdiction of incorporation or formation, and its location in the Qualified Bidder's corporate structure. The bid must also disclose any past or present connection or agreement with any Debtor, any other prospective bidder for all or any portion of the Assets, or any officer, director, or equity security holder of any Debtor.

2. ***Purpose; Assets and Liabilities***. Each Qualified Bidder must state that the Bid includes an irrevocable and binding offer by the Qualified Bidder to purchase some or all of the Assets (identified with specificity). The Bid

must clearly identify the following: (a) the Assets, or the portion thereof, to be purchased; and (b) the Liabilities and obligations to be assumed, including any indebtedness and applicable Cure Costs to be assumed, if any.

3. ***Purchase Price***. The Bid must clearly set forth the cash purchase price, assumed Liabilities, and any other non-cash consideration (with the form of such consideration specified), to be paid for the Assets to be purchased; provided that the proposed purchase price shall satisfy the Minimum Bid requirement set forth below. A Bid that contemplates a Sale for less than all of the Assets but includes multiple segments or groups of Assets must contain sufficient information as to allow the Debtors to determine an allocation of value among each segment or group of Assets (including, as applicable, by allocating the purchase price among each of the Assets that the Qualified Bidder intends to acquire).

4. ***Deposit***. Each Bid must be accompanied by a good faith deposit in the form of cash (or other form acceptable to the Debtors after consultation with the Committee and the DIP Lenders) in an amount equal to ten (10) percent (10%) of the maximum cash component of the purchase price of the Bid (the "Deposit") to be held in an escrow account to be established by the Debtors until no later than five (5) Business Days after the conclusion of the Auction and thereafter returned to the respective Qualified Bidders (except for the Deposit of any bidder who is selected at the Auction as a Successful Bidder or as a Backup Bidder (as defined below)); provided that, for the avoidance of doubt, in the event of the exercise of the Credit Bid Right, a Deposit must only be made with respect to the cash component of the purchase price, and not to any actual Credit Bid amount.

5. ***Minimum Bid***. If at least one Qualified Bid (in addition to the (i) Stalking Horse Bid; and (ii) any Credit Bid) is received by the Bid Deadline with regard to the Assets, the Debtors will conduct an Auction with respect to such Assets and shall determine, in their reasonable discretion (after consultation with (i) the Committee and (ii) the DIP Lenders), which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction (the "Minimum Bid"). The Minimum Bid must have a value to the Debtors, as determined by the Debtors in their reasonable business judgment, that: (a) is greater than or equal to the value of the Stalking Horse Bid, taking into account the aggregate cash consideration, assumption of liabilities (including, for the avoidance of doubt, the assumption of litigation liabilities, including currently outstanding litigation liabilities, contingent future litigation liabilities, and the operational savings to the Debtors' estates on account of the buyer's assumption of such litigation), and other non-cash consideration contemplated by the Stalking Horse Bid; and (b) includes cash consideration in an amount equal to or greater than (i) the sum of the Purchase Price under the Stalking Horse Purchase Agreement, plus (ii) the

amount of the Bid Protections, plus (iii) $2,500,000. For the avoidance of doubt, if the Debtors receive one or more Bids that do not each independently constitute a "Minimum Bid," but otherwise meet all requirements set forth herein for a "Qualified Bid," then the Debtors may aggregate two or more such Qualified Bids and treat them as a single Qualified Bid for purposes of constituting the Minimum Bid.

6. ***Marked Agreement***. Each Bid must include duly executed, non-contingent transaction documents necessary to effectuate the transactions contemplated in the Bid (the "Bid Documents"). The Bid Documents shall include a schedule of Assigned Contracts and a clearly marked version of (a) the form Sale Order provided by the Debtors to the Acceptable Bidder, in each case, showing all changes requested by the Acceptable Bidder, and (b) the Stalking Horse Purchase Agreement, as well as all other material documents integral to such Bid.

7. ***Committed Financing***. Each Bid must include evidence of (a) the Acceptable Bidder's capacity to consummate the proposed transactions set forth in its Bid with cash on hand or (b) committed financing documented to the satisfaction of the Debtors (after consultation with the Committee and the DIP Lenders) that demonstrates that the Acceptable Bidder has received sufficient unconditional debt and/or equity funding commitments to satisfy the Acceptable Bidder's Purchase Price and other obligations under its Bid, including providing adequate assurance of future performance under all contracts proposed to be Assigned Contracts by such Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors.

8. ***Contingencies; No Financing or Diligence Outs***. A Bid shall not be conditioned on the obtaining or the sufficiency of financing or any internal approval, or on the outcome or review of due diligence.

9. ***Governmental, Licensing, and Regulatory Approvals***. Each Bid must describe all governmental, licensing, regulatory, or other approvals or consents that are required to consummate the proposed transaction (including any antitrust approval related to the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended), together with evidence satisfactory to the Debtors, after consultation with the Committee and the DIP Lenders, of the ability to obtain such approvals or consents as soon as reasonably practicable, as well as a description of any material contingencies or other conditions that will be imposed upon, or that will otherwise apply to, the obtainment or effectiveness of any such approvals or consents.

10. ***Irrevocable***. Each Bid must be irrevocable and binding; provided that if the Bid is not selected as the Successful Bid or Backup Bid, the Bid may be revoked after the Auction if such Acceptable Bidder's Bid is not selected as the Successful Bid or Backup Bid.

11. ***Backup Bidder***. Each Bid must contain an agreement for the Acceptable Bidder to be a Backup Bidder if such bidder's Qualified Bid is selected as the next highest or next best bid after the Successful Bid; provided that, notwithstanding anything to the contrary herein, the Stalking Horse Bidder is not required to serve as the Backup Bidder.

12. ***As-Is, Where-Is***. The Bid must include the following representations and warranties: (a) expressly state that the Acceptable Bidder has had an opportunity to conduct any and all due diligence regarding the Debtors' business and the Assets such Acceptable Bidder proposes to acquire prior to submitting its Bid; and (b) a statement that the Acceptable Bidder has relied solely upon its own independent review, investigation, and/or inspection of any relevant documents and the Assets such Acceptable Bidder proposes to acquire in making its Bid and did not rely on any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express or implied, by operation of law or otherwise, regarding the Debtors' businesses or the Assets such Acceptable Bidder proposes to acquire or the completeness of any information provided in connection therewith, except as expressly stated in the representations and warranties contained in the Acceptable Bidder's proposed purchase agreement ultimately accepted and executed by the Debtors.

13. ***Authorization***. The Bid must include evidence that the Acceptable Bidder has obtained authorization or approval from its board of directors (or comparable governing body) acceptable to the Debtors, in consultation with the Committee and the DIP Lenders, with respect to the submission, execution, and delivery of its Bid and Bid Documents, participation in the Auction, and closing of the proposed Sale contemplated in such Bid. The Bid shall further state that any necessary filings under applicable regulatory, antitrust, and other laws will be made in a timely manner and that payment of the fees associated therewith shall be made by the Acceptable Bidder.

14. ***Disclaimer of Fees***. Each Bid (other than the Stalking Horse Bid, subject to the terms of the Bidding Procedures Order) must disclaim any right to receive a fee analogous to a break-up fee, expense reimbursement, "topping" or termination fee, or any other similar form of compensation. For the avoidance of doubt, no Qualified Bidder (other than the Stalking Horse Bidder) will be permitted to request, nor will be granted by the Debtors, at any time, whether as part of the Auction or otherwise, a break-up fee, expense reimbursement, termination fee, or any other similar form of compensation, and, by submitting its Bid, the Qualified Bidder is deemed

to have agreed to waive any request for any such fee, costs, or reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

15. ***Time Frame for Closing***. A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations in the Debtors' reasonable business judgment, after consultation with (i) the Committee and (ii) the DIP Lenders) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors. The Acceptable Bidder must commit to closing the proposed Sale contemplated by the Bid as soon as practicable, and in no event later than June 30, 2024, and must expressly set forth any potential regulatory issues or approvals that might arise in connection with such Acceptable Bidder's acquisition of the Assets, including such Acceptable Bidder's anticipated timing and proposed approach for resolving any such regulatory issues and obtaining any potential regulatory approvals. Each Bid must include a commitment to close the proposed Sale as soon as practicable, and must state the expected date of (and timeline and any milestones to) closing of the proposed Sale.

16. ***Employees***. Each Bid must include a statement regarding whether the Acceptable Bidder intends to offer future employment to any of the Debtors' employees. Each Bid must also expressly propose the treatment of the Debtors' prepetition compensation, incentive, retention, bonus or other compensatory arrangements, plans, or agreements, including offer letters, employment agreements, consulting agreements, severance arrangements, retention bonus agreements, change in control arrangements, retiree benefits, and any other employment related agreements.

17. ***Adherence to Bidding Procedures***. Each Bid must include a statement that (a) the Acceptable Bidder has acted in good faith consistent with section 363(m) of the Bankruptcy Code; and (b) the Bid constitutes a *bona fide* offer to consummate the proposed Sale embodied therein, and the Acceptable Bidder agrees to be bound by these Bidding Procedures.

18. ***Cooperation.*** The Acceptable Bidder must covenant to cooperate with the Debtors to provide factual information regarding such Bidder's operations upon the Debtors' request to analyze issues arising with respect to any applicable laws or regulatory or licensing requirements.

19. ***No Collusion.*** The Acceptable Bidder must acknowledge in writing that (a) in connection with submitting its Bid, it has not engaged in any collusion that would be subject to section 363(n) of the Bankruptcy Code with respect to any Bids or the Sale, specifying that it did not agree with any Potential Bidders, Acceptable Bidders, or Qualified Bidders to control price; and (b) it agrees not to engage in any collusion that would be subject to section

363(n) of the Bankruptcy Code with respect to any Bids, the Auction, or the Sale.

20. ***Other Information*.** The Bid contains such other information as may be reasonably requested by the Debtors, the Committee, and the DIP Lenders (with such requests made through the Debtors).

21. ***Consent to Jurisdiction***. Each Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the qualification of the Bids, the Auction (if held), the construction and enforcement of these Bidding Procedures and the relevant documents, and the consummation of any Sale.

V. BID DEADLINE.

An Acceptable Bidder that desires to make a bid must transmit via email (in .pdf or similar format) or deliver written copies of its bid to the following parties so as to be received not later than **5:00 p.m. (prevailing Eastern Time) on April 12, 2024** (the "Bid Deadline"): (i) counsel to the Debtors, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Rachel C. Strickland, email: rstrickland@willkie.com, Debra M. Sinclair, email: dsinclair@willkie.com, and Betsy L. Feldman, email: bfeldman@willkie.com; (ii) Delaware counsel to the Debtors, Young Conaway Stargatt and Taylor, LLP, 1000 North King Street, Wilmington, DE, 19801, Attn: Edmon L. Morton, email: emorton@ycst.com; Matthew B. Lunn, email: mlunn@ycst.com; and Allison S. Mielke, email: amielke@ycst.com; and (iii) the Debtors' investment banker, Perella Weinberg Partners, 767 Fifth Avenue, New York, NY 10153, Attn: John Cesarz, email: jcesarz@pwpartners.com; Alexander Svoyskiy, email: asvoyskiy@pwpartners.com. The Debtors shall, as soon as practicable, but in any event within 24 hours of receipt of any Bid, deliver a copy of such Bid, by email to (i) the Committee's proposed professional advisors (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, NY 10036, Attn: Philip C. Dublin (pdublin@akingump.com), Meredith A. Lahaie (mlahaie@akingump.com), Benjamin L. Taylor (taylorb@akingump.com)) and Erica D. McGrady, (emcgrady@akingump.com) and (b) Piper Sandler & Co., 1251 Avenue of Americas, 39th Floor, New York, NY 10020, Attn: James Wang (james.wang@psc.com) and Andrew Zinn (andrew.zinn@psc.com), on a professional eyes only basis, and (ii) counsel to the DIP Lenders, (a) Gibson Dunn & Crutcher LLP, 333 South Grand Avenue, Los Angeles, CA 90071, Attn: David M. Feldman (dfeldman@gibsondunn.com) and Michael S. Neumeister (mneumeister@gibsondunn.com), (b) Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, Attn: Ari Blaut (blauta@sullcrom.com) and Benjamin Beller (bellerb@sullcrom.com), and (c) Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis (landis@lrclaw.com) and Matthew B. McGuire (mcguire@lrclaw.com).

VI. QUALIFIED BIDDERS.

The Debtors will evaluate all Bids that are timely submitted by the Bid Deadline and may engage in negotiations with Potential Bidders who submitted Bids as the Debtors deem appropriate, in the exercise of their reasonable business judgment and after consultation with the Committee and the DIP Lenders, based upon the Debtors' evaluation of each Bid.

No later than twenty-four (24) hours prior to the commencement of the Auction, the Debtors, after consultation with the Committee and the DIP Lenders, shall notify each Acceptable Bidder whether such party is a Qualified Bidder. If any Bid is determined by the Debtors (after consultation with the Committee and the DIP Lenders) not to be a Qualified Bid, the Debtors will refund such Acceptable Bidder's Deposit on or before the date that is five (5) Business Days after the Bid Deadline. On the same date that the Debtors determine (after consultation with the Committee and the DIP Lenders) that a Bid is a Qualified Bid, the Debtors shall provide notice of such determination to the Stalking Horse Bidder.

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may, in consultation with the Committee and the DIP Lenders, discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors after consultation with the Committee and the DIP Lenders, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the consideration contemplated by, or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; provided that any Qualified Bid may be improved at the Auction as set forth herein. The Debtors shall consult with the Committee and the DIP Lenders before permitting a Qualified Bidder to withdraw its Qualified Bid. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures.

Notwithstanding anything in these Bidding Procedures to the contrary, the Debtors, in consultation with the Committee and the DIP Lenders, reserve the right to work with Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the conclusion of the applicable Auction (if any). The Debtors, in consultation with the Committee and the DIP Lenders, reserve the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors, in consultation with the Committee and the DIP Lenders, may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple Qualified Bidders shall be treated as a single Qualified Bidder, and their Bid a single Qualified Bid, for purposes of the applicable Auction (if any)).

Each Qualified Bidder (other than the Stalking Horse Bidder) shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors regarding the ability of such Qualified Bidder to consummate its contemplated transaction. Failure by a Qualified Bidder (other than the Stalking Horse Bidder) to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, after consultation with the Committee and the DIP Lenders, to determine that such bidder is no longer a Qualified Bidder or that a bid made by such bidder is not a Qualified Bid.

For the avoidance of doubt, the Stalking Horse Bidder will be deemed a Qualified Bidder and any Stalking Horse Bid will be deemed to be a Qualified Bid, for all purposes and requirements pursuant to the Bidding Procedures, notwithstanding the requirements that a bidder (other than the Stalking Horse Bidder) must satisfy to be a Qualified Bidder.

VII. THE AUCTION.

Within two (2) Business Days after entry of the Bidding Procedures Order, the Debtors shall serve a notice of the Auction and Sale (the "Sale Hearing Notice") on: (a) the Notice Parties; (b) all parties to executory contracts and leases to be assumed, assigned, or rejected as part of the proposed Sale; (c) all parties who have expressed a written interest in some or all of the Debtors' Assets in the 12 months prior to entry of the Bidding Procedures Order, which service may be sent by email, if a mailing address for any of such parties is unknown; (d) all known holders of liens, encumbrances, and other claims secured by the Debtors' Assets; (e) the Internal Revenue Service; (f) all applicable state and local taxing authorities; (g) each governmental agency that is an interested party with respect to the Sale and transactions proposed thereunder; and (h) all parties that have requested or that are required to receive notice pursuant to Bankruptcy Rule 2002. As soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors shall publish the Sale Hearing Notice, with any modifications necessary for ease of publication, in *The New York Times* (national edition) to provide notice to any other potentially interested parties. If the Debtors receive no Qualified Bid other than the Stalking Horse Bid or if the only other Qualified Bid the Debtors receive is a Credit Bid with regard to the Assets, (a) the Debtors shall not hold an Auction with respect to such Assets; (b) the Stalking Horse Bid will be deemed the Successful Bid with respect to such Assets; (c) the Stalking Horse Bidder will be named the Successful Bidder with respect to such Assets; and (d) if the Agents submit a Credit Bid, the Debtors, in consultation with the Committee, shall have the right to select such Credit Bid as the Backup Bid. If the Debtors receive more than one Qualified Bid (other than the Stalking Horse Bid and a Credit Bid) for the Assets, the Debtors, in consultation with the Committee and the DIP Lenders, shall conduct the Auction to determine the Successful Bidder(s) with respect to the Assets.

As soon as practicable after the Debtors have determined the Baseline Bid, and in any event no later than twenty-four (24) hours prior to the commencement of the Auction, the Debtors will notify all Qualified Bidders and the DIP Lenders of the highest or otherwise best Qualified Bid for the Assets, as determined in the Debtors' reasonable business judgment (after consultation with the Committee and the DIP Lenders) (the "Baseline Bid"), and provide copies of the Bid Documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtors, in their reasonable business judgment and in consultation with the Committee and the DIP Lenders, reasonably deem relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (a) the number, type, and nature of any changes to the Stalking Horse Purchase Agreement requested by the Qualified Bidder, including the Assets sought and Assumed Liabilities to be assumed in the Qualified Bid; (b) the amount and nature of the total consideration; (c) the likelihood of the Bidder's ability to close the proposed Sale, the conditions thereto, and the timing thereof; (d) the net economic effect

of any changes to the value to be received by the Debtors' estates from the transactions contemplated by the Bid Documents; and (e) the tax consequences of such Qualified Bid.

The Auction shall take place **at 10:00 a.m. (prevailing Eastern Time) on April 16, 2024**, (i) via a virtual meeting, (ii) at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, or (iii) at such later date, time, and location as designated by the Debtors (after consultation with the Committee and the DIP Lenders), after providing notice to the Notice Parties. The Debtors shall have the right to conduct any number of Auctions on that date, if the Debtors determine, in their reasonable business judgment (in consultation with the Committee and the DIP Lenders), that conducting such Auctions would be in the best interests of the Debtors' estates.

A. Participants and Attendees.

The Debtors and their advisors, in consultation with the Committee and the DIP Lenders, shall direct and preside over the Auction throughout the Auction process. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids (as defined herein) and shall be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of the Auction and of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Successful Bid (as defined below).

Only Qualified Bidders (including, for the avoidance of doubt, the Stalking Horse Bidder) that have submitted Qualified Bids by the Bid Deadline are eligible to participate in the Auction. Qualified Bidders participating in the Auction must appear in person (or through a duly authorized representative), telephonically, or through a video teleconference, as determined by the Debtors. The Auction will be conducted openly and all creditors may be permitted to attend; provided that the Debtors may establish a reasonable limit on the number of representatives and/or professional advisors that may appear on behalf of or accompany each Qualified Bidder or creditor at the Auction. Any creditor and its advisors wishing to attend the Auction must contact the Debtors' advisors no later than one (1) Business Days prior to the start of the Auction; provided that the Committee, the Prepetition First Lien Secured Parties, the DIP Lenders and DIP Agent, and the Stalking Horse Bidder, and their respective advisors, shall be permitted to attend the Auction without any prior notice to the Debtors' advisors.

Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (i) it has not engaged in any collusion with respect to the submission of any Bid or the Auction and (ii) each Qualified Bid it submits at the Auction is a binding, good faith, and *bona fide* offer to purchase the Assets identified in such bid.

B. Auction Procedures.

The Auction shall be governed by the following procedures, subject to the Debtors' right (after consultation with the Committee and the DIP Lenders) to modify such procedures in their reasonable business judgment (provided that, for the avoidance of doubt, the Debtors may not modify the Bid Protections afforded to the Stalking Horse Bidder, unless the Stalking Horse Bidder

agrees to such modification in writing in its sole discretion). For the avoidance of doubt, the Debtors may not modify the rules, procedures, or deadlines set forth herein, or adopt new rules, procedures, or deadlines that would impair in any material respect the Stalking Horse Bidder's right to payment of the Break-Up Fee or the Expense Reimbursement or the Stalking Horse Bidder's right to receive a credit for its Bid Protections as set forth in paragraph B.2, immediately below without the express written consent of the Stalking Horse Bidder in its sole discretion):

1. ***Baseline Bid***. Bidding shall commence at the amount of the Baseline Bid.

2. ***Minimum Overbid***. Qualified Bidders may submit successive bids higher than the previous bid, based on and increased from the Baseline Bid for the Assets (each such bid, an "Overbid"). Any Qualified Bidder's initial Overbid shall be made in increments of at least $250,000 in cash, cash equivalents, the Credit Bid, or such other consideration that the Debtors (after consultation with the Committee) deem equivalent; provided that no bid may qualify as an Overbid unless such bid provides for cash consideration in an amount equal to or greater than the Bid Protections granted to the Stalking Horse Bidder. The Debtors may, in their reasonable business judgment (and after consultation with the Committee and the DIP Lenders), announce increases or reductions to initial or subsequent minimum incremental bids at any time during the Auction. If the Stalking Horse Bidder submits an Overbid, it will receive a credit equal to the value of the Bid Protections granted to it when bidding during the Auction.

3. ***Highest or Best Offer***. After the first round of bidding and between each subsequent round of bidding, the Debtors shall announce the bid that they believe in their reasonable business judgment (and after consultation with the Committee and the DIP Lenders) to be the highest or otherwise best offer for the Assets (the "Leading Bid") and describe the material terms thereof. Each round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a subsequent bid with full knowledge of the Leading Bid. To the extent not previously provided (as determined by the Debtors), a Qualified Bidder submitting a subsequent bid must submit, as part of its subsequent bid, written evidence (in the form of financial disclosure or credit quality support information or enhancement reasonably acceptable to the Debtors) demonstrating such Qualified Bidder's ability to close the transaction at the Purchase Price contemplated by such subsequent bid.

4. ***Incremental Deposit***. Upon the declaration by a Qualified Bidder of its Bid at the Auction, it must commit on the record to pay promptly following the Auction, if such Bid were to be the Successful Bid or the Backup Bid, the incremental amount of its Deposit calculated based on the increased purchase price of such bid, if applicable (the "Incremental Deposit Amount"); provided that the foregoing requirement shall not apply to the Stalking Horse Bidder.

5. ***Rejection of Bids***. The Debtors may, in their reasonable business judgment after consultation with the Committee and DIP Lenders, at any time before entry of an order of the Court approving a Qualified Bid, reject any bid that the Debtors determine is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale, or (c) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders. For the avoidance of doubt, the Debtors may not reject the Stalking Horse Bid on any such grounds.

6. ***No Late Bids***. The Debtors shall not consider any bids submitted after the conclusion of the Auction, and any and all such bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

7. ***No Round-Skipping***. Round-skipping, as described herein, is explicitly prohibited. To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit a Bid before the end of such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding and (ii) to the extent a Qualified Bidder fails to bid in such round of bidding or to submit a Bid in such round of bidding that is a higher or otherwise better offer than the immediately preceding Bid submitted by a Qualified Bidder in such round of bidding, as determined by the Debtors in their reasonable business judgment (and after consultation with the Committee and the DIP Lenders), such Qualified Bidder shall be disqualified from continuing to participate in the Auction for such Assets without the consent of the Debtors; provided that, notwithstanding anything to the contrary herein, a Qualified Bidder that is bidding on all or substantially all of the Assets shall not be required to participate in any Auction or round thereof for less than all or substantially all of the Assets.

8. ***Auction Sequence***. In the event the Debtors receive Qualified Bids for less than all or substantially all of the Assets (such bids, "Partial Asset Bids"), the Debtors shall start the Auction with such Partial Asset Bids (and, for the avoidance of doubt, the Stalking Horse Bidder and any other bidder for all or substantially all the Assets shall not be required to participate in such Auction) to determine which Partial Asset Bid is the highest or otherwise best bid for the Assets in question (such bid, the "Prevailing Partial Asset Bid"). Upon determination of the Prevailing Partial Asset Bid, the Debtors shall determine whether such Prevailing Partial Asset Bid is a higher or otherwise better bid than the Stalking Horse Bid or other highest or otherwise best bid for all or substantially all of the Assets (such bids, "All Asset Bids," and the highest or otherwise best such bid, the "Prevailing All Asset Bid"). To the extent the Debtors determine that the Prevailing Partial Asset Bid is not higher or otherwise better than the Prevailing All Asset Bid, then no other Partial Asset Bids shall be accepted at the Auction and the

Partial Asset Bid bidders shall not be entitled to participate in the Auction for all or substantially all of the Assets. To the extent the Debtors determine that the Prevailing Partial Asset Bid is higher or otherwise better than the Prevailing All Asset Bid, then the All Asset Bid bidders shall be required to submit bids that are higher or otherwise better than the Prevailing Partial Asset Bid.

9. ***Additional Information***. The Debtors shall have the right to request any additional financial information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's (other than either Agent's and the Stalking Horse Bidder's) financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any bid made by a Qualified Bidder during the Auction.

10. ***Modification of Procedures***. The Debtors may, after consultation with (i) the Committee and (ii) the DIP Lenders, and in their reasonable business judgment, (a) announce, at the Auction, modified or additional procedures for conducting the Auction, and (b) otherwise modify these Bidding Procedures; *provided that*, for the avoidance of doubt, the Debtors may not modify (i) the Bid Protections afforded to the Stalking Horse Bidder, unless the Stalking Horse Bidder agrees to such modification in writing in its sole discretion, (ii) the rules, procedures, or deadlines set forth herein, or adopt new rules, procedures, or deadlines that would impair in any material respect the Stalking Horse Bidder's right to payment of the Break-Up Fee or the Expense Reimbursement or the Stalking Horse Bidder's right to receive a credit for its Bid Protections as set forth in paragraph B.2, immediately above without the express written consent of the Stalking Horse Bidder in its sole discretion, or (iii) the consent and consultation rights set forth herein. All such modifications and additional rules will be communicated to each of the Acceptable Bidders and Qualified Bidders in advance to the extent reasonably practicable; provided that, to the extent such modifications occur at the Auction, disclosure of such modifications shall be limited to those in attendance at the Auction.

The Auction shall include open bidding in the presence of all other Qualified Bidders. All Qualified Bidders shall have the right to submit additional bids and make modifications to any prior Qualified Bid or Overbid at the Auction to improve their bids; provided that any Overbid made by a Qualified Bidder must remain open and binding on the Qualified Bidder until the Debtors determine the Successful Bid and the Backup Bid in accordance with the terms of these Bidding Procedures; provided further that the Successful Bid and the Backup Bid must remain open and binding until the earlier of (a) the closing of a Sale for the Assets pursuant to the Successful Bid and (b) 90 days after the date of the Sale Hearing, unless otherwise agreed. The Debtors may, in their reasonable business judgment, negotiate with any and all Qualified Bidders participating in the Auction.

C. Adjournment of the Auction.

The Debtors reserve the right, in their reasonable business judgment (after consultation with (i) the Committee and (ii) the DIP Lenders and (iii) the Stalking Horse Bidder)), to adjourn the Auction one or more times to, among other things, (i) facilitate discussions between the Debtors and Qualified Bidders, (ii) allow Qualified Bidders to consider how they wish to proceed, and (iii) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their reasonable business judgment after consultation with the Committee and the DIP Lenders, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt or equity funding commitments to consummate the proposed Sale at the prevailing bid amount.

D. Successful Bidder.

Immediately prior to the conclusion of the Auction, the Debtors shall (a) determine (after consultation with the Committee, and with the consent of the DIP Lenders and the Prepetition First Lien Holders (in each case, unless such Bid shall result in payment in full in cash of the DIP Obligations and Prepetition First Lien Obligations, respectively))consistent with these Bidding Procedures, in their reasonable business judgment, which Bid constitutes the highest or otherwise best Bid for the applicable Assets (each such Bid, a "Successful Bid"); and (b) notify all Qualified Bidders at the Auction for the applicable Assets of the identity of the bidder that submitted the Successful Bid (such bidder, the "Successful Bidder") and the amount of the purchase price and other material terms of the Successful Bid (the "Notice of Winning Bidder"). As a condition to remaining the Successful Bidder, any Successful Bidder (other than the Stalking Horse Bidder) shall be required to wire to the Debtors in immediately available funds the Incremental Deposit Amount, if applicable, calculated based on the purchase price of the Successful Bid, no later than one (1) Business Day following the date on which the Notice of Winning Bidder is served.

The Debtors shall file a notice identifying the Successful Bidder and Backup Bidder (if selected) as soon as reasonably practicable after closing the Auction, if any, and in any event not more than twenty-four (24) hours following closing the Auction.

VIII. BACKUP BIDDER.

Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder (other than the Stalking Horse Bidder) with the next-highest or otherwise second-best Qualified Bid as compared to the Successful Bid at the Auction for the Assets, as determined by the Debtors in the exercise of their reasonable business judgment after consultation with the Committee and, other than with respect to a Credit Bid, with the consent (not to be unreasonably withheld, conditioned or delayed) of the DIP Lenders (the "Backup Bid"), shall be required to serve as a backup bidder (the "Backup Bidder"), and each Qualified Bidder shall agree and be deemed to agree to be the Backup Bidder if so designated. For the avoidance of doubt, in the event either Agent exercises the Credit Bid Right (consistent with Section III.C. above), such Agent shall agree to serve as a Backup Bidder. As a condition to remaining the Backup Bidder, any Backup Bidder (other than the Stalking Horse Bidder) shall wire to the Debtors, in immediately available funds, the incremental amount of its Deposit, if applicable,

calculated based on the increased cash component of the Purchase Price of the Backup Bid, no later than one (1) Business Day following the date on which the Notice of Winning Bidder is served.

The identity of the Backup Bidder and the amount and material terms of the Qualified Bid of the Backup Bidder shall be announced by the Debtors at the conclusion of the Auction at the same time the Debtors announce the identity of the Successful Bidder.

The Backup Bid(s) shall remain binding on the Backup Bidder until the earlier of (a) the closing of a Sale for the Assets pursuant to the Successful Bid and (b) 90 days after the date of the Sale Hearing, unless otherwise agreed. If a Successful Bidder fails to consummate the approved transactions contemplated by its Successful Bid, the Debtors may select the Backup Bidder as the Successful Bidder, and such Backup Bidder shall be deemed a Successful Bidder for all purposes.

The Debtors will be authorized, but not required, to consummate all transactions contemplated by the Bid of a Backup Bidder without further order of the Court or notice to any party.

For the avoidance of doubt, and notwithstanding anything to the contrary herein, the Stalking Horse Bidder is not required to serve as the Backup Bidder and the Stalking Horse Bid shall not be deemed the Backup Bid unless and until the Stalking Horse Bidder separately agrees in writing to serve as the Backup Bidder.

IX. ACCEPTANCE OF SUCCESSFUL BID.

The Debtors' presentation of a particular Qualified Bid to the Court for approval does not constitute the Debtors' acceptance of such Qualified Bid. The Debtors will be deemed to have accepted a Bid only when the Bid has been approved by the Court at the Sale Hearing (as defined below).

X. FREE AND CLEAR OF ANY AND ALL ENCUMBRANCES.

All rights, title, and interest in and to the Assets or any portion thereof shall be sold free and clear of all liens, claims, interests, and encumbrances (if any) (collectively, the "Encumbrances"), subject only to the Assumed Liabilities and Permitted Liens (each as defined in the Successful Bidder's purchase agreement), if any, in accordance with Bankruptcy Code section 363(f), with such Encumbrances to attach to the net proceeds (if any) received by the Debtors from the Sale of the Assets in accordance with the Bankruptcy Code, applicable non-bankruptcy law, and any prior orders of the Court.

XI. ASSUMPTION AND ASSIGNMENT PROCEDURES.

The procedures for assuming and assigning Assigned Contracts to the Successful Bidder are set forth in the Bidding Procedures Order.

XII. NOTICE PARTIES.

The term "Notice Parties" as used in these Bidding Procedures shall mean (i) the Prepetition First Lien Secured Parties and their counsel; (ii) the Stalking Horse Bidder; (iii) the U.S. Trustee for the District of Delaware; and (iv) the Committee and its counsel.

XIII. CONSULTATION BY THE DEBTORS.

The Debtors shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures, including, for the avoidance of doubt, the limitation on the DIP Agent's consultation rights as explicitly set forth elsewhere herein. Each reference in these Bidding Procedures to "consultation" (or similar phrase) with the Consultation Parties shall mean consultation in good faith. The Debtors shall consult with the Consultation Parties in good faith regarding the sale process for the Assets and provide to the Consultation Parties and their advisors regular reports concerning the sale process, including parties contacted, buyer feedback, copies of letters of intent, drafts of definitive agreements, updates regarding purchase proposals, and any diligence and other information reasonably requested by the Consultation Parties; provided that such materials shall be provided to the advisors to the Committee on a professional eyes only basis and may only be shared with an individual Committee member if such party has unequivocally revoked its right to submit a Bid in writing to the Debtors. The following parties will constitute the "Consultation Parties": (a) the DIP Lenders and their counsel; and (b) the Committee and its counsel. Notwithstanding anything to the contrary herein, during any period in which a Consultation Party has submitted a Qualified Bid and has become a Qualified Bidder hereunder, such Consultation Party shall no longer be considered a Consultation Party for purposes of these Bidding Procedures and shall only receive the same diligence, information, and notice as all other Qualified Bidders, unless and until such party unequivocally revokes its Bid and waives its right to continue in the Auction process.

XIV. RESERVATION OF RIGHTS.

The Debtors reserve the right, in their reasonable business judgment (after consultation with the DIP Lenders and the Committee), to modify these Bidding Procedures in good faith and in a manner consistent with their fiduciary duties (*provided that*, for the avoidance of doubt, the Debtors may not modify (i) the Bid Protections afforded to the Stalking Horse Bidder, unless the Stalking Horse Bidder agrees to such modification in writing in its sole discretion, (ii) the rules, procedures, or deadlines set forth herein, or adopt new rules, procedures, or deadlines that would impair in any material respect the Stalking Horse Bidder's right to payment of the Break-Up Fee or the Expense Reimbursement or the Stalking Horse Bidder's right to receive a credit for its Bid Protections as set forth in paragraph B.2, immediately above without the express written consent of the Stalking Horse Bidder in its sole discretion, or (iii) the consent and consultation rights set forth herein), to further the goal of attaining the highest or otherwise best offer for the Assets, or impose, at or prior to selection of the Successful Bidder(s), additional customary terms and conditions on the Sale of the Assets, including, without limitation: (a) extending the dates and deadlines set forth in these Bidding Procedures (including, but not limited to, those set forth in Section II hereof); (b) adjourning the Auction (if held) without further notice; (c) adding or

modifying procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction, and/or adjourning the Sale Hearing (as defined below) in open court (if held); (d) cancelling the Auction or electing not to hold an Auction; (e) rejecting any or all Bids or Qualified Bids (other than the Stalking Horse Bid); (f) adjusting the applicable minimum Overbid increment; and (g) selecting a draft purchase agreement agreed to by a Qualified Bidder in connection with a Qualified Bid to serve as the purchase agreement that will be executed by the Successful Bidder or Successful Bidders, as applicable and with any necessary adjustments for the Assets and Liabilities being purchased and assumed, upon conclusion of the Auction, if held. The Debtors shall provide reasonable notice of any such modification to all Qualified Bidders, including the Stalking Horse Bidder and the DIP Agent.

XV. CONSENT TO JURISDICTION.

All Potential Bidders, Acceptable Bidders, and Qualified Bidders shall be deemed to have consented to the exclusive jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the construction and enforcement of these Bidding Procedures, and/or the Bid Documents, as applicable.

XVI. SALE HEARING.

A hearing to consider approval of the sale of the Debtors' Assets (or any portion thereof) to the Successful Bidder(s) or Backup Bidder(s) (if applicable) (the "Sale Hearing") shall be scheduled to take place on April 22, 2024, at 10:00 a.m. (prevailing Eastern Time), or the soonest date the Court is available thereafter, before the Honorable Craig T. Goldblatt, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Courtroom No. 7, Wilmington, Delaware 19801.

The Sale Hearing may be continued to a later date by the Debtors (after consultation with the DIP Lenders and the Committee) by sending notice prior to, or making an announcement at, the Sale Hearing. No further notice of any such continuance will be required to be provided to any party (including the Stalking Horse Bidder).

At the Sale Hearing, the Successful Bidder and the Backup Bidder must acknowledge on the record at the start of the hearing that in connection with submitting their Bids, they did not engage in any collusion that would be subject to section 363(n) of the Bankruptcy Code with respect to any Bids, the Auction, or the Sale, specifying that they did not agree with any Potential Bidders, Acceptable Bidders, or Qualified Bidders to control the price or any other terms of the Sale.

Objections to (i) the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to the Successful Bidder(s) and/or Backup Bidder(s), as applicable, (ii) any of the relief requested in the Motion, and (iii) entry of any order approving the sale (the "Sale Order"), must (w) be in writing and specify the nature of such objection; (x) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Court; (y) state with particularity the legal and factual basis for the objection and the

specific grounds therefor; and (z) be filed with the Court and served on the Objection Notice Parties (as such term is defined in the Bidding Procedures Order) so as to be actually received no later 4:00 p.m. (prevailing Eastern Time) on April 17, 2024.

XVIII. FIDUCIARY OUT.

Nothing in these Bidding Procedures will require the board of directors, board of managers, or such similar governing body of a Debtor or any non-Debtor affiliate to take any action, or to refrain from taking any action (including, but not limited to, with respect to the Bidding Procedures or the Sale), to the extent such board of directors, board of managers, or such similar governing body determines in good faith (upon consultation with outside financial advisors and legal counsel) that taking such action, or refraining from taking such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

XVIII. RETURN OF DEPOSIT.

The Deposit of each Successful Bidder shall be applied to the purchase price of the applicable transaction(s) at closing. The Deposits for each Qualified Bidder (other than the Stalking Horse Bidder) shall be held in one or more escrow accounts on terms acceptable to the Debtors in their sole discretion (after consultation with the Committee) and shall be returned on or before the date that is five (5) Business Days after the Auction (other than with respect to the Successful Bidder and the Backup Bidder). The Stalking Horse Bidder's Deposit shall be held and returned in accordance with the terms of the Stalking Horse Purchase Agreement. Any Backup Bidder's Deposit shall be held in escrow until the closing of the Sale with the Successful Bidder. In the event the applicable Successful Bidder fails to close and the Debtors opt to close on the Sale set forth in the applicable Backup Bid, the Backup Bidder's Deposit shall be applied to the purchase price of such transaction at closing. In the event of a breach or failure to consummate a Sale by the Successful Bidder or the Backup Bidder, as applicable, the defaulting Successful Bidder's Deposit or Backup Bidder's Deposit, as applicable, shall be forfeited to the Debtors, and the Debtors specifically reserve the right to seek all available remedies against the defaulting Successful Bidder or Backup Bidder, as applicable, subject to the terms of the Stalking Horse Purchase Agreement, the Successful Bidder's purchase agreement, or the Backup Bidder's purchase agreement, as applicable.

* * * *

EXHIBIT 2

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NANOSTRING TECHNOLOGIES, INC., *et al*.,[1]	Case No. 24-10160 (CTG)
	(Jointly Administered)
Debtors.	**Ref. Docket No. ___**

NOTICE OF PROPOSED SALE OF ASSETS,
BIDDING PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that, on February 4, 2024 (the "Petition Date"), the debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors") each filed a voluntary petition for relief (collectively, these "Chapter 11 Cases") under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"). The Debtors are seeking to sell (the "Sale") all or substantially all of their assets (the "Assets"), free and clear of all liens, claims, interests, and encumbrances, except as may be provided in any applicable Sale Order.[2]

PLEASE TAKE FURTHER NOTICE that, by order dated [●], 2024 [Docket No. ●] (the "Bidding Procedures Order"), the Bankruptcy Court approved certain "Bidding Procedures" that govern the Sale. All interested parties should carefully read the Bidding Procedures Order and the Bidding Procedures. Copies of the Bidding Procedures Order, the Bidding Procedures (which are attached to the Bidding Procedures Order as Exhibit 1), and all related pleadings filed in these Chapter 11 Cases are available for download at https://cases.ra.kroll.com/NanoString, or upon request to the Debtors' claims and noticing agent, Kroll Restructuring Administration LLC via telephone at (844) 596-1372 (U.S./Canada) or +1 (646) 777-2348 (International), or via email at NanoStringTeam@ra.kroll.com.

PLEASE TAKE NOTICE that a separate notice will be provided to counterparties to the Debtors' executory contracts and unexpired leases, which may be assumed and assigned in connection with the Sale. **Any interested bidder should contact John Cesarz (jcesarz@pwpartner.com), Christopher O'Connor (coconnor@pwpartners.com), Chad**

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[1] The Debtors in the Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are NanoString Technologies, Inc. (4687), NanoString Technologies International, Inc. (2723), NanoString Technologies Netherlands B.V., and NanoString Technologies Germany GmbH. The Debtors' headquarters is located at 530 Fairview Avenue North, Suite 2000, Seattle, WA 98109.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings given to them in, as applicable, the Bidding Procedures or Bidding Procedures Order (as defined below).

Porter (cporter@pwpartners.com), or Jason Forschler (jforschler@pwpartners.com) at Perella Weinberg Partners, the Debtors' investment banking advisor.

- The deadline for the submission of Qualified Bids is **April 12, 2024 at 5:00 p.m. (ET)**.

- Any objections to the Sale or the relief requested in connection with the Sale (a "Sale Objection"), other than a Cure Objection, which shall be governed by the Assumption Procedures, must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) set forth the specific basis for the Sale Objection; (d) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, DE 19801 **on or before 4:00 p.m. (ET) on April [●], 2024** (the "Sale Objection Deadline"); and (e) be served upon the Objection Notice Parties. The "Objection Notice Parties" are as follows: (i) proposed counsel to the Debtors, (a) Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Rachel C. Strickland (rstrickland@willkie.com), Debra M. Sinclair (dsinclair@willkie.com), Betsy L. Feldman (bfeldman@willkie.com), and Jessica D. Graber (jgraber@willkie.com), and (b) Young Conaway Stargatt & Taylor, LLP, 1000 North King Street, Wilmington, DE 19801, Attn: Edmon L. Morton (emorton@ycst.com), Matthew B. Lunn (mlunn@ycst.com), and Allison S. Mielke (amielke@ycst.com); (ii) counsel to the Stalking Horse Bidder, Kirkland & Ellis LLP, 600 Lexington Ave., New York, NY 10022, Attn: Brian Schartz (bschartz@kirkland.com) and Jordan E. Elkin (jelkin@kikrland.com); (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Room 2207, Wilmington, DE 19801, Attn: Timothy J. Fox (Timothy.Fox@usdoj.gov); (iv) counsel to the Committee, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, Bank of America Tower, New York, NY 10036, Attn: Phillip C. Dublin (pdublin@akingump.com) and Meredith A. Lahaie (mlahaie@akin.com), and (b) Troutman Pepper Hamilton Sanders LLP, 1313 N. Market Street, P.O. Box 1709, Wilmington, DE 19899, Attn: David M. Fournier (david.fournier@troutman.com), Evelyn J. Meltzer (evelyn.meltzer@troutman.com), and Tori L. Remington (tori.remington@troutman.com); and (v) counsel to the DIP Lenders, (a) Gibson Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: David M. Feldman (dfeldman@gibsondunn.com) and 333 S. Grand Avenue, Los Angeles, CA 90071, Attn: Michael S. Neumeister (mneumeister@gibsondunn.com), (b) Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, Attn: Ari Blaut (blauta@sullcrom.com) and Benjamin Beller (bellerb@sullcrom.com), and (c) Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis (landis@lrclaw.com) and Matthew B. McGuire (mcguire@lrclaw.com).

- Any counterparty that wishes to obtain adequate assurance information regarding bidders that will or may participate at the Auction (defined below) must notify, in writing, the proposed counsel to the Debtors: Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Rachel C. Strickland (rstrickland@willkie.com), Debra M. Sinclair (dsinclair@willkie.com), Betsy L. Feldman (bfeldman@willkie.com), and Jessica D. Graber (jgraber@willkie.com) (the "Request for Adequate Assurance"). The Request for Adequate Assurance must include an e-mail or address to which a response to such information request can be sent.

- An auction for the Assets, unless cancelled or adjourned in accordance with the Bidding Procedures Order, will be held on **April 16, 2024 at 10:00 a.m. (ET)** (the "Auction"), either (i) via a virtual meeting, (ii) at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, or (iii) at such later date, time, and location as designated by the Debtors, after providing notice to the Notice Parties (as defined in the Bidding Procedures Order).

- If the Auction is held, the Debtors shall file a reply to any Sale Objections and/or Cure Objections by April 19, 2024 at 4:00 p.m. (ET), and the Sale Hearing shall take place on April 22, 2024 at 10:00 a.m. (ET) subject to availability of the Court.

PLEASE TAKE FURTHER NOTICE THAT IF A SALE OBJECTION IS NOT FILED AND SERVED ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, THE OBJECTING PARTY MAY BE BARRED FROM OBJECTING TO THE SALE AND BEING HEARD AT THE SALE HEARING, AND THE BANKRUPTCY COURT MAY ENTER THE SALE ORDER WITHOUT FURTHER NOTICE TO SUCH PARTY.

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Dated: [●], 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/
Edmon L. Morton (Del. No. 3856)
Matthew B. Lunn (Del. No. 4119)
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-and-

WILLKIE FARR & GALLAGHER LLP
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Proposed Co-Counsel to the Debtors and Debtors in Possession

EXHIBIT 3

Assumption and Assignment Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	Chapter 11
NANOSTRING TECHNOLOGIES, INC., *et al*.,[1]	Case No. 24-10160 (CTG)
	(Jointly Administered)
Debtors.	**Ref. Docket No. ___**

NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT AND CURE COSTS WITH RESPECT TO EXECUTORY CONTRACTS AND UNEXPIRED LEASES

PLEASE TAKE NOTICE THAT:

On February 4, 2024, the debtors and debtors-in-possession in the above-captioned cases (collectively, the "Debtors") each filed a voluntary petition (collectively, these "Chapter 11 Cases") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court").

The Debtors are seeking to assume and assign certain of their executory contracts and unexpired leases in connection with the sale (the "Sale") of all or substantially all of their assets (the "Assets"), free and clear of all liens, claims, interests, and encumbrances, except as may be provided in any applicable Sale Order.[2]

By order dated [●], 2024 [Docket No. {●}] (the "Bidding Procedures Order"), the Bankruptcy Court established certain procedures that govern the assumption and assignment of the Debtors' executory contracts and unexpired leases in connection with the Sale, and certain "Bidding Procedures" that govern the sale of the Assets to the highest or otherwise best bidder(s). Copies of the Bidding Procedures Order, the Bidding Procedures, and any related pleadings filed in these Chapter 11 Cases are available for download at https://cases.ra.kroll.com/NanoString or from the Debtors' claims and noticing agent, Kroll Restructuring Administration LLC via telephone at (844) 596-1372 (U.S./Canada) or +1 (646) 777-2348 (International), or via email at NanoStringTeam@ra.kroll.com.

You are receiving this notice (the "Cure Notice") because you may be a party to an unexpired lease or an executory contract (including, without limitation, any and all amendments,

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[1] The Debtors in the Chapter 11 Cases, along with the last four digits of their U.S. federal tax identification numbers, to the extent applicable, are NanoString Technologies, Inc. (4687), NanoString Technologies International, Inc. (2723), NanoString Technologies Netherlands B.V., and NanoString Technologies Germany GmbH. The Debtors' headquarters is located at 530 Fairview Avenue North, Suite 2000, Seattle, WA 98109.

[2] Capitalized terms used but not otherwise defined herein shall have the meanings given to them in the Bidding Procedures Order (as defined below).

modifications, side letters, memoranda of understanding, documents incorporated by reference, attachments and exhibits thereto) that *may* be assumed and assigned (collectively, the "Assigned Contracts") in connection with such Sale. A list of the Assigned Contracts is attached hereto as Exhibit A (the "Cure Schedule").

The Debtors have conducted a review of their books and records and have determined that all unpaid monetary obligations under the Assigned Contracts, *as of the date of this Cure Notice*, are as set forth in the Cure Schedule (the "Cure Costs"). To the extent that the Debtors satisfy any portion of the Cure Costs subsequent to the filing of this Cure Notice, the Cure Costs shall be reduced accordingly. The Cure Costs are the only amounts proposed to be paid upon any assumption and assignment of the Assigned Contracts, in full satisfaction of all amounts outstanding under the Assigned Contracts.

To the extent that a counterparty to an Assigned Contract objects to (i) the assumption and assignment of such party's Assigned Contract, (ii) the applicable Cure Cost, or (iii) the provision of adequate assurance of future performance, the counterparty must file and serve an objection (a "Cure Objection").

Any Cure Objection shall: (i) be in writing; (ii) comply with the Bankruptcy Rules and the Local Rules; (iii) be filed with the Clerk of the Court, 824 N. Market Street, 3rd Floor, Wilmington, DE 19801 on or before 4:00 p.m. (ET) on [●], 2024 (the "Cure Objection Deadline"); (iv) be served upon the Objection Notice Parties (as defined below); and (v) state with specificity the grounds for such objection, including, without limitation, the fully liquidated proposed cure amount and the legal and factual bases for any unliquidated cure amount that the counterparty believes is required to be paid under section 365(b)(1)(A) and (B) of the Bankruptcy Code for the Assigned Contract, along with the specific nature and dates of any alleged defaults.

Any objections to adequate assurance of future performance by a Successful Bidder (as defined in the Bidding Procedures Order) that is not the Stalking Horse Bidder shall be filed not later than April 17, 2024 at 4:00 p.m. (ET).

The "Objection Notice Parties" are as follows: (i) counsel to the Debtors, Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, Attn: Rachel C. Strickland (rstrickland@willkie.com), Debra M. Sinclair (dsinclair@willkie.com), Betsy L. Feldman (bfeldman@willkie.com), and Jessica D. Graber (jgraber@willkie.com); (ii) co-counsel to the Debtors, Young Conaway Stargatt and Taylor, LLP, 1000 North King Street, Wilmington, DE, 19801, Attn: Edmon L. Morton (emorton@ycst.com), Matthew B. Lunn (mlunn@ycst.com), and Allison S. Mielke (amielke@ycst.com); (ii) counsel to the Stalking Horse Bidder, Kirkland & Ellis LLP, 600 Lexington Ave., New York, NY 10022, Attn: Brian Schartz (bschartz@kirkland.com) and Jordan E. Elkin (jelkin@kikrland.com); (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Room 2207, Wilmington, DE 19801, Attn: Timothy J. Fox (Timothy.Fox@usdoj.gov); and (iv) counsel to the Committee, (a) Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, Bank of America Tower, New York, NY 10036, Attn: Phillip C. Dublin (pdublin@akingump.com) and Meredith A. Lahaie (mlahaie@akin.com), and (b) Troutman Pepper Hamilton Sanders LLP, 1313 N. Market Street, P.O. Box 1709, Wilmington, DE 19899, Attn: David M. Fournier (david.fournier@troutman.com), Evelyn J. Meltzer (evelyn.meltzer@troutman.com), and Tori L. Remington

(tori.remington@troutman.com), and (v) counsel to the DIP Lenders, (a) Gibson Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166, Attn: David M. Feldman (dfeldman@gibsondunn.com) and 333 S. Grand Avenue, Los Angeles, CA 90071, Attn: Michael S. Neumeister (mneumeister@gibsondunn.com), (b) Sullivan & Cromwell LLP, 125 Broad Street, New York, NY 10004, Attn: Ari Blaut (blauta@sullcrom.com) and Benjamin Beller (bellerb@sullcrom.com), and (c) Landis Rath & Cobb LLP, 919 N. Market Street, Suite 1800, Wilmington, DE 19801, Attn: Adam G. Landis (landis@lrclaw.com) and Matthew B. McGuire (mcguire@lrclaw.com).

If a Cure Objection is not timely received with respect to an Assigned Contract: (i) the counterparty to such Assigned Contract shall be deemed to have consented to the assumption by the Debtors and assignment to the Successful Bidder; (ii) any and all defaults under the Assigned Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code upon assumption and assignment of the Assigned Contract and payment of the Cure Cost; and (iii) the Cure Cost for such Assigned Contract shall be controlling, notwithstanding anything to the contrary in such Assigned Contract, or any other related document, and the counterparty shall be deemed to have consented to the Cure Cost and shall be forever barred from asserting any other claims related to such Assigned Contract against the Debtors and their estates or the Successful Bidder, or the property of any of them, that existed prior to the entry of the Sale Order.

If a timely objection is not received as to the adequate assurance of future performance with respect to an Assigned Contract, the non-Debtor party to such Assigned Contract shall be deemed to have consented to the assumption, assignment, and/or transfer of the applicable Assigned Contract to the proposed assignee, and shall be forever barred and estopped from asserting or claiming that any conditions to such assumption, assignment, and/or transfer must be satisfied under such applicable Assigned Contract or that any related right or benefit under such applicable Assigned Contract cannot or will not be available to the proposed assignee.

Subject to the terms of the Bidding Procedures Order, an auction (the "Auction") for the Assets, including the Assigned Contracts, will be conducted on **April 16, 2024 at 10:00 a.m. (ET)**, either (i) via a virtual meeting, (ii) at the offices of Willkie Farr & Gallagher LLP, 787 Seventh Avenue, New York, NY 10019, or (iii) at such later date, time, and location as designated by the Debtors, after providing notice to the Notice Parties (as defined in the Bidding Procedures Order). After the Auction, the Debtors will file and serve a notice that identifies the Successful Bidder for the Assets.

The Debtors will seek to assume and assign the Assigned Contracts that have been selected by the Successful Bidder (which, for the avoidance of doubt, may be the Stalking Horse Bidder) at a hearing before the Honorable Craig T. Goldblatt, in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, Wilmington, DE 19801, 3rd Floor, Courtroom 7, (a "Sale Hearing") on April 22, 2024 at 10:00 a.m. (ET), or such other date as determined by the Debtors in accordance with the terms of the Bidding Procedures Order, subject to the Court's availability.

In the event that a non-Debtor contract counterparty files a timely Cure Objection and the Debtors and such counterparty cannot resolve such objection, the objection shall be heard at the Sale Hearing or such later date that the Debtors determine in consultation with the Successful Bidder, subject to the Court's calendar. If such objection has not been resolved prior to the Closing Date (whether by an order of the Court or by agreement with the counterparty), the Successful Bidder may elect, in its sole discretion, to: (i) treat such counterparty's contract (the "Disputed Contract") as an Excluded Contract (as defined in the Stalking Horse Purchase Agreement) or (ii) temporarily treat such counterparty's contract as an Excluded Contract, proceed to Closing of the Sale, and determine whether to treat the Disputed Contract as an Assigned Contract or Excluded Contract within five (5) business days after resolution of such objection (whether by order of the Court or by agreement with the counterparty).

Dated: [●], 2024
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/
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-and-

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Proposed Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Cure Schedule

EXHIBIT 4

Stalking Horse Purchase Agreement

ASSET PURCHASE AGREEMENT

by and among

NanoString Technologies, Inc.,

and

Nucleus Buyer, LLC

Dated as of March 10, 2024

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EXHIBITS

Exhibit A Form of Bill of Sale and Assignment and Assumption Agreement
Exhibit B Form of Domain Name Transfer Agreement
Exhibit C Form of Patent Assignment Agreement
Exhibit D Form of Trademark Assignment Agreement
Exhibit E Form of Lease Assignment

ASSET PURCHASE AGREEMENT (this "**Agreement**") is made and executed as of March 10, 2024 (the "**Execution Date**"), by and between NanoString Technologies, Inc., a Delaware corporation ("**Seller**"), and Nucleus Buyer, LLC, a Delaware limited liability company ("**Buyer**"). Seller and Buyer may be referred to herein individually as a "**Party**" and collectively as the "**Parties**."

RECITALS

WHEREAS, Seller and its Subsidiaries are engaged in the Business;

WHEREAS, on February 4, 2024 (the "**Petition Date**"), Seller and certain of its Subsidiaries (collectively, the "**Debtors**") sought relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (as amended, the "**Bankruptcy Code**") by filing cases (the "**Chapter 11 Cases**") in the Bankruptcy Court (as defined below);

WHEREAS, Seller desires to sell to Buyer, and Buyer desires to purchase from Seller, substantially all of its assets and rights associated with the Business, upon the terms and conditions hereinafter set forth;

WHEREAS, the Purchased Assets and Assumed Liabilities are assets and liabilities of Seller and its Subsidiaries which are to be sold and assumed pursuant to the Sale Order and this Agreement, free and clear of all Encumbrances and Liabilities except Assumed Liabilities and Permitted Encumbrances, which Sale Order will include the authorization for the assumption and assignment of certain executory contracts and unexpired leases and liabilities thereunder under section 365 of the Bankruptcy Code, all in the manner and on the terms and subject to the conditions set forth herein and in accordance with other applicable provisions of the Bankruptcy Code;

WHEREAS, concurrently with the execution and delivery of this Agreement, and as a condition and material inducement to the willingness of Seller to enter into this Agreement, Patient Square Equity Partners, LP, a Delaware limited partnership ("**Sponsor**") has entered into (i) an equity commitment letter (the "**Equity Commitment Letter**") dated as of the date hereof, pursuant to which Sponsor has committed to fund an aggregate amount to Buyer as set forth therein, subject to the terms and conditions and the limitations set forth therein, and (ii) a limited guarantee with Seller, dated as of the date hereof, pursuant to which Sponsor has guaranteed the obligations and the payment by Buyer of its monetary obligations under this Agreement prior to Closing, subject to the limitations set forth therein; and

WHEREAS, in connection with entering into this Agreement, Buyer shall cause, on the first Business Day following the date hereof, an aggregate amount equal to $22,000,000 in cash to be deposited on its behalf as a "good faith deposit" (the "**Deposit**") by wire transfer of immediately available funds to the Escrow Agent, to be held in escrow in accordance with the terms of that certain Escrow Agreement, entered into on the date hereof (the "**Deposit Escrow Agreement**"), by and among Buyer, Seller and the Escrow Agent.

NOW, THEREFORE, in consideration of the mutual benefits to be derived from this Agreement, the representations, warranties, conditions, agreements and promises contained herein

and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

ARTICLE 1
DEFINITIONS

1.1 Certain Defined Terms. As used herein, the following terms shall have the following meanings:

"**Accounting Firm**" has the meaning set forth in Section 2.3.3.

"**Accounts Receivable**" means all amounts (whether current or non-current) related to the Purchased Assets or Acquired Entities that constitute, as of the Closing, accounts receivable, notes receivable and other rights or indebtedness due and owed by any Third Party to Seller or any of its Subsidiaries, in each case, whether billed or unbilled, recorded or unrecorded, written off or not written off.

"**Acquired Entities**" means NanoString Technologies Europe Limited, NanoString Technologies SAS, NanoString Technologies Spain, S.l., NanoString Technologies (Beijing) Co. Ltd., NanoString Technologies Singapore Pte Limited and NanoString Technologies Asia Pacific Limited.

"**Affiliate**" means, with respect to a Person, any other Person that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such first Person, and a Person shall be deemed to be controlled by another Person if controlled in any manner whatsoever that results in control in fact by that other Person (or that other Person and any Person or Persons with whom that other Person is acting jointly or in concert), whether directly or indirectly. For purposes of this definition, "control" and, with correlative meanings, the terms "controlled by" and "under common control with" mean, when used with respect to any specified Person, (a) the possession, directly or indirectly, of the power to direct the management or policies of that Person, directly or indirectly, whether through the ownership of securities, by trust, by contract, or otherwise or (b) the ownership, directly or indirectly, of more than 50% of the voting securities or other ownership interest of a business entity (or, with respect to a limited partnership or other similar entity, its general partner or controlling entity).

"**Agreement**" has the meaning set forth in the preamble hereto, and includes all schedules and exhibits hereto, and all instruments supplementing, amending, modifying, restating or otherwise confirming this agreement.

"**Allocation**" has the meaning set forth in Section 2.3.3.

"**Alternative Transaction**" means the sale, transfer, other disposition, directly or indirectly, including through an asset sale, share sale, merger, amalgamation, foreclosure or other transaction, including a plan of reorganization approved by the Bankruptcy Court, or resulting from the Auction, of any material portion of the Purchased Assets or the Business, which, for the avoidance of doubt, may be one or more of Seller's product lines, in a single transaction or a series of transactions, with one or more Persons other than Buyer (other than sales of Products in

the Ordinary Course) that Seller has determined in its good faith business judgment, after consultation with its outside financial advisors and outside legal counsel, would, if consummated, reasonably be expected to result in the highest or otherwise best overall transaction for Seller, taking into account all terms thereof, including (i) the likelihood and timing of consummation, and (ii) all material legal, financial (including the financing terms of any such proposal), conditionality, regulatory, and other aspects of such proposal.

"**Ancillary Agreements**" means the Bill of Sale, the Patent Assignment Agreement, the Deposit Escrow Agreement, the Domain Name Transfer Agreement, the Lease Assignment, the Trademark Assignment Agreement, and any other agreements, certificates and other instruments delivered, given or contemplated pursuant to this Agreement.

"**Anti-Corruption Laws**" has the meaning set forth in Section 3.1.18.

"**Antitrust Laws**" has the meaning set forth in Section 4.5.2.

"**Appointee**" has the meaning set forth in Section 8.1.5.

"**Apportioned Obligations**" has the meaning set forth in Section 5.3.2(b).

"**Assumed Liabilities**" has the meaning set forth in Section 2.2.1.

"**Assumed Plans**" has the meaning set forth in Section 5.12.3.

"**Auction**" means the auction, if any, contemplated to be run in the sales process in connection with the Business pursuant to the Bidding Procedures Order.

"**Automatic Transfer Employee**" any employee of Seller or its Subsidiaries who will automatically transfer with the Business to Buyer or its Affiliate on the Closing.

"**Avoidance Actions**" shall mean those actual and/or potential claims and causes of action under sections 502(d) and 544 through 553 of the Bankruptcy Code, or any other avoidance actions under the Bankruptcy Code or any analogous state law.

"**Bankruptcy Code**" has the meaning set forth in the recitals.

"**Bankruptcy Court**" means the United States Bankruptcy Court for the District of Delaware and any other court before which the Chapter 11 Cases are held.

"**Bankruptcy Court Orders**" has the meaning set forth in Section 5.7.1(a).

"**Bankruptcy Rules**" means the Federal Rules of Bankruptcy Procedure and any local rules of the Bankruptcy Court.

"**Bidding Procedures Motion**" has the meaning set forth in Section 5.7.1.

"**Bidding Procedures Order**" has the meaning set forth in Section 5.7.1(a).

"**Bill of Sale**" means the Bill of Sale and Assignment and Assumption Agreement, in substantially the form attached hereto as Exhibit A.

"**Business**" means the business and operations of Seller and its Subsidiaries as of the Closing.

"**Business Day**" means any day other than Saturday, Sunday or a day on which banking institutions in New York, New York are permitted or obligated by Law to remain closed.

"**Business Employee**" means each individual who is (a) employed by an Acquired Entity or a professional employer organization that contracts with an Acquired Entity; (b) an Offer Employee; and (c) any Automatic Transfer Employee.

"**Business Employee List**" has the meaning set forth in Section 3.1.12(h).

"**Buyer**" has the meaning set forth in the preamble hereto.

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

"**Claims**" mean, collectively, all rights, claims (as that term is defined in Section 101(5) of the Bankruptcy Code) and causes of action, whether class, individual or otherwise in nature, under contract or in law or in equity, known or unknown, contingent or matured, liquidated or unliquidated and all rights and remedies with respect thereto.

"**Closing**" has the meaning set forth in Section 2.4.

"**Closing Date**" has the meaning set forth in Section 2.4.

"**Closing Payment**" has the meaning set forth in Section 2.3.1(b).

"**Code**" means the US Internal Revenue Code of 1986, as amended.

"**Collective Bargaining Agreement**" has the meaning set forth in Section 3.1.12(h).

"**Commercialization**" or "**Commercialize**" means any and all activities directed to the offering for sale and sale of the Products, including activities directed to storing, marketing, promoting, detailing, manufacturing, distributing, importing, exporting, seeking Regulatory Approvals, selling and offering to sell such Products. When used as a verb, "to Commercialize" and "Commercializing" means to engage in Commercialization and "Commercialized" has a corresponding meaning.

"**Confidentiality Agreement**" means the Mutual Nondisclosure Agreement, dated as of September 8, 2023, by and between the Seller and Patient Square Capital, L.P.

"**Continuing Employees**" has the meaning set forth in Section 5.12.1.

"**Contract**" means any legally binding contract, agreement, obligation, lease, sublease, license, sublicense, regulatory license, undertaking, engagement, sales order, purchase order, instrument or other legally binding commitment.

"**CosMx Litigation**" means the following pending Litigation: *10x Genomics, Inc. et al v. NanoString Technologies, Inc.*, Case No. 1-22-cv-00261 (D. Del.).

"**Cure Cost Certificate**" has the meaning set forth in Section 2.3.2.

"**Cure Costs**" shall mean the Liabilities and obligations that must be paid or otherwise satisfied to cure all of Debtors' defaults under the Purchased Contracts necessary for the assumption thereof by Seller and assignment to Buyer pursuant to Section 365 of the Bankruptcy Code, as provided herein and in the Sale Order.

"**D&O Policies**" has the meaning set forth in the definition of "Excluded Assets."

"**Debtors**" has the meaning set forth in the preamble hereto.

"**Deposit**" has the meaning set forth in the recitals.

"**Deposit Escrow Agreement**" has the meaning set forth in the recitals.

"**DIP Financing Order**" means the Interim Order (a) Authorizing the Debtors to Obtain Postpetition Financing, Granting Senior Postpetition Security Interests and According Superpriority Administrative Expense Status Pursuant to Sections 364(c) and 364(d) of the Bankruptcy Code, (b) Authorizing the Use of Cash Collateral, (c) Granting Adequate Protection, (d) Modifying the Automatic Stay, and (e) Granting Related Relief Docket No. 75 and any other order of the Bankruptcy Court approving debtor-in-possession financing and/or use of cash collateral for the Debtors.

"**Domain Name Transfer Agreement**" means the Domain Name Transfer Agreement, in substantially the form attached hereto as Exhibit B.

"**Employee Equipment**" mean all mobile phones, computers, and related peripherals owned by the Seller or its Subsidiaries and used by any Continuing Employee as of immediately prior to the Closing in connection with the Business, if any.

"**Employment Matters**" has the meaning set forth in Section 5.12.4.

"**Employee Sessions**" has the meaning set forth in Section 5.12.4.

"**Encumbrance**" means any mortgage, lien (statutory or otherwise, including as defined in section 101(37) of the Bankruptcy Code), Claim, license, sublicense, pledge, security interest, charge, hypothecation, restriction, claim of ownership, lease, sublease, option, right of use or possession, preference, encroachment, restrictive covenant, right of first offer or refusal, title defect or other encumbrance or similar restriction of any kind.

"**Enforceability Exceptions**" has the meaning set forth in Section 3.1.2.

"**Environmental Laws**" means all Laws concerning pollution, public or worker health or safety (as it pertains to exposure to Hazardous Materials), or protection of the environment.

"**Equity Commitment Letter**" has the meaning set forth in the recitals.

"**Equity Financing**" has the meaning set forth in Section 3.2.6.

"**Equity Securities**" means, (a) if a Person is a corporation, shares of capital stock of such corporation and, if a Person is a form of entity other than a corporation, ownership interests in such form of entity, whether membership interests or partnership interests, or (b) other securities directly or indirectly convertible into, exercisable or exchangeable for or measured by reference to, any securities described in clause (a) above.

"**ERISA**" means the Employee Retirement Income Security Act of 1974, as amended.

"**Escrow Agent**" means Citibank, N.A., together with its permitted successors and assigns.

"**Excluded Assets**" means the following assets, property, rights and interests of Seller and its Subsidiaries (other than, for the avoidance of doubt, the Acquired Entities): (a) all cash, cash equivalents, bank or other deposits, similar cash items of Seller and its Subsidiaries other than those of the Acquired Entities; (b) all refunds, claims for refunds or rights to receive refunds from any Taxing Authority with respect to any and all Taxes paid or to be paid by Seller or any of its Subsidiaries (including any and all Taxes paid or to be paid by any of Seller's Subsidiaries on behalf of Seller), in each case other than in respect of the Acquired Entities; (c) (i) any legal or beneficial interest in the capital stock and other Equity Securities of Seller, its Subsidiaries or any other Person, in each case other than in respect of the Acquired Entities, and (ii) the corporate or other entity charter, qualifications to conduct business as a foreign corporation or other form of business entity, arrangements with registered agents relating to foreign qualifications, taxpayer and other identification numbers, Tax Returns and other tax records, seals, minute books, stock transfer books, and similar organizational documents of Seller or any of its Subsidiaries, in each case other than in respect of the Acquired Entities; (d) the bank accounts of Seller and its Subsidiaries set forth on Section 1.1.1 of the Seller Disclosure Schedules; (e) all Excluded Items; (f) any Excluded Contract; (g) all rights of Seller under this Agreement and the Ancillary Agreements; (h) the Debtors' directors and officers liability insurance policies and all rights and benefits of any nature with respect thereto, including all insurance recoveries thereunder and rights to assert claims with respect to such insurance recoveries (the "**D&O Policies**"); (i) all Avoidance Actions other than those specified as Purchased Assets and all Claims against current and former directors and officers of Seller and its Subsidiaries; (j) any intercompany accounts receivable owed between or among the Debtors; and (k) the sponsorship and assets of all Plans (other than with respect to the Assumed Plans) and any other benefit or compensation plan, program, policy, contract, agreement, or arrangement of any kind at any time sponsored, maintained, contributed to or required to be contributed to by Seller or any of its Subsidiaries or under or with respect to which Seller or any of its Subsidiaries has (or has had) any Liability and all right, title and interest in any asset thereof or relating thereto.

"**Excluded Contract**" has the meaning set forth in Section 2.1.2.

"**Excluded Items**" means any and all (a) books, documents, records, files and other items prepared in connection with or relating to the negotiation and consummation of the transactions contemplated by this Agreement or the Ancillary Agreements or otherwise prepared in connection with the divestiture of the Purchased Assets or the Business, including all (i) bids received from Third Parties (and related analyses) relating to the Business, (ii) confidentiality, joint defense or similar agreements with prospective purchasers of the Products or the Business, (iii) strategic, financial or Tax analyses relating to the divestiture of the Purchased Assets, the Assumed Liabilities and the Business, (iv) analyses regarding the competitive landscape (e.g., consultant reports regarding the market and likely future developments) of the Products or the Business, (v) presentations or minutes relating to any of the meetings of Debtors' board of directors or committees thereof, including materials relating to strategic alternatives, including the transactions contemplated by this Agreement and (vi) presentations or other materials relating to discussion with Seller's lenders or key constituents or counterparties; and (b) all personnel records (including all human resources and other records), whether or not held by Seller or any of its Subsidiaries and whether or not relating to employees (other than the Continuing Employees) of Seller or any of its Subsidiaries.

"**Excluded Liabilities**" means the following Liabilities of Seller or any of its Subsidiaries (other than Liabilities of the Acquired Entities) of whatever nature, whether presently in existence or arising or asserted hereafter: (a) Taxes attributable to periods ending on or prior to the Closing Date; *provided* that Transfer Taxes and Apportioned Obligations shall be allocated between Buyer and Seller as provided in Section 5.3.2, (b) all Liabilities arising out of, resulting from, or relating to any Excluded Assets; (c) all indebtedness of the Debtors' set forth on Section 1.1.2(c) of the Seller Disclosure Schedules; (d) fees, costs and expenses incurred in connection with the Chapter 11 Cases or the Transactions (except as otherwise contemplated by this Agreement); (e) any transaction, change of control, success, retention or stay bonuses, severance, incentive, or deferred compensation payments or other similar payments or obligations payable to any current or former employee, officer, director or other individual service provider of Seller or its Subsidiaries (including the Business Employees) in connection with or arising out of the consummation of the Transactions (including any "double-trigger" severance or other payments or obligations payable in combination with any other event), other than retention amounts payable under the NanoString Technologies, Inc. 2024 Key Employee Retention Plan and the Retention Bonus Letters thereunder; (f) any outstanding and unpaid bonus, commission or incentive obligations in respect of any current or former employee, officer, director or other individual service provider of Seller or its Subsidiaries (including the Business Employees), other than retention amounts payable under the NanoString Technologies, Inc. 2024 Key Employee Retention Plan and the Retention Bonus Letters thereunder; (g) all Liabilities at any time arising under, pursuant to or in connection with each Plan that is not an Assumed Plan and any other benefit or compensation plan, program, policy, contract, agreement or arrangement, in each case, at any time sponsored, maintained, contributed to or required to be contributed to by Seller or any of its Affiliates or under or with respect to which Seller or any of its Affiliates has (or has had) any Liability; (h) all Liabilities relating to or arising out of the employment or service or termination of employment or service of any Person (including any Continuing Employees), at any time prior to or upon the Closing, including in respect of any accrued and unused paid time off or sick time accrued prior to or on the Closing; (i) all accrued and unpaid accounts payable of the Business as of the Closing Date, including legal expenses accrued but unpaid as of the Closing Date related to any Litigation to which Seller or its Subsidiaries are party, in each case, whether

invoiced before or after Closing, (j) all Cure Costs required to be paid pursuant to Section 365 of the Bankruptcy Code in connection with the assumption and assignment of the Purchased Contracts as finally determined by the Bankruptcy Court, and (k) any Liabilities set forth on Section 1.1.2(k) of the Seller Disclosure Schedules.

"**Execution Date**" has the meaning set forth in the preamble hereto.

"**Expense Reimbursement**" shall mean the aggregate amount, which shall not exceed $3,300,000 of all reasonable and documented out-of-pocket expenses (including all fees and expenses of counsel, accountants, investment banks, advisors, and consultants to Buyer or its Affiliates) incurred by Buyer or its Affiliates prior to any termination of this Agreement in accordance with Article 8 relating to or in connection with (a) the purchase of the Purchased Assets, including the transactions contemplated by this Agreement and any Ancillary Agreements; (b) the negotiation, preparation, execution or performance of agreements relating to the purchase of the Purchased Assets, including this Agreement and any Ancillary Agreements; and (c) business, financial, legal, accounting, tax, and other due diligence relating to the Purchased Assets.

"**Exploit**" or "**Exploited**" means the exercise of any and all rights in respect of the Products, including to Manufacture, make, have made, import, export, use, have used, sell, offer for sale, have sold, license, research, develop, Commercialize, register, hold or keep (whether for disposal or otherwise), transport, treat, store, distribute, promote, market, sell or otherwise dispose of, and "**Exploitation**" means actions taken to Exploit.

"**Export Control Laws**" means all applicable U.S. export and re-export laws and regulations, including, the Export Control Reform Act of 2018 and, where applicable, the Export Administration Act of 1979, including but not limited to: the Export Administration Regulations, the Office of Foreign Asset Control Regulations and the International Traffic in Arms Regulations.

"**FDA**" means the United States Food and Drug Administration and any successor agency thereto.

"**Final Order**" shall mean an Order or judgment of the Bankruptcy Court entered by the clerk of the Bankruptcy Court or such other court on the docket in the Chapter 11 Cases or the docket of such other court, which has not been modified, amended, reversed, vacated or stayed and as to which (a) the time to appeal, petition for certiorari, or move for a new trial, reargument or rehearing has expired and as to which no appeal, petition for certiorari or motion for new trial, reargument or rehearing shall then be pending or (b) if an appeal, writ of certiorari new trial, reargument or rehearing thereof has been sought, such order or judgment of the applicable Bankruptcy Court, or other court of competent jurisdiction shall have been affirmed by the highest court to which such Order was appealed, or certiorari shall have been denied, or a new trial, reargument or rehearing shall have been denied or resulted in no modification of such order, and the time to take any further appeal, petition for certiorari or move for a new trial, reargument or rehearing shall have expired, as a result of which such order shall have become final in accordance with Rule 8002 of the Federal Rules of Bankruptcy Procedure or a similar rule of such other court of competent jurisdiction; *provided* that with respect to the Bankruptcy Court,

the possibility that a motion under Rule 60 of the Federal Rules of Civil Procedure, or any analogous rule under the Bankruptcy Rules, may be filed relating to such order, shall not cause such order not to be a Final Order.

"**Financial Statements**" has the meaning set forth in Section 3.1.15.

"**Finished Goods Inventory**" means all Products (including samples) in finished form packaged and ready to be shipped to customers or other parties by Seller and/or its Subsidiaries (or designees thereof).

"**Fraud**" means a Person's knowing and intentional fraud under Delaware law in making the representations and warranties contained in Article 3 of this Agreement and shall require an affirmative showing of (i) a false representation of material fact; (ii) actual knowledge that such representation is false, or reckless indifference to the truth; (iii) an intention to induce a party to act or refrain from acting in reliance upon it; (iv) such party's actual reliance thereon to its detriment; and (v) such counterparty suffering damage by reason of such reliance. "Fraud" does not and shall not include equitable fraud, promissory fraud, unfair dealings fraud or any torts based on negligence or recklessness.

"**GAAP**" has the meaning set forth in Section 3.1.15.

"**Governmental Authority**" means (i) any governmental or public department, central bank, court, minister, governor-in-council, cabinet, commission, tribunal, board, bureau, agency, commissioner or instrumentality or other regulatory or administrative authority, whether international, multinational, national, federal, provincial, state, municipal, local, or other; (ii) any subdivision or authority of any of the above; (iii) any stock exchange; (iv) any arbitral body (public or private), and (v) any quasi- governmental or private body exercising any regulatory, expropriation or taxing authority under or for the account of any of the above, which, for the avoidance of doubt, includes the FDA, any corresponding foreign agency and any other federal, state, provincial, local or foreign Governmental Authority with jurisdiction over the authorization, approval, marketing, advertising, sale, pricing, storage, distribution, use, handling and control, safety, efficacy, reliability or manufacturing of medical device or similar products.

"**Hazardous Materials**" means any materials, substances or wastes for which Liability or binding standards of conduct may be imposed pursuant to any Environmental Laws, including any petroleum products or byproducts, asbestos or asbestos-containing materials, polychlorinated biphenyls, per- and polyfluoroalkyl substances, lead, toxic mold or radioactive materials.

"**Intellectual Property**" means all of the following: (a) Patents; (b) copyrights and other equivalent rights in works of authorship (published or unpublished), moral rights (or other similar rights), copyright registrations and applications for copyright registration ("**Copyrights**"); (c) designs, design registrations, design registration applications; (d) names, trade names, business names, corporate names, domain names, social media accounts, website names and world wide web addresses, common law trademarks, trademark registrations, trademark applications, unregistered trademarks, service marks, trade dress and logos, slogans, and other designations of source or origin, and all goodwill related to the foregoing ("**Trademarks**"); (e) rights in computer programs and software (whether in source code, object code, or other form), algorithms,

databases, compilations and data, technology supporting the foregoing, and all documentation, including user manuals and training materials, related to any of the foregoing (collectively, "**Technology**"); (f) rights in trade secrets and all other confidential information, know-how, inventions, improvements, processes, formulae, models, techniques, plans, ideas, concepts, designs, business, scientific and technical data or information, and methodologies ("**Trade Secrets**"); (g) registrations and applications for any of the foregoing; (h) all goodwill associated or arising in connection with the forgoing; and (i) all other intellectual property or proprietary rights of any kind or nature arising under any jurisdiction.

"**Interim Period**" means the period between the close of business on the Execution Date and the earlier of (x) Closing and (y) the termination of this Agreement.

"**IRS**" means the Internal Revenue Service or any successor Governmental Authority.

"**Joint Written Instructions**" has the meaning set forth in Section 8.2.5.

"**Law**" means any (i) applicable national, supranational, domestic or foreign, federal, state, provincial or local statute, law (including the common law), act, treaty, code, constitution, ordinance, Order, decree, rule, administrative interpretation, regulation, or by-law, and (ii) any other policy, guideline, notice, protocol or requirement having the force of law of any Governmental Authority, in each case as in effect from time to time.

"**Lease Assignment**" means the Lease Assignment and Assumption Agreement, in substantially the form attached as Exhibit E.

"**Leased Real Property**" has the meaning set forth in Section 2.1.1(j).

"**Liability**" means any debt, loss, liability, obligation, commitment, claim, damage, demand, fine, judgment, deficiency, fee, charge or penalty, whether absolute or contingent, accrued or unaccrued, asserted or unasserted, known or unknown, fixed or contingent, matured or unmatured, direct or indirect, determined or determinable or otherwise (including all adverse reactions, recalls, product and packaging complaints or other liabilities), whether arising under any Law, Order, Contract or otherwise and without regard to when sustained, incurred or asserted or when the relevant events occurred or circumstances existed.

"**Litigation**" means any claim, action, charge, complaint, audit, investigation, inquiry, arbitration, mediation, hearing, proceeding, suit (whether civil, criminal, administrative, or investigative or appellate proceeding), warning letter, or notice of violation.

"**Look-Back Date**" means January 1, 2023.

"**Manufacture**", "**Manufacturing**" and "**Manufactured**" means all activities related to the production, manufacture, processing, filling, finishing, packaging, labeling, shipping and holding of the Products, or any intermediate, quality assurance and quality control testing thereof prior to the distribution of the Products.

"**Material Adverse Effect**" means any event, result, effect, occurrence, state of facts, circumstance, development, condition or change, that, individually or in the aggregate, is material

and adverse to the business, results of operations, assets, liabilities or financial condition of the Purchased Assets and the Assumed Liabilities, taken as a whole; *provided, however*, none of the following, and no event, fact, condition, occurrence, change, development, circumstance or effect to the extent resulting from the following, shall be deemed (individually or in combination) to constitute, or shall be taken into account in determining whether there has been, a "Material Adverse Effect": (i) general political or economic conditions or conditions affecting the capital or financial markets generally, including the worsening of any existing conditions or changes affecting the availability or cost of financing; (ii) conditions generally affecting any industry or industry sector in which the Seller and its Subsidiaries operate or compete or any conditions generally affecting the medical device or healthcare industry; (iii) any change in accounting requirements, applicable Laws or the enforcement, implementation or interpretation thereof; (iv) any hostility, act of war, sabotage, terrorism or military actions, or any escalation of any of the foregoing; (v) any hurricane, flood, tornado, earthquake, pandemic (including COVID-19 or any permutation thereof) or other natural disaster or force majeure event; (vi) (A) the entry into market of a product or products competitive with any of the products of the Seller and its Subsidiaries or any change in the sales, financial results of any such products, or other impact on the products of the Seller and its Subsidiaries, as a result of competition from another product or (B) the outcome or any other development, ruling or judgment related to or arising out of the Litigation set forth on Section 3.1.6 of the Seller Disclosure Schedules; (vii) this Agreement, the transactions contemplated hereby or the Chapter 11 Cases, including the public announcement thereof or the impact of such announcement or pendency on the relationship of Seller with any supplier, distributor, customer, partner or similar relationship or any loss of employees resulting therefrom; *provided* that this clause (vii) shall not apply to, and shall be disregarded with respect to, references to "Material Adverse Effect" in the representations and warranties made by Seller in Section 3.1.3 and the related condition set forth in Article 6; (viii) the failure of the Seller and its Subsidiaries to achieve any financial projections, predictions, forecasts or estimates of revenues for any period (*provided* that the underlying causes of such failure shall not be excluded unless otherwise excluded pursuant to this definition); (ix) any act or omission of Seller or any of its Subsidiaries required or permitted by the terms of this Agreement with the prior consent of or at the request of Buyer; (x) actions taken by Buyer or its Affiliates; (xi) (A) the commencement or pendency of the Chapter 11 Cases, (B) any objections in the Bankruptcy Court to (1) this Agreement, any Ancillary Agreement or the Transactions, (2) the reorganization of Seller or its Subsidiaries, (3) the Bidding Procedures Order or (4) the assumption or rejection of any Purchased Contract otherwise in compliance with this Agreement, or (C) any Order of the Bankruptcy Court or any actions or omission of Seller or its Subsidiaries required to be taken (or not taken) to comply therewith; (xii) any act or omission by Seller or any of its Subsidiaries required to be taken pursuant to the terms of the DIP Financing Order; (xiii) any change in the market price, credit rating or trading volume of the Seller's stock or other securities or any change affecting the ratings or the ratings outlook for the Seller (*provided* that the underlying factors contributing to any such change shall not be excluded unless such underlying factors would otherwise be excluded from the definition of Material Adverse Effect); and (xiv) any cyber attack; except, in the case of clauses (i) through (v), to the extent that any such event, result, effect, occurrence, fact, circumstance, development, condition or change has a disproportionate effect on the Purchased Assets and Assumed Liabilities, taken as a whole, relative to other Persons operating businesses similar to the Business.

"**Material Contracts**" has the meaning set forth in Section 3.1.21(a).

"**Non-US Plan**" has the meaning set forth in Section 3.1.12(j).

"**Notice**" has the meaning set forth in Section 9.2.1.

"**Offer Employee**" means each individual who is employed by Seller or any of its Subsidiaries (other than an Acquired Entity) as of the date of this Agreement.

"**Order**" means any judicial, arbitral, administrative, ministerial, departmental or regulatory writ, judgment, edict, directive, adjudication, decree, injunction, ruling, order, decision, award or other binding obligation, pronouncement, determination or similar action taken by, or applied by, any Governmental Authority (in each case, whether temporary, preliminary or permanent).

"**Ordinary Course**" means, with respect to an action taken by a Person, that such action is (i) substantially consistent with the past practices of the Person and (ii) taken in the ordinary course of the normal day-to-day operations of the Person.

"**Owned Intellectual Property**" means all Intellectual Property owned or purported to be owned by Seller or any of its Subsidiaries.

"**Owned Technology**" means any tangible embodiments of Intellectual Property (including Technology and Trade Secrets), in each case owned or purported to be owned by Seller or any of its Subsidiaries.

"**Outside Date**" means June 30, 2024.

"**Party(ies)**" has the meaning set forth in the preamble hereto.

"**Patent Assignment Agreement**" means the Patent Assignment Agreement, in substantially the form attached as Exhibit C.

"**Patents**" means all issued patents and patent applications, provisional patent applications, applications for reissues, industrial designs, or invention disclosures in any country or supranational jurisdiction, and any substitutions, divisionals, continuations, continuations-in-part, reissues, renewals, confirmations, re-examinations, extensions, and supplementary protection certificates and the like.

"**Payee**" has the meaning set forth in Section 5.3.1(a).

"**Payer**" has the meaning set forth in Section 5.3.1(a).

"**Payments**" has the meaning set forth in Section 5.3.1(a).

"**Permit**" means with respect to any Person, any permit, license, grant, authorization, consent, registration, certificate, franchise, certification, variance, exemption, Order or approval or similar authorization of any Governmental Authority having jurisdiction over the Person.

"**Permitted Encumbrance**" means any (a) Encumbrance for utilities and Taxes not yet due or delinquent or for those Taxes being contested in good faith by appropriate proceedings and for which appropriate reserves have been established in accordance with GAAP; (b) Encumbrance imposed by Law that does not or would not be reasonably expected to materially detract from the current value of, or materially interfere with, the present use and enjoyment of any Purchased Asset subject thereto or affected thereby in the Ordinary Course; (c) Encumbrance incurred or deposit made to a Governmental Authority in connection with any Permit, (d) non-exclusive licenses of Intellectual Property granted in the Ordinary Course; (e) mechanics', materialmen's, carriers', workmen's, warehouseman's, repairmen's, landlords' and similar Encumbrances granted or which arise in the Ordinary Course for amounts which are not due and payable; (f) Encumbrances that would not reasonably be expected to materially detract from the property and/or use of the property for its current purpose; (g) Encumbrances expressly contemplated by the Sale Order; and (h) Encumbrances disclosed on Section 1.1.3 of the Seller Disclosure Schedules.

"**Person**" means any individual, partnership, limited partnership, limited liability partnership, limited liability company, unlimited liability company, joint stock company, joint venture, syndicate, sole proprietorship, corporation, unincorporated association, trust, trustee, executor, administrator or other legal personal representative, or any other legal entity, including a Governmental Authority, and pronouns have a similarly extended meaning.

"**Personal Data**" means any information or data that (a) identifies, relates to, describes, is reasonably capable of being associated with, or could reasonably be linked, directly or indirectly, with a particular individual or household, or (b) "personal data," "personal information," "personally identifiable information," "protected health information," or similar term as defined in applicable Laws relating to data protection, data privacy, and data security.

"**Personnel Records**" means the following current employment and current personnel information with respect to each Continuing Employee, in each case, to the extent permitted by applicable Law: salary, wage grade, job description, variable compensation targets, performance documentation, training and continuing education records, business and personal mailing addresses and telephone numbers, any employment, confidentiality, restrictive covenants and/or intellectual property assignment agreements, employee handbook and policy acknowledgments, and any other employment-related agreements, acknowledgements and authorizations, Family and Medical Leave Act (or similar) records, disability accommodation records, workplace injury records, internal or external complaints by or concerning such Continuing Employee, Forms I-9 (Employment Eligibility Verification) related to such Continuing Employee; *provided* that Personnel Records shall not include any medical records.

"**Petition Date**" has the meaning set forth in the recitals.

"**Plan**" means each "employee benefit plan" within the meaning of Section 3(3) of ERISA (whether or not subject thereto) and all other stock purchase, stock option, restricted stock, equity, equity-based, severance, termination, retention, employment, consulting, change-of-control, collective bargaining, bonus, incentive, deferred compensation, retirement, and other benefit or compensation plan, program, agreement or arrangement, in each case, which is maintained, sponsored or contributed to by Seller or any of its Subsidiaries or under or with respect to which

Seller or any of its Subsidiaries has any Liability (other than any such employee benefit plan maintained for employees located outside of the United States that are required under applicable Law and maintained by a Governmental Authority).

"**Post-Closing Tax Period**" has the meaning set forth in Section 5.3.2(b).

"**Pre-Closing Tax Period**" has the meaning set forth in Section 5.3.2(b).

"**Products**" means Seller's and its Subsidiaries' products as of the Closing, including the nCounter® Analysis System and product platforms, the GeoMx Digital Spatial Profiler and product platforms, the CosMx Spatial Molecular Imager and product platforms, the AtoMx Spatial Informatics Platform, and the consumables related to GeoMx, CosMx and nCounter product platforms.

"**Public Statement**" has the meaning set forth in Section 5.2.

"**Purchase Price**" has the meaning set forth in Section 2.3.1(b).

"**Purchased Assets**" has the meaning set forth in Section 2.1.1.

"**Purchased Contracts**" has the meaning set forth in Section 2.1.1(a).

"**Purchased Intellectual Property**" means the Intellectual Property licensed to Seller or its Subsidiaries under the Purchased Contracts, and all other Owned Intellectual Property.

"**Purchased Permits**" has the meaning set forth in Section 2.1.1(d).

"**Purchased Product Records**" means all books and records (including records of call center activity) primarily relating to the Business to the extent owned, maintained and in the possession or control of Seller or any of its Subsidiaries and reasonably necessary or used to monitor the collection or payment of royalties with respect to the Products, maintain, prosecute, or enforce the Purchased Intellectual Property or Regulatory Approvals, Manufacture, Research, develop and Exploit the Products throughout the world, but excluding, in all cases, the Excluded Items and any Intellectual Property included therein.

"**Purchased Regulatory Approvals**" means the Regulatory Approvals set forth on Section 1.1.5 of the Seller Disclosure Schedules; *provided, however*, "Purchased Regulatory Approvals" shall not include Permits other than Purchased Permits.

"**Purchased Technology**" means all tangible embodiments of Intellectual Property (including Technology and Trade Secrets), in each case licensed to Seller or its Subsidiaries under the Purchased Contracts, and all other Owned Technology.

"**Regulatory Approvals**" means all approvals (including pricing and reimbursement approvals required for marketing authorization), product and/or establishment licenses, registrations or authorizations of any Regulatory Authorities required to Exploit the Products in any jurisdiction.

"**Regulatory Approval Transfer Documentation**" means, (x) with respect to Seller, a letter or letters to the applicable Regulatory Authority transferring the rights to the Purchased Regulatory Approvals to Buyer and a letter or letters to the applicable Regulatory Authority, notifying it of the transfer of the Purchased Regulatory Approvals to Buyer, as well as any similar letters to any other applicable Regulatory Authority, in each case delivered to Buyer for further delivery on behalf of Seller in the form to be reasonably agreed to by Buyer and Seller; and (y), with respect to Buyer, a letter or letters to the applicable Regulatory Authority assuming responsibility for the Purchased Regulatory Approvals from Seller and a letter or letters to the applicable Regulatory Authority from Buyer, notifying it of the transfer of the Purchased Regulatory Approvals from Seller to Buyer, as well as any similar letters to any other applicable Regulatory Authority, in each case, copying Seller and in the form to be reasonably agreed to by Buyer and Seller.

"**Regulatory Authority**" means any Governmental Authority with authority over the Research, development, registration, Manufacture, making, having made, use and Commercialization of a medical device or similar product (including the Products).

"**Regulatory Filings**" means, individually or collectively, all applications, filings, submissions, licenses, registrations, permits, notifications, and authorizations (including marketing and labeling authorizations) or waivers with respect to the testing, Research, development, registration, manufacture, making, having made, use and Commercialization of the Products made to or received from any Regulatory Authority in a given country, and all correspondence related to any of the foregoing.

"**Representatives**" means a Party's officers, directors, employees, agents, attorneys, accountants, consultants, advisors, financing sources and other representatives.

"**Required Amount**" has the meaning set forth in Section 3.2.6.

"**Research**" means all activities related to the research, identification, screening and testing of a Product.

"**Sale Hearing**" means the hearing conducted by the Bankruptcy Court to approve the transactions contemplated by this Agreement.

"**Sale Order**" has the meaning set forth in Section 5.7.1(b).

"**Sanctions**" means all applicable Laws concerning economic sanctions.

"**Sanctioned Country**" means any of Cuba, Iran, North Korea, Syria, and the Crimea region or so-called Donetsk People's Republic or Luhansk People's Republic regions in Ukraine.

"**Sanctioned Person**" means any Person with whom dealings are restricted or prohibited under any Sanctions, including (i) any Person identified in any list of Sanctioned Persons maintained by (A) the U.S. Department of Treasury, Office of Foreign Assets Control, the U.S. Department of Commerce, Bureau of Industry and Security or the U.S. Department of State, (B) His Majesty's Treasury of the United Kingdom, (C) any committee of the United Nations Security Council or (D) the European Union, (ii) any Person located, organized, or resident in,

organized in, or a Governmental Authority or government instrumentality of, any Sanctioned Country and (iii) any Person directly or indirectly 50% or more owned or controlled by, or acting for the benefit or on behalf of, a Person described in clause (i) or (ii).

"**SEC**" means the U.S. Securities and Exchange Commission and any successor agency thereto.

"**Seller**" has the meaning set forth in the preamble hereto.

"**Seller Disclosure Schedules**" means the disclosure schedules of Seller delivered by Seller pursuant to this Agreement.

"**Seller Financial Advisor**" means Perella Weinberg Partners LP.

"**Seller's Knowledge**" means the actual knowledge of any one of Brad Gray, Thomas Bailey, Joseph Beechem, Todd Garland, Bjorn Johnson and Kathy Surace-Smith without personal liability on the part of any of them.

"**Sponsor**" has the meaning set forth in the recitals.

"**Subsidiary**" means any entity of which at least a majority of the securities or ownership interests having by their terms voting power to elect a majority of the board of directors or other Persons performing similar functions is directly or indirectly owned or controlled by such party or by one or more of its respective Subsidiaries. The term "Subsidiary" shall include all Subsidiaries of such Subsidiary.

"**Successful Bidder**" has the meaning set forth in Section 8.1.3.

"**Tax Return**" means any return, declaration, report, election, notice, filing, claim for refund, information return or statement relating to Taxes, including any schedule or attachment thereto, filed or maintained, or required to be filed or maintained, in connection with the calculation, determination, assessment or collection of any Tax and includes any amended returns required as a result of examination adjustments made by the IRS or other Taxing Authority.

"**Taxes**" means all taxes of any kind, and all charges, fees, customs, levies, duties, excises, premiums, imposts, required deposits or other assessments, including all federal, state, local or foreign net income, capital gains, gross income, gross receipt, property, franchise, sales, use, excise, withholding, payroll, employment, social security, worker's compensation, unemployment, occupation, capital stock, transfer, gains, windfall profits, net worth, asset, transaction and other taxes, and any interest, penalties, fines or additions to tax with respect thereto, imposed upon any Person by any Taxing Authority or other Governmental Authority under applicable Law.

"**Taxing Authority**" means any Governmental Authority or any quasi-governmental body exercising tax regulatory authority.

"**Termination Fee**" means an amount equal to $6,600,000.

"**Third Party**" means any Person other than Seller, Buyer and their respective Affiliates and permitted successors and assigns.

"**Top Customer**" has the meaning set forth in Section 3.1.22.

"**Top Supplier**" has the meaning set forth in Section 3.1.22.

"**Trademark**" has the meaning set forth in the definition of "Intellectual Property."

"**Trademark Assignment Agreement**" means the Trademark Assignment Agreement, in substantially the form attached as Exhibit D.

"**Transactions**" means the transactions contemplated by this Agreement and the Ancillary Agreements.

"**Transfer Taxes**" has the meaning set forth in Section 5.3.2(a).

1.2 Construction. Except where the context otherwise requires, wherever used, the singular includes the plural, the plural the singular, the use of any gender shall be applicable to all genders and the word "or" is used in the inclusive sense (and/or). The captions of this Agreement are for convenience of reference only and in no way define, describe, extend or limit the scope or intent of this Agreement or the intent of any provision contained in this Agreement. The terms "include," "includes" and "including" mean "include, without limitation," "includes, without limitation" and "including, without limitation," respectively, and do not limit the generality of any description preceding such term. The language of this Agreement shall be deemed to be the language mutually chosen by the Parties and no rule of strict construction shall be applied against either Party. Unless otherwise specified or where the context otherwise requires, (a) references in this Agreement to any Article, Section, Schedule or Exhibit are references to such Article, Section, Schedule or Exhibit of this Agreement; (b) references in any Section to any clause are references to such clause of such Section; (c) "hereof," "hereto," "hereby," "herein" and "hereunder" and words of similar import when used in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement; (d) references to a Person are also to its successors and permitted assigns; (e) references to a Law include any amendment or modification to such Law and any rules or regulations issued thereunder, in each case, as in effect at the relevant time of reference thereto; (f) references to any agreement, instrument or other document in this Agreement refer to such agreement, instrument or other document as originally executed or, if subsequently amended, replaced or supplemented from time to time, as so amended, replaced or supplemented and in effect at the relevant time of reference thereto; (g) "extent" in the phrase "to the extent" means the degree to which a subject or other thing extends, and such phrase does not mean simply "if", (h) all references to "made available" means, when used with respect to any document or other item of information, that such document or other item of information was provided or made available to Buyer in the "virtual data room" prepared by Seller to which Buyer has been provided access prior to the date hereof; and (i) references to monetary amounts are denominated in United States Dollars and all references to "$" shall be deemed to refer to United States dollars. The Parties have participated jointly in the negotiation and drafting of this Agreement and in the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of

proof shall arise favoring or disfavoring any Party (or any Affiliate thereof) by virtue of the authorship of any of the provisions of this Agreement.

ARTICLE 2
SALE AND PURCHASE OF ASSETS; LIABILITIES

2.1 Sale of Purchased Assets.

2.1.1 Purchase and Sale of Purchased Assets. Upon the terms and subject to the conditions of this Agreement and the Ancillary Agreements, at and effective as of the Closing, Seller shall (or shall cause its applicable Subsidiaries to), sell, transfer, convey, assign and deliver to Buyer, and Buyer shall purchase and accept from Seller (or such Subsidiaries), all rights, title and interests of Seller or its Subsidiaries in and to all of the assets, properties, interests, rights and claims of Seller and its Subsidiaries used in the Business, other than the Excluded Assets, including the following (collectively, the "**Purchased Assets**"), in each case free and clear of any Encumbrances (other than Permitted Encumbrances and Assumed Liabilities):

(a) all rights and interests of Seller or its Subsidiaries under the Contracts set forth in Section 2.1.1(a) of the Seller Disclosure Schedules, which Section of the Seller Disclosure Schedules may be modified (unless otherwise indicated in the Seller Disclosure Letter) from the date hereof through five (5) Business Days prior to the Closing Date in accordance with Section 4.3.1 (the "**Purchased Contracts**");

(b) the Purchased Product Records;

(c) the Purchased Intellectual Property and Purchased Technology, including all rights to sue for past, present, and future infringement, misappropriation, or violation thereof;

(d) all Permits that are listed on Section 2.1.1(d) of the Seller Disclosure Schedule, to the extent assignable or transferable (the "**Purchased Permits**");

(e) all Finished Goods Inventory owned by and in the possession or custody of Seller and its Subsidiaries;

(f) all raw materials, work-in-process, demonstration equipment, components, packaging material or similar items used by third-party contract manufacturers, in each case, in the production or distribution of the Products and in the possession or custody of Seller and its Subsidiaries;

(g) all advertising, marketing, sales and promotional materials relating to the Products;

(h) all URLs, websites, website content, fax numbers and telephone numbers;

(i) all pre-paid expenses and security deposits;

(j) all rights and interests of Seller or its Subsidiaries under Purchased Contracts for the lease, sublease, license, or other right to use or occupy real property, as set forth in Section 2.1.1(a) of the Seller Disclosure Schedules (such real property, the "**Leased Real Property**");

(k) all Purchased Regulatory Approvals to the extent transferable under law;

(l) copies of the Personnel Records;

(m) all Employee Equipment;

(n) the sponsorship of all Assumed Plans and any assets or property in respect of any Assumed Plan;

(o) all Accounts Receivable;

(p) all insurance policies (other than the D&O Policies and those funding a Plan that is not an Assumed Plan), to the extent transferable, including all insurance recoveries thereunder and all rights to assert claims thereunder;

(q) all goodwill of Seller as a going concern and any goodwill related to the Business, the Purchased Assets and the Assumed Liabilities;

(r) all rights of Seller under any non-disclosure or confidentiality, non-compete, non-interference or non-solicitation agreements with current and former employees and agents of Seller or Acquired Entities or with third parties, in each case, related to the Purchased Assets or the Business (or any portion thereof);

(s) all refunds, overpayments, credits or rebates with respect to Taxes that are Assumed Liabilities;

(t) all Avoidance Actions against any of Seller's vendors, suppliers, customers or trade creditors with whom Buyer continues to conduct business in regard to the Purchased Assets after the Closing and any of their Affiliates;

(u) all bank accounts of Seller and its Subsidiaries set forth on Section 2.1.1(u) of the Seller Disclosure Schedules; and

(v) the Equity Securities of the Acquired Entities (and, for the avoidance of doubt, thereby indirectly all of the assets, rights, Contracts and Liabilities of the Acquired Entities).

2.1.2 Excluded Assets. Notwithstanding anything to the contrary in this Agreement or in any Ancillary Agreement, (a) Buyer shall not acquire the Excluded Assets, including any Contract not set forth on Section 2.1.1(a) of the Seller Disclosure Schedules (each such contract an "**Excluded Contract**"), which Section of the Seller Disclosure Schedules may be modified (unless otherwise indicated in the Seller Disclosure Letter) from the Execution Date

through five (5) Business Days prior to the Closing Date in accordance with Section 4.3.1, (b) the Purchased Assets shall not include the Excluded Assets, and (c) Seller shall retain the Excluded Assets following the Closing.

2.1.3 Retention of Rights. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, Seller retains, on behalf of itself and its Affiliates, a right to retain copies of all or any part of all documentation that Seller delivers to Buyer pursuant to this Agreement as may be reasonably necessary to exercise its or its Affiliates' respective rights or perform its or its Affiliates' respective obligations under this Agreement or any Ancillary Agreement, for a purposes of administration of the Chapter 11 Cases, and for purposes of complying with Law.

2.2 Liabilities.

2.2.1 Assumed Liabilities. Upon the terms and subject to the conditions of this Agreement, at the Closing, Seller shall (or shall cause its applicable Subsidiaries to) assign to Buyer and Buyer shall assume from Seller or its applicable Subsidiaries and agree to pay and discharge when due, all Liabilities of Seller and its Subsidiaries other than the Excluded Liabilities (collectively, the "**Assumed Liabilities**"), including the following:

(a) all Liabilities arising under the Purchased Contracts;

(b) all Liabilities arising from the ownership of the Purchased Assets or the conduct or operation of the Business;

(c) all Liabilities relating to the ownership of the Equity Securities of the Acquired Entities (and, for the avoidance of doubt, thereby indirectly, the Liabilities of the Acquired Entities whether arising prior to or after the Closing);

(d) all Liabilities for Transfer Taxes allocated to Buyer as provided in Section 5.3.2;

(e) all Liabilities directly relating to the sponsorship of any Assumed Plans and all Liabilities relating to the employment in respect of the Continuing Employees by Buyer or one of Buyer's Affiliates following the Closing (other than Liabilities arising as a consequence of any breach of representation or warranty or covenant by Seller hereunder); and

(f) all Liabilities related to the litigation matters set forth on Section 3.1.6 of the Seller Disclosure Schedules.

2.2.2 Excluded Liabilities. Notwithstanding anything to the contrary in this Agreement or any Ancillary Agreement, neither Buyer nor any of its Affiliates shall assume, nor shall they be or become responsible for, any Excluded Liabilities or any Liabilities of Seller or any of its Subsidiaries, other than the Assumed Liabilities. For greater certainty, the Excluded Liabilities shall remain the sole obligation and responsibility of Seller and its Subsidiaries.

2.3 Consideration.

2.3.1 Purchase Price. Upon the terms and subject to the conditions of this Agreement, in consideration of the conveyances contemplated under Section 2.1, Buyer shall:

(a) at the Closing, assume the Assumed Liabilities; and

(b) at the Closing, pay to Seller an amount equal to $220,000,000 (the "**Purchase Price**"), *less* the Deposit (together with any and all investment interest thereon, if any), by wire transfer of immediately available funds to the account designated by Seller by written Notice to Buyer, such written Notice to be provided at least five (5) Business Days prior to the Closing Date (such amount, the "**Closing Payment**").

2.3.2 Cure Costs. As soon as reasonably practicable and, in any event no later than when filed with the Bankruptcy Court, Seller shall deliver to Buyer a certificate setting forth the Cure Costs (together with reasonable supporting documentation) (the "**Cure Cost Certificate**").

2.3.3 Allocation of Consideration. Buyer shall reasonably allocate the Purchase Price (and the Assumed Liabilities, to the extent properly taken into account under applicable tax laws "**Tax Laws**"), among the Purchased Assets in accordance with Section 1060 of the Code and all other applicable Tax Laws and consistent with Section 2.3.3 of the Seller Disclosure Schedules (the "**Allocation**") within ninety (90) days following the Closing and shall deliver to Seller a copy of such Allocation promptly after such determination. Seller shall have the right to review and raise any reasonable objections in writing to the Allocation during the thirty (30) day period after its receipt thereof. If Seller disagrees with respect to any item in the Allocation, the Parties shall negotiate in good faith to attempt to resolve the dispute. To the extent Buyer and Seller cannot resolve any such dispute, the dispute will be referred to a nationally recognized accounting firm to be mutually agreed on by Buyer and Seller (the "**Accounting Firm**") for resolution. Buyer and Seller agree to file their respective IRS Form 8594 and all federal, state and local Tax Returns in accordance with the Allocation (as agreed by the Parties or as resolved by the Accounting Firm) and agree not to take any position inconsistent with the Allocation in any Tax Return, in any refund claim, in any litigation or otherwise, except as otherwise required by a "determination" as defined in Section 1313(a) of the Code (or corresponding provision of state or local law).

2.4 Closing. Pursuant to the terms and subject to the conditions of this Agreement, the closing of the transactions contemplated hereby (the "**Closing**") shall take place at the New York, New York offices of Willkie Farr & Gallagher LLP, at 10:00 a.m. local time, on the third (3rd) Business Day following satisfaction of all conditions (other than those that by their terms are to be satisfied or taken at the Closing) set forth in Article 6 (or, to the extent permitted by applicable Law, waived by the Party entitled to the benefits thereof), or such other time and place as the Parties may mutually agree to in writing (such date of the Closing being hereinafter referred to as the "**Closing Date**").

2.5 No Offset. Buyer's obligations under this Article 2 shall not be subject to offset or reduction.

2.6 Deposit. At Closing, Buyer and Seller shall deliver Joint Written Instructions to the Escrow Agent to release the Deposit (together with any and all investment interest thereon, if any) to Seller in accordance with the Deposit Escrow Agreement.

ARTICLE 3
REPRESENTATIONS AND WARRANTIES

3.1 Representations and Warranties of Seller. Seller represents and warrants to Buyer as follows, with each such representation and warranty subject to (a) such exceptions, if any, as are set forth in the corresponding section of the Seller Disclosure Schedules and (b) disclosure in any reports, schedules, forms, statements and other documents (including exhibits and all other information incorporated therein) required to be filed or furnished by the Seller with the SEC (the "**Seller SEC Documents**") publicly filed or furnished on or after the Look-Back Date and prior to the date of this Agreement other than any information (other than statements of fact) in the "*Risk Factors,*" or "*Note About Forward-Looking Statements*" sections of such Seller SEC Documents or other forward-looking or predictive statements in such Seller SEC Documents; *provided*, *however*, that nothing disclosed in the Seller SEC Documents filed by Seller prior to the date hereof shall be deemed to modify or qualify any representation or warranty set forth in Section 3.1.1 (Organization; Good Standing; Qualification), Section 3.1.3 (Authorizations and Consents), Section 3.1.4 (No Broker) and Section 3.1.5 (Capitalization). Disclosures in any section or paragraph of the Seller Disclosure Schedules shall be deemed disclosure with respect to any other sections or paragraphs of this Agreement to the extent that it is reasonably apparent from the face of such disclosure that such disclosure is applicable to such other sections or paragraphs.

3.1.1 Organization; Good Standing; Qualification. Seller is a corporation validly existing and in good standing under the Laws of the State of Delaware. Each Acquired Entity is validly existing and in good standing under the Laws of the jurisdiction of its organization (to the extent such concept exists in such jurisdiction). Seller is duly qualified to carry on business in each jurisdiction in which the nature or character of the properties and assets owned, leased or operated by it, including for greater certainty, the Purchased Assets, or the nature of its business or activities, including for greater certainty, the operation of the Business, makes such qualification necessary, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect. Each Acquired Entity is duly qualified or otherwise authorized to carry on business in each jurisdiction in which the nature or character of the properties and assets owned, leased or operated by it or the nature of its business or activities makes such qualification necessary, except where the failure to be so qualified would not reasonably be expected to have a Material Adverse Effect.

3.1.2 Authority and Enforceability. Seller has the requisite power, authority and capacity to enter into this Agreement and the Ancillary Agreements to which it is or will be a party and, subject to the Bidding Procedures Order and Sale Order, to perform its obligations hereunder or thereunder and to complete the transactions contemplated hereby and thereby. The execution and delivery of this Agreement and each Ancillary Agreement to which it is or will be a party, the performance of the obligations hereunder or thereunder and the consummation of the transactions contemplated hereby or thereby have been, or will be at or prior to Closing, duly authorized by all necessary action on the part of Seller. This Agreement and each of the Ancillary Agreements to which Seller is or will be a party, have been, or will be at or prior to Closing, duly executed and

delivered by Seller, and, subject to the Bankruptcy Court's entry of the Sale Order, constitute or will constitute a legal, valid and binding obligation of Seller, enforceable against it in accordance with its terms, except as such enforceability may be limited by bankruptcy, insolvency, reorganization, fraudulent transfer, moratorium and other similar Laws relating to limitations of actions or affecting the availability of equitable remedies and the enforcement of creditors' rights generally and by general principles of equity (the "**Enforceability Exceptions**").

3.1.3 Authorizations and Consents. Except for (a) the entry of the Bidding Procedures Order and the Sale Order and, as applicable, the expiration or waiver of the Bankruptcy Court of the applicable 14-day period set forth in Rule 6004(h) of the Bankruptcy Rules, (b) the delivery to the applicable Regulatory Authority of the Regulatory Approval Transfer Documentation and, if applicable the approval by the applicable Regulatory Authority of the transfer of the Purchased Regulatory Approvals to Buyer or its designee, and (c) items disclosed in Section 3.1.3 of the Seller Disclosure Schedules, no material Order, Permit, license, consent, approval, waiver, notification or filing, in each case, with a Governmental Authority, is required on the part of Seller for the execution and delivery by Seller of this Agreement, the performance by Seller of its obligations hereunder or thereunder and the consummation of the transactions contemplated hereby and thereby, including, for greater certainty, the transfer of the Purchased Assets.

3.1.4 No Broker. Seller has not used any broker or finder in connection with the transactions contemplated hereby, except that Seller has engaged the Seller Financial Advisor as its financial advisors, and no other broker, finder or investment banker is entitled to any fee or commission from Seller in connection with the transactions contemplated hereby.

3.1.5 Capitalization. Section 3.1.5(a) of the Seller Disclosure Schedules sets forth the authorized Equity Securities of each Acquired Entity and a complete and correct list of the issued and outstanding Equity Securities of each Acquired Entity. All of the outstanding Equity Securities of each Acquired Entity have been validly issued and, if applicable, are fully paid and non-assessable and are held of record by Seller or a Subsidiary of Seller. Except as set forth on Section 3.1.5(b) of the Seller Disclosure Schedules, no Acquired Entity owns or otherwise holds, directly or indirectly, any Equity Security in any Person. No Acquired Entity has violated any applicable federal or state securities Laws in connection with the offer, sale or issuance of any of its Equity Securities.

3.1.6 Litigation. Section 3.1.6 of the Seller Disclosure Schedules sets forth a list of all material Litigation to which Seller or any of its Subsidiaries is a Party as of the date hereof relating to any of the Purchased Assets, the Assumed Liabilities or the Business as of the Execution Date. Except for the Chapter 11 Cases and the Litigation listed on Section 3.1.6 of the Seller Disclosure Schedules, there are no, and since the Look-Back Date to the date hereof there has not been any, material Litigation pending or, to Seller's Knowledge, threatened against the Purchased Assets or, to the extent involving or related to the operations or conduct of the Business (including with respect to any current or former employees or other individual service providers who provided services to the Business), against Seller or its Subsidiaries. Except as set forth on Section 3.1.6 of the Seller Disclosure Schedules, as of the date hereof, there are no material Orders of or by a court of competent jurisdiction or other Governmental Authority outstanding against Seller with respect to the Business or any of the Purchased Assets, except for the Chapter 11 Cases.

3.1.7 No Violation. Subject to (a) the entry of the Bidding Procedures Order and the Sale Order and, as applicable, the expiration or waiver of the Bankruptcy Court of the applicable 14-day period set forth in Rule 6004(h) of the Bankruptcy Rules, (b) the delivery to the applicable Regulatory Authority of the Regulatory Approval Transfer Documentation and, if applicable the approval by the applicable Regulatory Authority of the transfer of the Purchased Regulatory Approvals to Buyer or its designee, and (c) items disclosed in Section 3.1.7 of the Seller Disclosure Schedules, the execution and delivery by Seller of this Agreement and each Ancillary Agreement to which it is or will be a party, the performance by Seller of its obligations hereunder or thereunder and the consummation of the transactions contemplated hereby and thereby do not and will not: (i) result in a violation of any Law applicable to Seller; (ii) result in a breach of, or conflict with, the constituent documents of Seller or the Acquired Entities; (iii) result in a breach of or result in the loss of any rights or the imposition of obligations under, any Purchased Contract or Purchased Permit; or (iv) result in the creation of any Encumbrance (other than any Permitted Encumbrance) upon the Purchased Assets other than Encumbrances created solely as a result of the acquisition by Buyer of the Purchased Assets and assumption of the Assumed Liabilities, in each case of clauses (i) and (iii), except as would not have a Material Adverse Effect.

3.1.8 Purchased Assets.

(a) Except as set forth in Section 3.1.8(a) of the Seller Disclosure Schedules, Seller has good and marketable title to, a valid leasehold interest in or the right to use, all of the Purchased Assets. Upon the entry and effectiveness of the Sale Order, Seller will have the power and right to sell, assign, transfer, convey and deliver, as the case may be, to the Buyer the Purchased Assets, free and clear of all Encumbrances other than Permitted Encumbrances and Assumed Liabilities. Other than Encumbrances that will be released upon the entry and effectiveness of the Sale Order, Seller owns or has rights to, and upon delivery to Buyer at the Closing will transfer to Buyer, good title to or a valid leasehold interest in all of the Purchased Assets, free and clear of all Encumbrances, except for Permitted Encumbrances and Assumed Liabilities.

(b) Except as set forth in Section 3.1.8(b) of the Seller Disclosure Schedules, no other Person (other than Seller and its Subsidiaries) owns any assets that are material to operate the Business in substantially the same manner as conducted by Seller and its Subsidiaries before Closing except for personal property leased by Seller, Intellectual Property and computer software and programs licensed to Seller, products sold pursuant to distribution or similar contracts with Seller, and the Excluded Assets.

(c) Except as set forth in Section 3.1.8(c) of the Seller Disclosure Schedules, neither Seller nor any Subsidiary is a party to any agreement or option to purchase any real property or interest therein, other than as may be provided in connection with the Leased Real Property.

3.1.9 Intellectual Property.

(a) Section 3.1.9(a) of the Seller Disclosure Schedules sets forth a correct and complete list of all Owned Intellectual Property that is registered, issued, or the subject

of an application for registration or issuance, including Patents, Trademarks, Copyrights, and domain names. Except as would not reasonably be expected to have a Material Adverse Effect, all Intellectual Property set forth on Section 3.1.9(a) of the Seller Disclosure Schedules is, to Seller's Knowledge, subsisting, valid and enforceable.

(b) Except as would not reasonably be expected to have a Material Adverse Effect, Seller or its Subsidiaries own all right, title and interest in and to, free and clear of all Encumbrances (other than Permitted Encumbrances) all Owned Intellectual Property, and have a valid right to use, under a Purchased Contract, all other Purchased Intellectual Property. The Purchased Intellectual Property and Purchased Technology constitute all material Intellectual Property necessary for the operation of the Business as presently conducted. Except as would not be adverse to the Business, Seller or its Subsidiaries are in possession of or have access to all Owned Technology. Except as would not be material and adverse to the Business, Seller or its Subsidiaries are in possession of or have access to all other Purchased Technology.

(c) Except as would not reasonably be expected to have a Material Adverse Effect, (i) to Seller's Knowledge, the operation of the Business has not, in the past three (3) years, infringed, misappropriated or violated any Intellectual Property of any Third Party and (ii) no Claims or actions are pending or, to Seller's Knowledge, threatened in writing, (A) regarding infringement, misappropriation, dilution, or other violation of the Intellectual Property of any Person against Seller or its Subsidiaries in respect of the conduct or operation of the Business by Seller or its Subsidiaries, or (B) challenging the ownership, validity, enforceability or use of any Owned Intellectual Property or, to Seller's Knowledge, other Purchased Intellectual Property to which Seller or its Subsidiaries have exclusive rights (except, in each case, for non-final office actions).

(d) Except as would not reasonably be expected to have Material Adverse Effect, to Seller's Knowledge, no Person is, or has been since the past three (3) years, infringing, misappropriating or otherwise violating any Owned Intellectual Property or other Purchased Intellectual Property to which Seller or its Subsidiaries have exclusive rights, and no such Claims have been asserted or threatened against any Person by Seller, or to Seller's Knowledge, any other Person, since the Look-Back Date.

(e) Except as would not reasonably be expected to have a Material Adverse Effect, all current and former employees, independent contractors, and consultants who have been involved in the creation, invention, development, authorship, conception, modification or improvement of any Intellectual Property on behalf of Seller or the Business during the course of their employment or engagement ("**Contributors**") have signed and delivered to Seller written agreements including confidentiality and non-disclosure obligations in favor of Seller and its Subsidiaries. Except as would not reasonably be expected to have a Material Adverse Effect, all Owned Intellectual Property created or developed by Contributors has either vested in the Seller or its Subsidiaries by operation of law or such Contributors have signed and delivered to Seller written agreements including present-tense assignment to Seller or one of its Subsidiaries of such Intellectual Property.

(f) Except as would not reasonably be expected to have a Material Adverse Effect, Seller has taken commercially reasonable measures to maintain and protect the

Owned Intellectual Property and Owned Technology (including by timely making all applicable filing, examination, maintenance, or renewal fees), and the secrecy and value of all Trade Secrets in Seller or its Subsidiaries' possession and used in connection with the Business. No material Trade Secrets included in the Owned Intellectual Property or Owned Technology have been disclosed or authorized to be disclosed to any Person, other than in the Ordinary Course pursuant to a written non-disclosure agreement.

(g) Since the Look-Back Date, Seller and its Subsidiaries have been in compliance, in all material respects, with all applicable Laws, privacy policies, and Contracts relating to the collection, use, storage, destruction, modification, transfer, and other processing of Personal Data collected or used by Seller and its Subsidiaries in the conduct of the Business. To Seller's Knowledge (i) there has been no material unauthorized access to any information technology systems used in the operation of the Business (or data stored in or processed thereby), nor (ii) any unauthorized access, disclosure, destruction, modification, or use of Personal Data that would require notification of individuals, other affected Persons, or any Governmental Authority.

3.1.10 No Material Disposals. Since the Look-Back Date, Seller has not sold or otherwise disposed of any assets (including any licenses, assignments, transfers, or abandonments of Intellectual Property or tangible embodiments thereof) that are material to the Business, other than for sales of the Products, expiration of any registered or issued Intellectual Property in accordance with its maximum statutory term and non-exclusive licenses granted in the Ordinary Course.

3.1.11 Absence of Certain Changes. Except as set forth in Section 3.1.11 of the Seller Disclosure Schedules, since December 31, 2023, (a) no event, result, effect, occurrence, fact, circumstance, development, condition or change has occurred or arisen that has had, or would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect and (b) Seller has not taken any action that would be prohibited by Section 4.2.1 if taken during the Interim Period.

3.1.12 Employee and Benefit Matters.

(a) Section 3.1.12(a) of the Seller Disclosure Schedules lists each material Plan, separated by jurisdiction and identifies each Assumed Plan.

(b) Each Plan is and has been established, funded, maintained and administered in all material respects in accordance with its terms and with the requirements of ERISA, the Code and other applicable Law (except with respect to each Plan that is not an Assumed Plan, to the extent that the failure to so establish, fund, maintain and administer would not be reasonably expected, individually or in the aggregate, to result in material Liability to Buyer or any of its Affiliates). With respect to each Assumed Plan, all contributions and premium payments for all periods ending on the Closing Date have been made, there has been no prohibited transaction (as defined under Section 406 of ERISA or Section 4975 of the Code) or breach of fiduciary duty (as determined under ERISA) that would result in material Liability to Buyer or any of its Affiliates, and there are no material Liabilities by reason of an individual being improperly excluded from participating in any Assumed Plan or any Person being improperly allowed to participate in any Assumed Plan.

(c) No Plan is, and neither Seller nor any of its Affiliates has any Liability under or with respect to, (i) a multiemployer plan within the meaning of Section 3(37) of ERISA or has two or more contributing sponsors, at least two of whom are not under common control, within the meaning of Section 4063 of ERISA, (ii) a plan that is or was subject to Section 4063 or 4064 of ERISA, or (iii) a plan that is or was subject to Section 412 of the Code, Section 430 of the Code or Title IV of ERISA. No Assumed Plan is a "multiple employer welfare arrangement" (as defined in Section 3(40) of ERISA) or a "multiple employer plan" (within the meaning of Section 210 of ERISA or Section 413 of the Code).

(d) If intended to be qualified within the meaning of Code Section 401(a), each Plan has received a favorable determination letter from the IRS as to its qualification, and nothing has occurred that would reasonably be expected to cause a loss of such qualification.

(e) Except as disclosed in Section 3.1.12(e) of the Seller Disclosure Schedules, neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated hereby could, alone or together with any other event, (i) result in or cause the accelerated vesting, funding or delivery of, or increase the amount or value of, any payment, compensation or benefit, including severance, to any Business Employee or individual independent contractor of the Business, (ii) require a contribution to any Assumed Plan, or (iii) result in any payment (whether in cash, property or the vesting of property) that would reasonably be expected to, individually or in combination with any other such payment, constitute an "excess parachute payment" (within the meaning of Section 280G of the Code).

(f) There are no pending or, to Seller's Knowledge, threatened (i) investigations or audits by any Governmental Authority involving the Assumed Plans, or (ii) claims or Litigation with respect to any Assumed Plan (other than routine claims for benefits or appeals thereof).

(g) Neither Seller nor any of its Affiliates has any Liability to provide retiree, post-ownership or post-termination health, life or other welfare benefits to any Person, other than as required by Section 4980B of the Code and any similar Law.

(h) Seller has provided to Buyer a complete, current and accurate list of each individual who is a Business Employee as of the date hereof (to be updated after the date hereof in accordance with Section 5.12.1), including for each, (i) name or employee identification number, (ii) job title, (iii) date of hire, (iv) annual salary or hourly rate (as applicable), (v) exempt or non-exempt status (for Business Employees located in the United States), (vi) primary work location, (vii) active or inactive status, (viii) employing entity, (ix) visa type, status and sponsoring entity (if applicable), and (x) whether represented by a union, works council, labor organization or other employee representative ("**Business Employee List**").

(i) Seller and its Subsidiaries are not a party to, nor bound by, any collective bargaining agreement or other labor-related contract with a union, works council, labor organization, or other employee representative (each, a "**Collective Bargaining Agreement**"), and none are currently being negotiated; and, to Seller's Knowledge, no Business Employees are

represented by any labor union, labor organization, works council, or employee representative with respect to their employment with the Seller and its Affiliates.

(j) With respect to each Assumed Plan that is maintained for current or former employees or other service providers who reside or work primarily outside of the United States (a "**Non-U.S. Plan**"): (i) each Non-U.S. Plan required to be registered has been registered and has been maintained in good standing in all material respects with any applicable Governmental Authority; (ii) no Non-U.S. Plan is a defined benefit plan (as defined in ERISA, whether or not subject to ERISA), seniority premium, termination indemnity, gratuity or similar plan or arrangement; and (iii) no material unfunded or underfunded Liabilities exist with respect to any Non-U.S. Plan.

(k) Neither Seller nor any of its Affiliates has any obligation to gross-up, indemnify or otherwise reimburse any Business Employee, or individual independent contractor of the Business for any Tax incurred by such individual, including under Section 409A or 4999 of the Code.

3.1.13 Compliance with Laws.

(a) Except as set forth in Section 3.1.13(a) of the Seller Disclosure Schedules, the Business is currently being, and since the Look-Back Date has been, conducted in compliance, in all material respects, with all applicable Laws. Seller has not received any written or, to Seller's Knowledge, oral notice of any actual or alleged material non-compliance or violation of any Laws in connection with the ownership of the Purchased Assets or the operation of the Business.

(b) Seller and its Subsidiaries are and have been since the Look-Back Date in possession of all material Regulatory Approvals pursuant to any applicable Law required for the ownership or operation of the Purchased Assets or Assumed Liabilities. All such Regulatory Approvals are in full force and effect, no default (with or without notice, lapse of time or both) has occurred under any such Regulatory Approval, and none of Seller or any of its Subsidiaries has received any written notice from any Governmental Authority threatening to suspend, revoke, or withdraw any such Permit, in each case except as would not have a Material Adverse Effect.

3.1.14 Purchased Contracts. As of the date hereof, each Purchased Contract listed or described in Section 2.1.1(a) of the Seller Disclosure Schedules is in full force and effect and is a valid and binding obligation of Seller or its Subsidiaries and, to Seller's Knowledge, the other parties thereto, in accordance with its terms and conditions, in each case except (a) as such enforceability may be limited by the Enforceability Exceptions and (b) as set forth on Section 3.1.14 of the Seller Disclosure Schedules. Seller has made available to Buyer correct and complete copies of all Purchased Contracts in effect as of the date hereof. Except for those arising out of the Chapter 11 Cases, as set forth on Section 3.1.14 of the Seller Disclosure Schedules and payment of the Cure Costs set forth in the certificate to be delivered pursuant to Section 2.3.2, as of the date hereof, (i) Seller is not in material breach or default of its obligations under any Purchased Contract, (ii) to Seller's Knowledge, no condition exists that with notice or lapse of time or both would constitute a material default by Seller or its applicable Subsidiary under any such Purchased Contract, and (iii) to Seller's Knowledge, no other party to any such Purchased Contract is in

material breach or default thereunder. Except as set forth on Section 3.1.14 of the Seller Disclosure Schedules, (x) neither Seller nor any Subsidiary has subleased, licensed or otherwise granted to any third Person (unaffiliated with Seller and its Subsidiaries) the right to use or occupy any Leased Real Property or any portion thereof and (y) neither Seller nor any Subsidiary has collaterally assigned or granted any other security interest in any Leased Real Property or any interest therein.

3.1.15 Financial Statements. (a) The audited consolidated balance sheet and statement of operations of Seller as of and for the fiscal year ended December 31, 2022, and (b) (i) the unaudited consolidated balance sheet of Seller as of December 31, 2023 and (ii) the unaudited consolidated statement of operations of Seller for the twelve month period ended December 31, 2023 (collectively, the "**Financial Statements**") have been prepared in conformity with United States generally accepted accounting principles ("**GAAP**") (except as disclosed in the notes thereto and except that the unaudited Financial Statements do not contain footnotes and are subject to normal year-end audit adjustments) applied on a consistent basis throughout the periods covered except as otherwise noted therein. The Financial Statements fairly present in all material respects the financial condition of Seller and its Subsidiaries as of the dates indicated therein and the operating results of Seller and its Subsidiaries for the periods indicated therein, subject to normal year-end audit adjustments and the absence of footnotes in the case of the unaudited Financial Statements. Section 3.1.15 of the Seller Disclosure Schedules sets forth the Financial Statements.

3.1.16 Books and Records. The Purchased Product Records have been maintained in accordance with all applicable Laws in all material respects, and such Purchased Product Records are complete and accurate in all material respects. True and correct copies of all material Purchased Product Records have been made available to Buyer.

3.1.17 Sanctions and Export Controls. None of Seller or any of its Subsidiaries, nor, to Seller's Knowledge, any of their respective directors, officers or employees is a Sanctioned Person. Except as set forth in Section 3.1.17 of the Seller Disclosure Schedules, the Business is currently, and since the Look-Back Date has been, conducted in compliance, in all material respects, with all applicable Sanctions and Export Control Laws. Except as set forth in Section 3.1.17 of the Seller Disclosure Schedules, to Seller's Knowledge, there are no pending or threatened actions or investigations related to violations of Sanctions or Export Control Laws.

3.1.18 Foreign Corrupt Practices Act. Seller and its Subsidiaries are currently, and since the Look-Back Date have been, in material compliance with all applicable anti-bribery and anti-corruption Laws (the "**Anti-Corruption Laws**"), including the Foreign Corrupt Practices Act of 1977, as amended. Seller and its Subsidiaries currently maintain, and since the Look-Back Date have maintained, policies and procedures reasonably designed to ensure compliance by Seller and its Subsidiaries with, and to prevent breaches by Seller and its Subsidiaries of, the Anti-Corruption Laws.

3.1.19 Environmental Matters.

(a) The Business is, and since the Look-Back Date has been, conducted in compliance in all material respects with all Environmental Laws, which compliance has

included obtaining, maintaining and complying in all material respects with all Permits required under Environmental Law.

(b) Neither Seller nor any of its Subsidiaries have received any written notice, and no Claim is pending or, to Seller's Knowledge, threatened, in each case, alleging any material violation of, or material Liability under, Environmental Laws.

(c) Neither Seller nor any of its Subsidiaries (nor, to Seller's Knowledge, any other Person to the extent giving rise to Liability for Seller or any of its Subsidiaries) have treated, stored, disposed of, arranged for or permitted disposal of, transported, handled, manufactured, distributed, released, exposed any Person to, or owned or operated any property or facility contaminated by, any Hazardous Materials, in each case, so as to give rise to any material Liability of Seller and its Subsidiaries under Environmental Law.

(d) Seller and its Subsidiaries have furnished to Buyer all material environmental audits, reports, assessments and other material environmental, health and safety documents relating to the current properties, facilities or operations of the Business or the Purchased Assets, in each case, that are in their possession or under their reasonable control.

3.1.20 Taxes.

(a) (i) All material Tax Returns required to be filed by the Acquired Entities, or with respect to any Purchased Assets, have been timely filed (taking into account extensions) and all such Tax Returns are true, correct and complete in all material respects, (ii) all material Taxes required to be paid by Acquired Entities (or due and payable with respect to the Purchased Assets) have been timely paid, whether or not shown on any Tax Return, and (iii) all material Tax withholding, collection and deposit obligations imposed on or with respect to Acquired Entities or the Purchased Assets have been satisfied in all respects;

(b) (i) No Tax proceeding for material unpaid Taxes with respect to the Acquired Entities or any Purchased Asset is ongoing, pending or being proposed or threatened in writing by a Governmental Authority, (ii) no assessment, deficiency or adjustment with respect to material Taxes has been asserted, or proposed or threatened in writing, with respect to the Acquired Entities or any Purchased Asset, other than any assessment, deficiency or adjustment which has been fully satisfied by payment, settled or withdrawn, and (iii) in the past three years, no claim has been made by a Governmental Authority in a jurisdiction in which Seller and its Subsidiaries do not file Tax Returns or pay Taxes that any Seller or its Subsidiaries is or may be required to file a Tax Return or pay Taxes in that jurisdiction with respect to the Acquired Entities or any Purchased Asset;

(c) (i) No Acquired Entity is a party to or bound by any Tax allocation, sharing, or indemnity agreement or arrangement with any Person (including any advance pricing agreement or other similar agreement relating to Taxes with any Governmental Authority) (other than any such agreement or arrangement entered into in the Ordinary Course that is not primarily related to Taxes) for which it will have any obligation after the Closing, and (ii) no Acquired Entity (x) has ever been a member of any consolidated, affiliated, combined, unitary or similar group with respect to Taxes (other than a group the common parent of which is or was Seller or any of

its Affiliates (including any Acquired Entity)) or (y) has any liability for the Taxes of any Person (other than Seller or any of its Affiliates (including any Acquired Entity)) under Treasury Regulations § 1.1502-6 (or any corresponding provisions of U.S. state or local or non-U.S. Tax Law), as a transferee or successor, or by Contract;

(d) No Acquired Entity has requested or consented to extend the time or is the beneficiary of any extension of time (i) with respect to the due date for the filing of any Tax Return of any Acquired Entity (other than any automatic or automatically granted extension) or (ii) in which any Tax may be assessed or collected by any Governmental Authority (other than any extension which is no longer in effect or any automatic extension as a result of any ongoing Tax proceeding);

(e) No Acquired Entity is subject to Tax in any jurisdiction, other than the country in which it is organized, by virtue of having, or being deemed to have, a permanent establishment, fixed place of business or similar presence;

(f) There are no Encumbrances with respect to Taxes upon any of the Purchased Assets other than Permitted Encumbrances;

(g) After the Closing, the Acquired Entities will not be required to include any material item of income in, or exclude any material item of deduction from, taxable income for any Post-Closing Tax Period as a result of any: (i) change in method of accounting for a taxable period ending on or prior to the Closing Date; (ii) "closing agreement" as described in Section 7121 of the Code (or any corresponding or similar provision of U.S. state or local or non-U.S. Tax Law) executed prior to the Closing; (iii) intercompany transaction or any excess loss account described in Treasury Regulations under Section 1502 of the Code (or any corresponding or similar provision of U.S. state or local or non-U.S. Tax Law) entered into or created prior to the Closing; (iv) installment sale or open transaction disposition made prior to the Closing; (v) cash method of accounting or long-term contract method of accounting utilized prior to the Closing; or (vi) prepaid amount received or deferred revenue accrued on or prior to the Closing; and

(h) Each of the Acquired Entities is and at all times since its formation has been properly classified as an association taxable as a corporation for U.S. federal and applicable U.S. state and local income Tax purposes.

3.1.21 Material Contracts.

(a) Section 3.1.21 of the Seller Disclosure Letter contains a complete and correct list, as of the date of this Agreement, of each Contract described below in this Section 3.1.21(a) under which Seller or any of its Subsidiaries is a party and to which Seller or any of its Subsidiaries has any current or future rights, responsibilities, obligations or liabilities in connection with the Business, other than (A) any stand-alone purchase order not made pursuant to a separate Contract (as long as such purchase order does not impose future obligations on Seller or its Subsidiaries outside of the Ordinary Course for purchase orders of such products), (B) any Plan or confidentiality agreements to which Seller or its Subsidiaries is a party and (C) any Excluded Contracts (all Contracts of the type described in this Section 3.1.21(a), being referred to herein as the "**Material Contracts**"):

(i) is or would be required to be filed as an exhibit to the Seller's Annual Report on Form 10-K pursuant to Item 601(b)(10) of Regulation S-K under the Securities Act;

(ii) with a Top Customer;

(iii) with a Top Supplier;

(iv) requires expenditures by Seller or payments to be received by Seller in excess of $500,000 (or $100,000 solely for the purposes of Section 4.2.1(e)) in the previous twelve (12) month period and/or in the next twelve (12) month period, in each case, as measured from the date hereof;

(v) relates to the incurrence by Seller of any indebtedness for borrowed money or any capitalized lease obligations;

(vi) relates to the acquisition or disposition outside the Ordinary Course of any material assets or any material business, or any capital stock or equity interests of any Person (whether by merger, sale or purchase of stock, sale or purchase of assets or otherwise) entered into in the past two (2) years from the date hereof;

(vii) (A) limits or purports to limit, in any material respect, the freedom of the Business to engage or compete in any line of business or with any Person or in any geographic area, (B) contains exclusivity or "most favored nation" obligations to which the Business is subject in favor of any Person or (C) contains any other provisions restricting or purporting to restrict the ability of the Business to sell, market, distribute, promote, manufacture, develop, commercialize or test or research the Products in any material respect, directly or indirectly through third parties (in the case of clauses (A), (B) and (C), other than any such restriction or purported restrictions that have a *de minimis* effect on the Business);

(viii) is a Contract pursuant to which Seller (A) receives any license to any Intellectual Property material to the Business or the development or Exploitation of any Product (other than (w) non-exclusive licenses to use commercially available software, (x) non-disclosure agreements, (y) licenses for open source software, and (z) licenses which are merely incidental to the primary transactions contemplated by the Contract) (B) grants or licenses to a third party any rights to use any material Owned Intellectual Property (other than Intellectual Property licensed in the Ordinary Course on a non-exclusive basis);

(ix) is a Collective Bargaining Agreement; and

(x) relates to any settlement, conciliation or stipulation of any Litigation against Seller by any other Person, other than settlements of penalties in the Ordinary Course pursuant to a manufacturing agreement, distribution agreement or other Ordinary Course agreement for any Product.

(b) Seller has made available to Buyer correct and complete copies of all Material Contracts in effect as of the date hereof. Except for those arising out of the Chapter 11 Cases, as set forth on Section 3.1.21 of the Seller Disclosure Schedules and payment of the Cure

Costs set forth in the certificate to be delivered pursuant to Section 2.3.2, as of the date hereof, (i) Seller is not in material breach or default of its obligations under any Material Contract, (ii) to Seller's Knowledge, no condition exists that with notice or lapse of time or both would constitute a material default by Seller or its applicable Subsidiary under any such Material Contract, and (iii) to Seller's Knowledge, no other party to any such Material Contract is in material breach or default thereunder.

3.1.22 Customers and Suppliers. Section 3.1.22 of the Seller Disclosure Schedule sets forth a list of (a) the top ten (10) largest customers of the Business measured by dollar value of revenue received from such customer for the year ended December 31, 2023 ("**Top Customers**") and (b) for the same period, the top ten (10) suppliers and vendors based on the aggregate dollar amount of purchases by the Business ("**Top Suppliers**"). As of the date hereof, no such customer or supplier has (i) cancelled or terminated its business relationship with the Business, or (ii) notified or informed Seller in writing that it intends to terminate or materially alter the terms of its buying, distributing or supplying practices or its business relationship with the Business, and Seller does not otherwise have Knowledge of such intent except for Ordinary Course negotiation or re-negotiation of commercial terms. Since the Look-Back Date to the date hereof, the Business has not had any material disputes concerning any defects in its products and/or services with any such Top Customer or Top Supplier except in the Ordinary Course.

3.2 Representations and Warranties of Buyer. Buyer represents and warrants to Seller as follows.

3.2.1 Entity Status. Buyer is duly formed and validly existing under the laws of its jurisdiction of formation and has the requisite corporate power to enter into and perform its obligations under this Agreement and the Ancillary Agreements to which it is or will be a party.

3.2.2 Authority. The execution and delivery of and performance by Buyer of this Agreement and the Ancillary Agreements to which it is or will be a party have been, or will be at or prior to Closing, authorized by all necessary corporate action on the part of Buyer.

3.2.3 No Conflict. The execution and delivery of and performance by Buyer of this Agreement and the Ancillary Agreements to which it is or will be a party (a) do not and will not constitute or result in a violation or breach of, or conflict with, or allow any Person to exercise any rights under, any of the terms or provisions of Buyer's certificate of organization, bylaws or equivalent organizational documents, (b) do not and will not constitute or result in a breach or violation of, or conflict with or allow any Person to exercise any rights under, any Contract, license, lease or instrument to which it is a party; and (c) do not result in the violation of any Law applicable to Buyer.

3.2.4 Required Authorizations. Other than delivery to the applicable Regulatory Authority of the Regulatory Approval Transfer Documentation and, if applicable the approval by the applicable Regulatory Authority of the transfer of the Purchased Regulatory Approvals to Buyer or its designee and entry of the Sale Order, no filing with, notice to or Order, Permit, approval, consent, waiver, license or similar authorization of, any Governmental Authority is required on the part of Buyer as a condition to the lawful consummation of the transactions contemplated by this Agreement or the Ancillary Agreements to which it is or will be a party.

3.2.5 Execution and Binding Obligation. This Agreement and the Ancillary Agreements to which Buyer is or will be a party have been, or will be, duly executed and delivered by Buyer and constitute, or will constitute, legal, valid and binding agreements of Buyer, enforceable against it in accordance with its terms, subject only to the Enforceability Exceptions.

3.2.6 Financial Capacity. Buyer has delivered to Seller a true, correct and complete copy of the executed Equity Commitment Letter from Sponsor to invest, subject to the terms and conditions therein, cash in the aggregate amount set forth therein (the "**Equity Financing**") for the purpose of satisfying all of the obligations of Buyer or any of its Affiliates in this Agreement or, to the extent payable at Closing, under any Ancillary Agreement to which Buyer or its Affiliate is a party (including payment by Buyer of all obligations pursuant to Section 2.3, including the aggregate Closing Payment, and payment of any other fees, expenses and obligations required to be paid or satisfied by Buyer on the Closing Date (the amount of such aggregate payment obligations, the "**Required Amount**")). Assuming (i) the Equity Financing is funded in accordance with the Equity Commitment Letter and (ii) the performance by Seller of its obligations hereunder, as of the date hereof, the net proceeds contemplated by the Equity Commitment Letter will be sufficient to fund the payment by Buyer of the Required Amount. The Equity Commitment Letter is in full force and effect and, except as not prohibited by this Agreement, has not been withdrawn or terminated or otherwise amended or modified in any respect, and no such amendment or modification is contemplated. The Equity Commitment Letter is a legal, valid and binding obligation of Buyer and the other parties thereto, except as may be limited by applicable bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium or similar Laws from time to time in effect affecting generally the enforcement of creditors' rights and remedies, and general principles of equity. No event has occurred which, with or without notice, lapse of time or both, would or would reasonably be expected to constitute a default or breach under the Equity Commitment Letter by any of the parties thereto; *provided* that Buyer is not making any representation or warranty regarding the accuracy of the representations and warranties in Article 3. Buyer has fully paid any and all commitment fees or other fees required by the Equity Commitment Letter to be paid on or before the date of this Agreement. The aggregate proceeds from the Equity Financing constitute all of the financing required for Buyer to consummate the transactions contemplated by this Agreement at Closing and the payment of all associated costs and expenses to be paid by Buyer at Closing. As of the date hereof, Buyer does not have any reason to believe that any of the conditions to the Equity Financing will not be satisfied or that the Equity Financing will not be available to Buyer on the Closing Date; *provided* that Buyer is not making any representation regarding the accuracy of the representations and warranties set forth in Article 3 or compliance by Seller and the Acquired Entities with their obligations hereunder. The Equity Commitment Letter contains all of the conditions precedent to the obligations of the parties thereunder to make the Equity Financing available to Buyer on the terms therein and, except as set forth in the Equity Commitment Letter, there are no contingencies that would permit the parties thereunder to reduce the total amount of the Equity Financing. There are no side letters or other agreements or arrangements to which Buyer or any of its Affiliates is a party related to the funding or investing, as applicable, other than (i) as expressly set forth in the Equity Commitment Letter or (ii) any such side letters, agreements or arrangements that would not adversely affect the availability of the Equity Financing on the Closing Date.

3.2.7 Litigation. There is no material Litigation in progress, pending, or to Buyer's knowledge, threatened against Buyer, which prohibits, restricts or seeks to enjoin the transactions contemplated by this Agreement or the Ancillary Agreements.

3.2.8 No Broker. No broker, agent or other intermediary is entitled to any fee, commission or other remuneration in connection with the transactions contemplated by this Agreement and the Ancillary Agreements based upon arrangements made by or on behalf of Buyer.

3.2.9 Solvency. Assuming (x) the accuracy of the representations and warranties set forth in Section 6.2.1 and (y) the performance by Seller of the covenants and agreements required to be performed by it under this Agreement prior to the Closing, immediately after giving effect to the consummation of the transactions contemplated by this Agreement and the Ancillary Agreements (including any financings being entered into in connection therewith) and taking into account all obligations of Buyer pursuant to this Agreement and the Ancillary Agreements to which it is a party: (a) the fair saleable value of the assets of Buyer will be greater than the total amount of their respective Liabilities; (b) Buyer will be solvent and able to pay its debts and obligations in the Ordinary Course as they become due; (c) no transfer of property is being made and no obligation is being incurred in connection with the transactions contemplated by this Agreement and the Ancillary Agreements with the intent to hinder, delay or defraud either present or future creditors of Buyer in connection with the transactions contemplated by this Agreement and/or the Ancillary Agreements; and (d) Buyer will have adequate capital to carry on its business and all businesses in which Buyer is about to engage.

3.3 Exclusivity of Representations. Except for the representations and warranties made by Seller in Section 3.1 or in any Ancillary Agreement to be delivered by Seller pursuant to this Agreement, neither Seller nor any other Person makes any express or implied representation or warranty with respect to Seller, its Subsidiaries or their businesses, assets, operations, liabilities, condition (financial or otherwise) or prospects, and Seller hereby disclaims any such other representations or warranties. In particular, without limiting the foregoing disclaimer, except for the representations and warranties made by Seller in Section 3.1 or in any Ancillary Agreement to be delivered by Seller pursuant to this Agreement, neither Seller nor any of its Subsidiaries or Affiliates or any other Person makes or has made any representation or warranty to Buyer or any of its respective representatives, with respect to, nor has Buyer or any of its respective representatives relied on, (i) any financial projection, forecast, estimate, budget or prospective information relating to Seller, its Subsidiaries or the Business or (ii) any oral or written information furnished or made available to Buyer or any of its representatives in the course of its due diligence investigation of Seller and its Subsidiaries, the Business, the negotiation of this Agreement and the Ancillary Agreements or the consummation of the transactions contemplated hereby and thereby, including the accuracy, completeness or currency thereof, and neither Seller nor any of its Subsidiaries or Affiliates or any other Person will have any liability to Buyer or any other Person in respect of such information, including any subsequent use of such information.

ARTICLE 4
PRE-CLOSING COVENANTS

4.1 Access and Information.

4.1.1 During the Interim Period, Seller shall (a) afford Buyer and its Representatives reasonable access to the Business and the Purchased Assets, including the Acquired Entities, and information pertaining to the Assumed Liabilities, (b) use reasonable best efforts to cause its employees and Representatives to cooperate with and aid Buyer and its Representatives in its investigation of the Business. Any request or investigation under this Section 4.1.1 shall be made or conducted on a reasonable basis by Buyer providing reasonable Notice to Seller and shall be conducted during normal business hours in such a manner as not to interfere unreasonably with the conduct of the Business, and (c) reasonably consult with Buyer regarding any material ongoing Litigation and provide Buyer with any material communications in connection therewith reasonably promptly following Seller's receipt or delivery thereof. No investigation by Buyer or any of its Representatives or other information received by Buyer or any of its Representatives shall operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller (including Section 7.1) and shall not be deemed to amend or supplement the Seller Disclosure Schedules. Buyer acknowledges and agrees that Seller shall be entitled to restrict any such access to or restrict information (x) as determined, in its respective reasonable discretion, to be appropriate to ensure compliance with any Law, (y) that in the reasonable judgment of Seller would result in the disclosure of any Trade Secrets of third parties in violation of any of its obligations with respect to confidentiality and/or (z) to preserve any applicable attorney client privilege, attorney work product or other legal privilege; *provided* that in the event any information is withheld pursuant to this sentence, Seller shall promptly notify Buyer and at Buyer's request, Seller shall use commercially reasonable efforts to the extent feasible to develop an arrangement to communicate or provide the applicable information (or a portion thereof) in a manner that would not conflict with the foregoing clauses (x) and (y).

4.1.2 During the Interim Period, Buyer hereby agrees it shall not contact, and it shall cause its Affiliates or Representatives to not contact, any employee, licensor, licensee, competitor, supplier, distributor or customer of Seller or its Subsidiaries with respect to the Products, the Purchased Assets, the Business, this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby, without the prior written consent of Seller.

4.2 Ordinary Course of Business.

4.2.1 Except as (x) as required by applicable Law or Bankruptcy Court Order, (y) as required pursuant to the DIP Financing Order or (z) otherwise expressly provided in this Agreement, set forth on Section 4.2.1 of the Seller Disclosure Letter or for actions taken by Seller or its Subsidiaries as required in connection with the Chapter 11 Cases, during the Interim Period, Seller will use its reasonable best efforts to conduct the Business in accordance with the DIP Budget (as defined in the DIP Financing Order) in all material respects, taking into account the resources (financial and otherwise) and personnel available to Seller. Without limiting the foregoing, except (x) as required by applicable Law or Bankruptcy Court Order, (y) as required pursuant to the DIP Financing Order or (z) for actions taken by Seller or its Subsidiaries as required by this Agreement or the Chapter 11 Cases, without the prior written consent of Buyer, during the Interim Period, Seller shall not, and shall cause its Subsidiaries not to, directly or indirectly:

(a) other than as otherwise authorized by the Bankruptcy Court (including, without limitation, by the Final Order (I) Authorizing Debtors to (A) Pay Certain Prepetition Employment Obligations and Compensation Obligations and (B) Maintain the

Compensation Obligations and the Employee Benefits Programs and (II) Granting Related Relief Docket No. 187 or otherwise) or required by the terms of any Plan in existence as of the date hereof, (i) increase or agree to increase the base salary or incentive compensation or any other compensation or benefits of any current or former Business Employee or individual independent contractor of the Business, (ii) adopt, enter into, materially amend or terminate any Plan (or any other benefit or compensation plan, program, agreement or arrangement that would be a Plan if in effect on the date hereof), (iii) grant, announce, or enter into any severance, retention, change in control or transaction bonus, cash or equity or equity-based incentive awards, or similar agreement or arrangement with any current or former Business Employee or individual independent contractor of the Business, (iv) increase or accelerate the vesting or payment of, or otherwise fund or secure the payment of (whether in cash, property or vesting of property) or delivery, any compensation or benefits payable to a current or former Business Employee or other individual independent contractor of the Business, or (v) hire, promote, engage or terminate (other than for cause) any salaried Business Employee or individual independent contractor having annual base salary or hourly wage, as applicable, in excess of $150,000;

(b) (i) modify, extend, terminate or enter into any Collective Bargaining Agreement covering any Business Employees or (ii) recognize or certify any labor union, labor organization, works council or group of employees as the bargaining representative for any Business Employees;

(c) in respect of the Business or with respect to any facility at which Business Employees are located, implement or announce any employee layoffs, plant closings, reductions in compensation or other similar actions that trigger notice obligations under the WARN Act;

(d) grant, impose or suffer to be imposed any Encumbrance upon any of the Purchased Assets or any assets of any Acquired Entity (whether tangible or intangible) other than Permitted Encumbrances or Encumbrances that will be cured prior to the Closing;

(e) materially modify, materially breach, repudiate, extend, renew, reject, let lapse or terminate any Purchased Contract or any Material Contract (or any Contract that would be a Material Contract if entered into prior to the Execution Date), or enter into any Contract that would be a Material Contract if in existence as of the date hereof, or waive, release or assign any material rights or claims under any Purchased Contract or Material Contract, in each case other than in the Ordinary Course or as provided for in the DIP Financing Order or as contemplated or permitted in the DIP Budget;

(f) (i) encumber, transfer, sell, assign, abandon, allow to lapse, fail to prosecute or maintain, exclusively license, or otherwise dispose of any material Owned Intellectual Property, except, in each case, other than (x) the expiration of issued or registered Owned Intellectual Property at the end of the maximum statutory term, or (y) in the Ordinary Course, or (ii) disclose any material Trade Secrets to any Person other than in the Ordinary Course pursuant to a written non-disclosure agreement or under a binding obligation of confidentiality;

(g) compromise or settle any material Litigation, any opposition proceeding at the European Patent Office or any administrative proceeding at the United States

Patent and Trademark Office relating to the Business or cancel, abandon or compromise any claim or waive, abandon or release any right, in each case, that is related to the Business or a Purchased Asset, including in respect of any material claim or right at the United States Patent and Trademark office or European Patent Office that relates to any pending or future patent applications;

(h) amend the organizational documents of the Acquired Entities or issue any Equity Securities of any Acquired Entities other than to Seller or to a Subsidiary of Seller;

(i) in case of any Acquired Entity, incur or issue any indebtedness for borrowed money, or assume, grant, guarantee or endorse, or otherwise become responsible for, any obligations of any Person, or make any loans or advances except under the DIP Financing Order or intercompany loans.

(j) shorten or lengthen payment cycles or make any unusual or extraordinary efforts outside of the Ordinary Course to collect any accounts receivable, intercompany obligation or Liability for indebtedness, or give any discounts or concessions for early payment outside of the Ordinary Course with respect to such accounts receivable, intercompany obligation or Liability for indebtedness, or convey any interest in any accounts receivable, intercompany obligation or Liability for indebtedness to any third party;

(k) redeem, repurchase, issue or sell any shares of, or other equity interests in, the Acquired Entities, or securities convertible into or exchangeable for such shares or equity interests, or issue or grant any options, warrants, call rights, subscription rights or other rights of any kind to acquire such shares, equity interests or securities;

(l) commence any bankruptcy or insolvency proceeding with respect to any Acquired Entity;

(m) sell, transfer, lease, sublease or otherwise dispose of any Purchased Assets or any assets of any Acquired Entity other than in the Ordinary Course;

(n) cause or permit the assignment, assumption or other transfer of any Liability from any Person (including any Seller) to any Acquired Entity;

(o) grant any Top Customer or Top Supplier any material discounts, pricing accommodations, or other similar changes relating to pricing, payment terms or credit support other than in the Ordinary Course;

(p) (A) other than in the Ordinary Course, make, change or revoke any material Tax election, (B) change any annual accounting period, (C) change any material method of accounting for Tax purposes, (D) settle any claim or assessment in a Tax proceeding in respect of a material amount of Taxes, (E) surrender any right to claim a material refund for Taxes, (F) other than with respect to automatic or automatically granted extensions, consent to any extension or waiver of the limitation period applicable to any Tax claim or assessment, or (G) file (in a manner inconsistent with past practice) or amend any material Tax Return, in each case, with respect to any Acquired Entity;

(q) seek any relief from, or modification of, the automatic stay on any Litigation involving Debtors and/or any of its Subsidiaries issued by the Bankruptcy Court;

(r) grant any exclusive license to any material Purchased Intellectual Property to any Person in connection with the sale of Products to such Person or its Affiliates; and

(s) authorize or enter into any agreement or commitment, whether or not in writing, to take any action prohibited by this Section 4.2.

4.3 Notification of Certain Matters.

4.3.1 From the Execution Date through five (5) Business Days prior to the Closing Date (and in any event within two (2) Business Days after Seller discovers the existence of any such Contract), Seller shall use commercially reasonable efforts to provide Buyer written Notice of any Contract to which Seller or any of its Subsidiaries is a party as of the Execution Date that was not set forth on Section 2.1.1(a) of the Seller Disclosure Schedules and was not an Excluded Contract, and any Contracts that arise after the Execution Date, and Buyer shall be entitled, in its sole discretion and upon written Notice to Seller (email to counsel being sufficient), to add any such Contract to Section 2.1.1(a) of the Seller Disclosure Schedules; *provided*, that any dispute regarding Cure Costs associated with any such Contract shall be addressed as set forth in the Bidding Procedures. From the Execution Date through five (5) Business Days prior to the Closing Date, to the extent Buyer desires to amend Section 2.1.1(a) of the Seller Disclosure Schedules to remove (unless otherwise indicated in the Seller Disclosure Letter) any Contract on Section 2.1.1(a) of the Seller Disclosure Schedules, Buyer shall provide Seller with written Notice thereof (email to counsel being sufficient); *provided*, any such amendment to Section 2.1.1(a) of the Seller Disclosure Schedules and removal of any Contract therefrom shall not be considered and have no impact in determining whether any of the conditions to Closing set forth in Article 6 are or have been satisfied. Notwithstanding anything to the contrary set forth herein, (i) Buyer shall have no right to add any Contract rejected, in accordance with Section 365 of the Bankruptcy Code, by Seller prior to Seller receiving written Notice from Buyer to include such Contract on Section 2.1.1(a) of the Seller Disclosure Schedules and (ii) Seller shall not reject any Contract set forth on Section 2.1.1(a) of the Seller Disclosure Schedules or any Excluded Contract during the Interim Period without the prior written consent of Buyer.

4.3.2 Buyer's receipt of information under this Section 4.3 shall not operate as a waiver or otherwise affect any representation, warranty or agreement given or made by Seller in this Agreement (including Section 7.1) and shall not be deemed to amend or supplement the Seller Disclosure Schedules.

4.4 Obligation to Consummate the Transaction. Each of the Parties agrees that it shall use commercially reasonable efforts to take, or cause to be taken, all action and to do, or cause to be done, all things necessary, proper or advisable to the extent permissible under applicable Law, to consummate and make effective the transactions contemplated by this Agreement and to ensure that the conditions set forth in Article 6 are satisfied.

4.5 Filings; Other Actions; Notification and Cooperation.

4.5.1 Seller and Buyer shall cooperate with each other and use, and shall cause their respective Affiliates and Subsidiaries to use, their respective reasonable best efforts to take (or cause to be taken) all actions, and do (or cause to be done) all things necessary, proper or advisable under this Agreement and applicable Law to consummate and make effective the Transactions as expeditiously as reasonably practicable, and in any event no later than the Outside Date, including: (i) preparing and filing all documentation to effect all necessary notices, reports and other filings (and in any event, by filing by no later than ten (10) Business Days after the date hereof the notifications, filings and other information required to be filed under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended (the "**HSR Act**") with respect to the Transactions, unless mutually agreed otherwise); (ii) obtaining as expeditiously as practicable all consents, registrations, approvals, permits, expirations of waiting periods and authorizations necessary to be obtained from any Governmental Authority in order to consummate the Transactions; (iii) obtaining (and cooperating with each other in obtaining) any consent, approval of, waiver or any exemption by, any non-governmental third party, in each case, to the extent necessary, proper or advisable in connection with the Transactions; and (iv) executing and delivering any reasonable additional instruments necessary to consummate the Transactions and to fully carry out the purposes of this Agreement. Nothing herein shall require Seller or any of its Subsidiaries to pay any fee other consideration to obtain any such consent or approval of any third party.

4.5.2 None of the Parties, including their respective Subsidiaries, shall enter into a definitive agreement providing for, or consummate, the acquisition of any transaction which would reasonably be expected to materially delay or prevent consummation of the Transactions. Neither Party, without the other Party's prior written consent, shall: (i) enter into any timing, settlement or similar agreement, or otherwise agree or commit to any arrangement, that would have the effect of extending, suspending, lengthening or otherwise tolling the expiration or termination of the waiting period applicable to the contemplated transactions under the HSR Act or any Antitrust Laws; or (ii) enter into any timing or similar agreement, or otherwise agree or commit to any arrangement, that would bind or commit the Parties not to consummate the Transactions (or that would otherwise prevent or prohibit the Parties from consummating the Transactions). As used in this Agreement, the term "**Antitrust Laws**" means the Sherman Act of 1890, the Clayton Act of 1914, the Federal Trade Commission Act of 1914, the HSR Act and all other federal, state and foreign statutes, rules, regulations, orders, decrees and other Laws and Orders that are designed or intended to prohibit, restrict or regulate actions having the purpose or effect of monopolization or restraint of trade or lessening competition through merger or acquisition.

4.5.3 Buyer and Seller shall cooperate with one another, and consider in good faith the views of one another, with respect to the appropriate course of action with respect to obtaining the consents, approvals, permits, waiting period expirations or authorizations of any Governmental Authority required to consummate the Transactions prior to the Outside Date. No Party hereto or its counsel shall independently participate in any substantive call or meeting with any Governmental Authority in respect of any such filing, investigation, or other inquiry relating to the matters that are the subject of this Section 4.5 without giving the other Party or its counsel reasonable prior notice of such call or meeting and, to the extent permitted by such Governmental Authority, the opportunity to attend and participate. In furtherance of the foregoing and to the extent permitted by applicable Law: (i) each party shall notify the

other, as far in advance as practicable, of any filing or material or substantive communication or inquiry it or any of its Subsidiaries intends to make with any Governmental Authority relating to the matters that are the subject of this Section 4.5; (ii) prior to submitting any such filing or making any such communication or inquiry, such Party shall provide the other Party and its counsel a reasonable opportunity to review, and shall consider in good faith the comments of the other Party in connection with, any such filing, communication or inquiry; (iii) promptly following the submission of such filing or making such communication or inquiry, such Party shall provide the other Party with a copy of any such filing or, if in written form, communication or inquiry; and (iv) each Party shall consult with the other Party in connection with any inquiry, hearing, investigation or litigation by, or negotiations with, any Governmental Authority relating to the Transactions, including the scheduling of, and strategic planning for, any meetings with any Governmental Authority relating thereto. In exercising the foregoing cooperation rights, Seller and Buyer each shall act reasonably and as promptly as reasonably practicable. Notwithstanding the foregoing, materials provided pursuant to this Section 4.5 may be reasonably redacted to (A) remove references concerning valuation, (B) comply with contractual arrangements, (C) comply with applicable Law, and (D) address legal privilege or confidentiality concerns.

4.5.4 In furtherance and not in limitation of the covenants of the Parties contained in this Section 4.5, Buyer, including its Affiliates, shall use its reasonable best efforts to resolve such objections, if any, as may be asserted by any Governmental Authority under any Antitrust Law with respect to the Transactions and to avoid the entry of, or effect the dissolution of, any decree, order, judgment, injunction, temporary restraining order or other order in any suit or proceeding, as may be asserted by any Governmental Authority under any Antitrust Law that would otherwise have the effect of preventing the consummation of the Transactions. For the purposes of this Section 4.5, "reasonable best efforts" shall mean taking any and all actions (such actions, the "**Regulatory Actions**") reasonably necessary to obtain the consents, approvals, permits, waiting period expirations or authorizations of any Governmental Authority required to consummate the Transactions no later than the Outside Date, including: (x) committing, agreeing or submitting (or offering to commit, agree or submit) to any consent decree, hold separate order, sale, divestiture, lease, license, transfer, disposal, Encumbrance, other change or restructuring of, or operating restriction with respect to the businesses, properties, product lines, assets, permits, operations, rights or interest therein of Buyer, its Affiliates, the Purchased Assets or any of the Business; or (y) committing, agreeing or submitting (or offering to commit, agree or submit) to any action or agreeing to any remedies, terms or conditions in connection with its obligations under this Section 4.5; *provided* that those actions, remedies, terms or conditions are conditioned on the consummation of the Transactions contemplated by this Agreement.

4.5.5 In furtherance and not in limitation of the covenants of the Parties contained in this Section 4.5, if any administrative or judicial action or proceeding, including any proceeding by a private party, is instituted challenging the Transactions as violative of any Antitrust Law, each of Seller and Buyer shall use reasonable best efforts to contest and resist any such action or proceeding and to have vacated, lifted, reversed or overturned any decree, judgment, injunction or other order, whether temporary, preliminary or permanent, that is in effect and that prohibits, prevents or restricts consummation of the Transactions.

4.5.6 Seller and Buyer each shall, upon request by the other, promptly furnish the other with all information concerning itself, its Affiliates, directors, officers and stockholders and such other matters as may be reasonably necessary or advisable in connection with any statement, filing, notice or application made by or on behalf of Buyer, Seller or any of their respective Affiliates to any third party or any Governmental Authority in connection with the Transactions, all of which information shall be true and correct when provided; *provided* that each Party shall be entitled to redact discussions of the transaction value and competitively sensitive information, and may reasonably designate applicable materials to be reviewed solely by the other Party's outside counsel.

4.5.7 Seller and Buyer each shall keep the other reasonably apprised of the status of matters relating to completion of the Transactions, including promptly furnishing the other with copies of notices or other communications received by Seller or Buyer, as the case may be, or any of their respective Affiliates from any third party or any Governmental Authority with respect to the Transactions, other than immaterial communications.

4.5.8 Buyer shall bear the cost of any filing fee payable to a Governmental Authority in connection with any filings made under this Section 4.5.

ARTICLE 5
ADDITIONAL COVENANTS

5.1 Further Assurances.

5.1.1 Each of Seller and Buyer shall, at any time or from time to time after the Closing, at the request and expense of the other Party, execute and deliver to the other Party all such instruments and documents or further assurances as the other Party may reasonably request, in each case that are consistent with the terms of this Agreement, in order to (a) vest in Buyer all of Seller's right, title and interest in and to the Purchased Assets (including the Purchased Intellectual Property) as contemplated hereby, (b) effectuate Buyer's assumption of the Assumed Liabilities and (c) grant to each Party all rights contemplated to be granted to such Party under this Agreement and the Ancillary Agreements; *provided, however*, that after the Closing, apart from such foregoing customary further assurances, neither Seller nor Buyer shall have any other obligations except as specifically set forth and described herein or in the Ancillary Agreements.

5.1.2 If any approval, consent or waiver required for Seller to assume and assign to Buyer the Purchased Contracts and other Purchased Assets shall not have been obtained prior to the Closing, Seller shall use commercially reasonable efforts to obtain such approval, consent or waiver to assign to Buyer the Purchased Contracts and other Purchased Assets, including using commercially reasonable efforts to facilitate any negotiations with the counterparties to such Purchased Contracts and to obtain an order (which may be the Sale Order) containing a finding that the proposed assumption of such Purchased Contracts and assignment to Buyer satisfies all applicable requirements of section 365 of the Bankruptcy Code. At the Closing (a) Seller shall, pursuant to the Sale Order, assign to Buyer each of the Purchased Contracts that is capable of being assigned and (b) Seller shall pay all Cure Costs (if any) set forth in the certificate to be delivered pursuant to Section 2.3.2, in each case in connection with such assignment, and Buyer shall assume and discharge when due the Assumed Liabilities (if any) under the Purchased Contracts. Except

as to Purchased Contracts assigned pursuant to section 365 of the Bankruptcy Code or the Sale Order, anything in this Agreement to the contrary notwithstanding, this Agreement shall not constitute an agreement to assign any Purchased Asset or any right thereunder if an attempted assignment, without the consent of a Third Party, would constitute a breach or in any way adversely affect the rights of Buyer or Seller thereunder, and Seller, at Buyer's expense (if any), shall use its commercially reasonable efforts to obtain any such required consent(s) as promptly as possible. If such consent is not obtained or such assignment is not attainable pursuant to section 365 of the Bankruptcy Code or the Sale Order, or if any attempted assignment would be ineffective or would impair Buyer's rights under the Purchased Assets in question so that Buyer would not in effect acquire the benefit of all such rights, then Seller, to the maximum extent permitted by applicable Law, shall act after the Closing, at Buyer's request and expense, as Buyer's agent in order to obtain for it the benefits thereunder and shall cooperate, to the maximum extent permitted by applicable Law, with Buyer in any other reasonable arrangement designed to provide such benefits to Buyer. Seller and its Subsidiaries are not under any obligation to pay any money to a Third Party (unless Buyer agrees in writing to reimburse Seller for such payment), incur any material obligations, commence any Litigation (*provided* that Seller shall cooperate in any Litigation initiated by Buyer in the Bankruptcy Court regarding the assumption and assignment of any Purchased Contract and matters related thereto) or offer or grant any material accommodation (financial or otherwise) to any Third Party in order to obtain any approval, consent or waiver. All obligations of Seller under this Section 5.1.2 shall expire on the date that is twelve (12) months after the Closing Date.

5.1.3 Seller will use its commercially reasonable efforts to obtain, or cause to be obtained, prior to Closing, any approval, consent or waiver required for Seller to assign to Buyer, and for Buyer to assume, the Purchased Contracts and other Purchased Assets required as a result of the consummation of the transaction contemplated by this Agreement and the Ancillary Agreements or necessary to vest in Buyer all of Seller's rights, title and interest in and to the Purchased Assets, except to the extent such consents are not necessary as a result of the entry of the Sale Order. Despite the previous sentence, Seller is not under any obligation to pay any money to a Third Party (unless Buyer agrees in writing to reimburse Seller for such payment), incur any material obligations, commence any Litigation (*provided* that Seller shall cooperate in any Litigation initiated by Buyer in the Bankruptcy Court) or offer or grant any material accommodation (financial or otherwise) to any Third Party in order to obtain such approval, consent or waiver or take any action whatsoever that is not permitted by the Chapter 11 Cases. Buyer will cooperate in obtaining such consents, approvals and waivers, including by providing information of Buyer as is reasonably requested by a Third Party.

5.2 Publicity. No press release, public statement or announcement or other public disclosure (a "**Public Statement**") with respect to this Agreement, the Ancillary Agreements or the transactions contemplated hereby or thereby may be made except (a) with the prior written consent and joint approval of Buyer and Seller, not to be unreasonably withheld, or (b) if required by applicable Law, the Chapter 11 Cases, a Governmental Authority, or stock exchange requirements. Where the Public Statement is required by applicable Law, the Chapter 11 Cases, a Governmental Authority, or stock exchange requirement, the Party required to make the Public Statement will use its commercially reasonable efforts to consult with the other Party, and consider in good faith any revisions proposed by the other Party, prior to making such disclosure, and shall limit such disclosure to only that information that is legally or otherwise required to be disclosed.

5.3 Certain Tax Matters.

5.3.1 Withholding Taxes.

(a) The amounts payable by one Party (the "**Payer**") to another Party (the "**Payee**") pursuant to this Agreement ("**Payments**") shall not be reduced on account of any Taxes unless required by applicable Law. The Payee alone shall be responsible for paying any and all Taxes (other than withholding Taxes required to be paid by the Payer under applicable Law) levied on account of, or measured in whole or in part by reference to, any Payments it receives. The Payer shall deduct or withhold from the Payments any Taxes that it is required by applicable Law to deduct or withhold, and all such amounts deducted and withheld shall be treated for all purposes of this Agreement as having been paid to Payee. Notwithstanding the foregoing, if the Payee is entitled under any applicable Law or Tax treaty to a reduction of rate of, or the elimination of, or recovery of, applicable withholding Tax, it shall timely deliver to the Payer or the appropriate Governmental Authority (with the assistance of the Payer to the extent that this is reasonably required) the prescribed forms necessary to reduce the applicable rate of withholding or to relieve the Payer of its obligation to withhold Tax, and the Payer shall apply the reduced rate of withholding, or dispense with the withholding, as the case may be, to the extent it complies with the applicable Tax treaty. If, in accordance with the foregoing, the Payer withholds any amount, it shall make timely payment to the proper Taxing Authority of the withheld amount, and send to the Payee proof of such payment as soon as reasonably practicable.

(b) Seller shall deliver to Buyer a non-foreign affidavit dated as of the Closing Date, sworn under penalty of perjury and in form and substance required under Treasury Regulations issued pursuant to section 1445 of the Code stating that Seller is not a "foreign person" as defined in section 1445 of the Code or a properly completed IRS Form W-9.

5.3.2 Transfer Taxes and Apportioned Obligations.

(a) All amounts payable hereunder or under any Ancillary Agreement are exclusive of all recordation, transfer, documentary, stamp, conveyance, value added, sales, consumption, goods and services taxes or other similar Taxes imposed or levied by reason of, in connection with or attributable to this Agreement and the Ancillary Agreements or the transactions contemplated hereby and thereby (collectively, "**Transfer Taxes**"). Buyer and Seller shall each be responsible for the payment of fifty percent (50%) of all Transfer Taxes, and shall pay all amounts due and owing in respect of any Transfer Taxes, these amounts in addition to the sums otherwise payable, at the rate in force at the due time for payment or such other time as is stipulated under applicable Law.

(b) All personal property and similar ad valorem obligations levied with respect to the Purchased Assets for a taxable period which includes (but does not end on) the Closing Date (collectively, the "**Apportioned Obligations**") shall be apportioned between Seller and Buyer based on the number of days of such taxable period ending on the Closing Date (such portion of such taxable period, the "**Pre-Closing Tax Period**") and the number of days of such taxable period beginning on the day after the Closing Date (such portion of such taxable period, the "**Post-Closing Tax Period**"). Seller shall be liable for the proportionate amount of such Apportioned Obligations that is attributable to the Pre-Closing Tax Period, and Buyer shall be

liable for the proportionate amount of such Apportioned Obligations that is attributable to the Post-Closing Tax Period.

5.3.3 Cooperation and Exchange of Information. Each of Seller and Buyer shall (a) provide the other with such assistance as may reasonably be requested by the other Party (subject to reimbursement of reasonable out-of-pocket expenses) in connection with the preparation of any Tax Return, audit or other examination by any Taxing Authority or judicial or administrative proceeding relating to Liability for Taxes in connection with the Business or the Purchased Assets, (b) retain and provide the other Party with any records or other information that may be relevant to such Tax Return, audit or examination, proceeding or determination and (c) inform the other Party of any final determination of any such audit or examination, proceeding or determination that affects any amount required to be shown on any Tax Return of the other for any period.

5.4 Accounts Receivable and Payable.

5.4.1 Accounts Receivable. The Parties acknowledge and agree that all Accounts Receivable shall become the property of Buyer subsequent to the Closing. In the event that, subsequent to the Closing, Seller or any of its Subsidiaries receives any payments from any obligor with respect to an Account Receivable outstanding on the Closing Date, then Seller or any of its Subsidiaries shall, or shall cause such Subsidiary to, within thirty (30) days after receipt of such payment, remit the full amount of such payment to Buyer.

5.4.2 Accounts Payable. In the event that, subsequent to the Closing, Buyer, Seller or any of its Subsidiaries receives any invoices from any Third Party with respect to any account payable of the Business outstanding prior to the Closing, then Seller shall be responsible for payment thereof. In the event that, subsequent to the Closing, Seller or any of its Subsidiaries receives any invoices from any Third Party with respect to any account payable of Buyer or any of its Affiliates incurred for any period after the Closing, then Seller shall, or shall cause such Subsidiary to, within thirty (30) days after receipt of such invoice, provide such invoice to Buyer.

5.5 Wrong Pockets.

5.5.1 Assets. Without limiting Section 5.1, if either Buyer or Seller becomes aware subsequent to the Closing that any of the Purchased Assets has not been transferred to Buyer or that any of the Excluded Assets has been transferred to Buyer, it shall promptly notify the other Party and the Parties shall, and shall cause their Subsidiaries to, as soon as reasonably practicable, take all necessary actions (including executing any further instruments or documents) to ensure that such property is transferred, at the expense of Seller and with any necessary prior Third Party consent or approval, to (a) Buyer, in the case of any Purchased Asset that was not transferred to Buyer at the Closing; or (b) Seller, in the case of any Excluded Asset that was transferred to Buyer at the Closing.

5.5.2 Payments. If, on or after the Closing, either Party shall receive any payments or other funds due to or belonging to the other Party pursuant to the terms of this Agreement or any Ancillary Agreement, then the Party receiving such funds shall, within thirty (30) days after receipt of such funds, forward such funds to the proper Party. The Parties acknowledge and agree

there is no right of offset regarding such payments and a Party may not withhold funds received from Third Parties for the account of the other Party in the event there is a dispute regarding any other issue under this Agreement or any of the Ancillary Agreements.

5.6 Purchased Intellectual Property and Purchased Regulatory Approvals. Promptly following the Closing, at Buyer's sole cost and expense, Seller shall take such further reasonable actions and execute such further documents as may be necessary or reasonably requested by Buyer to effectuate, evidence and perfect the assignment and transfer of the Owned Intellectual Property and Purchased Regulatory Approvals to Buyer, including making such filings with any Governmental Authorities as may be required to transfer the Owned Intellectual Property and Purchased Regulatory Approvals to Buyer or to further the prosecution, issuance or maintenance of the Owned Intellectual Property and Purchased Regulatory Approvals.

5.7 Bankruptcy Court Filings and Approval.

5.7.1 Seller shall use its commercially reasonable efforts to obtain entry of the Bidding Procedures Order and the Sale Order and such other relief from the Bankruptcy Court as may be necessary or appropriate in connection with this Agreement and the consummation of the transactions contemplated by this Agreement. Promptly after execution of this Agreement, Seller shall file with the Bankruptcy Court a motion in form and substance reasonably acceptable to Seller and Buyer (the "**Bidding Procedures Motion**") seeking:

(a) entry of an order in form and substance reasonably acceptable to Seller and Buyer (the "**Bidding Procedures Order**," and together with the Sale Order, the "**Bankruptcy Court Orders**"), (a) establishing the Bidding Procedures (as defined in the Bidding Procedures Order), (b) approving procedures for the assumption and assignment of contracts, (c) setting sale milestones and scheduling related hearings, and (d) approving the Termination Fee and Expense Reimbursement; and

(b) entry of an order substantially in the form to be filed with the Bankruptcy Court, which proposed form shall be in form and substance acceptable to the Seller and the Buyer, and with such changes the Seller and the Buyer find reasonably acceptable, authorizing and approving pursuant to Sections 105, 363, and 365 of the Bankruptcy Code, inter alia, (i) the sale of the Purchased Assets of the Seller to Buyer on the terms and conditions set forth herein, free and clear of all Encumbrances (to the extent set forth therein), other than Permitted Encumbrances and Assumed Liabilities, (ii) the assumption and assignment of the Purchased Contracts to Buyer (iii) Seller has acted in "good faith" within the meaning of Section 363(m) of the Bankruptcy Code; (iv) this Agreement was negotiated, proposed and entered into by the Parties without collusion, in good faith and from arm's length bargaining positions, and (v) Buyer shall have no Liability or responsibility for any Liability or other obligation of Seller arising under or related to the Purchased Assets other than as expressly set forth in this Agreement, including successor or vicarious Liabilities of any kind or character, including any theory of antitrust, environmental, successor, or transferee Liability, labor law, de facto merger, or substantial continuity (as amended, modified, or supplemented, the "**Sale Order**").

5.7.2 Seller shall give appropriate notice, and provide appropriate opportunity for hearing, to all Persons entitled thereto, of all motions (including the Bidding Procedures Motion),

orders, hearings, and other proceedings relating to this Agreement or any Ancillary Agreement and the transactions contemplated hereby and thereby and such additional notice as ordered by the Bankruptcy Court or as Buyer may reasonably request.

5.7.3 Seller and Buyer shall take all commercially reasonable actions as may be reasonably necessary to cause the Bidding Procedures Order and Sale Order to become Final Orders, including, to the extent reasonably practicable, furnishing affidavits, declarations or other documents or information for filing with the Bankruptcy Court. Buyer agrees that it will promptly take such commercially reasonable actions as are reasonably requested by Seller to assist in obtaining entry of the Bidding Procedures Order, to the extent applicable, and Sale Order and a finding of adequate assurance of future performance by Buyer, including furnishing affidavits or other documents or information for filing with the Bankruptcy Court for the purposes, among others, of (x) providing necessary assurances of performance by Buyer under this Agreement and demonstrating that Buyer is a "good faith" purchaser under Section 363(m) of the Bankruptcy Code, and (y) establishing adequate assurance of future performance within the meaning of Section 365 of the Bankruptcy Code.

5.7.4 Buyer acknowledges that under the Bankruptcy Code, the sale is subject to approval of the Bankruptcy Court. Buyer acknowledges that to obtain such approval Seller must demonstrate that it has taken reasonable steps to obtain the highest or otherwise best bid possible for the assets, including giving notice of the transactions contemplated by this Agreement to creditors and other interested parties as ordered by the Bankruptcy Court, providing information about the assets to prospective Qualified Bidders (to be defined in the Bidding Procedures Order), and entertaining any higher or otherwise better offers from prospective Qualified Bidders.

5.7.5 If the Bidding Procedures Order, Sale Order or any other orders of the Bankruptcy Court relating to this Agreement or the transactions contemplated hereby shall be appealed by any Person (or if any petition for certiorari or motion for reconsideration, amendment, clarification, modification, vacation, stay, rehearing or reargument shall be filed with respect to the Sale Order, Bidding Procedures Order or other such order), and this Agreement has not otherwise been terminated pursuant to Section 8.1, Seller shall immediately notify Buyer of such appeal, petition, or motion and shall use commercially reasonable efforts to defend such appeal, petition, or motion and shall use commercially reasonable efforts to obtain an expedited resolution of any such appeal, petition, or motion.

5.7.6 Subject to entry of the Sale Order, (a) on or prior to the Closing, Seller shall pay the Cure Costs and cure any and all other defaults and breaches under the Purchased Contracts to the extent required under section 365 of the Bankruptcy Code (excluding any Purchased Contracts in which there is an objection by a non-debtor Purchased Contract counterparty to the Cure Costs asserted by Seller with regard to any such Contract or other dispute as to the assumption or assignment of such Contract (such contract, a "**Disputed Contract**") for which Cure Costs (or other matters related to the assumption and assignment of such Contract) have not been consensually agreed with the Contract counterparty and Seller or fixed by an order of the Bankruptcy Court as of the Closing) so that such Purchased Contracts may be assumed by Seller and assigned to Buyer (subject to payment by Seller of the Cure Costs and provision by the Buyer of adequate assurance of future performance), and (b) with respect to each Purchased Contract that is a Disputed Contract for which Cure Costs (or other matters related to the assumption and

assignment of such Contract) have not been consensually agreed upon with the Contract counterparty and Seller or fixed by an order of the Bankruptcy Court, on the date that is five (5) Business Days after the date on which (i) the Cure Costs with respect to such Purchased Contract have been consensually agreed, or (ii) the Bankruptcy Court has entered an order fixing such Cure Costs, Seller shall pay such Cure Costs so that such Purchased Contracts may be assumed by the Seller and assigned to the Buyer (subject to payment by Seller of the Cure Costs and provision by the Buyer of adequate assurance of future performance), in each case of the foregoing clauses (a) and (b), in accordance with the provisions of Section 365 of the Bankruptcy Code, the Bidding Procedures Order, the Sale Order and this Agreement; *provided*, that, notwithstanding anything to the contrary herein, Seller shall be entitled to designate any Disputed Contract as an Excluded Contract in its sole discretion upon Notice to Buyer (email to counsel being sufficient) at any time during the pendency of the dispute and, in any event, within five (5) Business Days after the date on which the Bankruptcy Court has entered an order fixing a Cure Cost that is higher than the amount listed on the Cure Cost Certificate; *provided, further*, that Buyer may elect to assume such Contract if it is material to the Business (and have such Contract be treated as an Assumed Contract hereunder) by notifying Seller, and Seller shall be required to pay any Cure Costs in excess of the amount set forth on the Cure Cost Certificate. Seller agrees that it will promptly take such commercially reasonable actions as are necessary to obtain a final order of the Bankruptcy Court (which may be the Sale Order) providing for the assumption and assignment of such Contracts that are not designated as Excluded Contracts. For the avoidance of doubt, if there is any inconsistency between this Agreement and the Bidding Procedures Order with respect to the assumption and assignment of the Contracts, or the payment of the Cure Costs, the Bidding Procedures Order shall govern.

5.8 Copies of Pleadings. Seller shall consult with Buyer concerning the Bidding Procedures Order, the Sale Order and any other Orders of the Bankruptcy Court relating to the transactions contemplated hereby, and the bankruptcy pleadings and proceedings in connection therewith. To the extent reasonably practicable at least two (2) Business Days prior to filing thereof, Seller shall provide Buyer with drafts of all documents, motions, orders, filings or pleadings that Seller proposes to file with the Bankruptcy Court that relate to the approval of this Agreement, the Bidding Procedures Order, the Sale Order and the consummation of the transactions contemplated hereby. Seller shall also promptly provide Buyer with copies of all pleadings received by or served by or upon Seller in connection with the Chapter 11 Cases that relate to or, in Seller's judgment, are reasonably expected to affect the transactions provided for in this Agreement and which have not, to the actual knowledge of Seller, otherwise been served on Buyer.

5.9 Books and Records. For a period of six (6) years after the Closing, Buyer shall: (a) retain all books and records related to the Purchased Assets, the Assumed Liabilities and the Business; and (b) upon reasonable notice and during normal business hours, cooperate with and provide Seller, any of Seller's Affiliates, and the officers, employees, agents and Representatives of Seller and Seller's Affiliates reasonable access (including the right to make copies at Seller's expense or the expense of any Affiliate of Seller) to such books and records and to Buyer's Representatives, to the extent necessary for a reasonable business purpose, including as may be necessary for the preparation of financial statements, Regulatory Filings related to the Products, Tax Returns, in connection with any Litigation, or in connection with the administration of the Chapter 11 Cases, and to any and all books and records relating to any Purchase Price payments

or any related reports, including all documents, work papers, schedules, memoranda, and records used by or prepared by Buyer or its Representatives in preparing any such reports, together with any other information related thereto which Seller may reasonably request. Notwithstanding the foregoing, Buyer shall not be required by this Section 5.9 to provide Seller, any of Seller's Affiliates, and the officers, employees, agents and Representatives of Seller and Seller's Affiliates with access to or to disclose information (i) the disclosure of which would violate applicable Law, (ii) that in the reasonable judgment of Buyer would result in the disclosure of any Trade Secrets of third parties or violate any of its obligations with respect to confidentiality or (iii) the disclosure of which would cause the loss of any attorney-client, attorney work product or other legal privilege.

5.10 Assumption of Regulatory Commitments; Transfer of Purchased Regulatory Approvals. The Parties shall reasonably cooperate with each other in any necessary or desirable communications with Regulatory Authorities regarding the transfer of the rights to the Purchased Regulatory Approvals. Notwithstanding any delay in transferring the rights to the Purchased Regulatory Approvals to Buyer, as between the Parties, Buyer shall be exclusively responsible for (and shall bear the cost of), and shall discharge all liabilities related to, the manufacture, packaging, labeling, promotion, marketing, handling, offering for sale or sale of the Products by or on behalf of Buyer after the Closing. From and after the Closing, Buyer will assume control of, and responsibility for, all costs and Liabilities arising from or related to any commitments or obligations to any Governmental Authority involving the Purchased Assets and the Business. Seller shall use all commercially reasonable efforts to complete the transfer of each Purchased Regulatory Approval as promptly as practicable after the Closing. Buyer shall use all commercially reasonable efforts to assist Seller in the transfer of the Purchased Regulatory Approvals to Buyer, accept the transfer of the Purchased Regulatory Approvals and formalize with Seller and any applicable Regulatory Authority, as promptly as practicable after the Closing, all necessary documents. Following such transfer, Seller shall not retain any rights in any Purchased Regulatory Approvals.

5.11 Trade Notification. Seller and Buyer shall consult with each other on the timing, method, form and content of notifications to customers and suppliers regarding the transactions contemplated by this Agreement, and shall consider in good faith any comments or proposed changes received from the other Party.

5.12 Employee Matters.

5.12.1 Offers of Employment. Seller shall update the Business Employee List and provide to Buyer the updated Business Employee List thirty (30) days prior to Closing, on the Closing Date, and within five (5) Business Days of Buyer's reasonable written request. No later than ten (10) Business Days prior to the Closing Date, Buyer shall offer employment on an at-will basis to be effective as of the Closing to each Offer Employee it designates in its sole discretion (individuals who accept such offer of employment and actually commence employment with Buyer or its Affiliate shall be referred to herein, collectively with the employees who are employed by an Acquired Entity as of immediately prior to the Closing and the Automatic Transfer Employees, the "**Continuing Employees**"). Seller will cooperate with any reasonable requests by Buyer in order to facilitate the offers of employment and delivery of such offers. Each offer made pursuant to this Section 5.12.1 shall initially provide for (a) base salary or hourly wage rate, as applicable, not less than such Offer Employee's base salary or hourly wage rate as in effect

immediately prior to the Closing Date, (b) annual target cash incentive compensation opportunities (excluding any equity, equity-based, long-term incentive, change in control, transaction or retention opportunities), to the extent applicable, that are substantially comparable, in the aggregate, to those provided to such Offer Employee by Seller and its Subsidiaries immediately prior to the Closing Date, to the extent applicable, and (c) other material employee benefits (including health, welfare, and retirement benefits but excluding equity or equity-based, long-term incentive, severance, retention, incentive, bonus, change in control, transaction, stock purchase plans, deferred compensation, post-employment welfare benefits and qualified and non-qualified defined benefit pension benefits) that are reasonably comparable, in the aggregate, to the employee benefits (including health, welfare, and retirement benefits subject to the same exclusions) provided to, as determined by Buyer in its discretion, (i) such Offer Employee by Seller and its Subsidiaries immediately prior to the Closing Date, under the Plans set forth on Section 3.1.12(a) of the Seller Disclosure Schedules or (ii) similarly-situated employees of Buyer and its Affiliates. Until December 31, 2024 (or, if earlier, until the relevant Continuing Employee's termination of service following the Closing), Buyer shall not, and shall cause its Affiliates not to, materially reduce, decrease or detrimentally change the terms and conditions of the employment of such Continuing Employees, in accordance with this Section 5.12.1 (except to the extent that similarly situated employees of Buyer and its Affiliates are similarly impacted by any such reduction, decrease or detrimental change). All such employment offers made by Buyer or its Affiliates to any Business Employee shall be subject to such Offer Employee's satisfaction of Buyer's or its Affiliate's customary pre-employment background check process and execution of standard employment documentation, including confidentiality and restrictive covenant agreements. Seller or its Subsidiaries will terminate or cause to be terminated the employment of (x) each Offer Employee who accepts an offer of employment with Buyer or its Affiliate in accordance with this Section 5.12.1, effective as of immediately prior to the date upon which such Offer Employee commences employment with Buyer or its Affiliate and (y) each Offer Employee who rejects an offer of employment with Buyer or its Affiliates in accordance with this Section 5.12.1, effective as of the Closing. For the avoidance of doubt, neither Buyer nor any of its Affiliates shall be required to make offers of employment to all or any of the Offer Employees; and Seller and its Subsidiaries shall be responsible for any and all Liabilities relating to any Offer Employee who is not hired by Buyer or its Affiliates.

5.12.2 Buyer Benefit Plans. In respect of the employee benefit plans, programs, policies, contracts, or arrangements (whether written or unwritten) established or maintained by Buyer or its Affiliates in which Continuing Employees are eligible to participate following the Closing Date (collectively, "**Buyer Benefit Plans**"), Buyer shall use commercially reasonable efforts to (i) for the plan year in which the Closing Date occurs, waive all limitations as to pre-existing conditions, exclusions and waiting periods with respect to participation and coverage requirements applicable to any Continuing Employee under a Buyer Benefit Plan that is a group health plan to the extent waived or satisfied under the corresponding Plan, (ii) for the plan year in which the Closing Date occurs, provide each Continuing Employee with credit for any co-payments and deductibles paid by such Continuing Employee during the portion of the plan year prior to the Closing Date under a Plan that is a group health plan for purposes of satisfying the corresponding deductibles and out-of-pocket maximums applicable to such Continuing Employee under the applicable Buyer Benefit Plan, and (iii) for purposes of determining eligibility to participate, vesting of 401(k) contributions and determination of the level of paid time off benefits (excluding for purposes of benefit accruals under any defined benefit pension plan or retiree health

or welfare plan or arrangement), recognize a Continuing Employee's service with Seller prior to the Closing Date to the same extent and for the same purpose such service was recognized under the corresponding Plans prior to the Closing Date; *provided* that such service shall not be recognized to the extent that (x) such recognition would result in a duplication of benefits or compensation, (y) such service was not recognized under the corresponding Plan immediately prior to Closing, or (z) such service is not recognized under such Buyer Benefit Plan (or a comparable plan) for other employees of Buyer and its Affiliates.

5.12.3 Assumed Plans. On or prior to the Closing Date, Buyer shall, or shall cause an Affiliate of Buyer to, assume the sponsorship of each Plan identified as an "Assumed Plan" on Section 3.1.12(a) of the Seller Disclosure Schedule to the extent transferrable or where consent is obtained from the applicable party (the "**Assumed Plans**"). For the avoidance of doubt, the remaining payments pursuant to the NanoString Technologies, Inc. 2024 Key Employee Retention Plan in an aggregate amount equal to $1,546,500 and the Retention Bonus Letters thereunder shall all be Assumed Plans. Between the date hereof and the Closing, Buyer and Seller shall work in good faith and take all actions necessary or appropriate to cause the sponsorship of and the assets maintained pursuant to or in connection with the Assumed Plans to transfer to Buyer or its designated Subsidiary, including securing written consents as necessary from all relevant third parties at or prior to the Closing, and Buyer shall cooperate in signing any documents or agreements in connection therewith. Effective as soon as reasonably practicable following the Closing, Seller shall take or cause to be taken all actions as are necessary or appropriate to amend each Plan in which any Continuing Employee participates and that is not an Assumed Plan (collectively, the "**Seller Plans**"), to provide that the Continuing Employees shall not be eligible to participate in such Seller Plans as of the Closing Date, in each case, in accordance with their terms and in compliance with the requirements of all applicable Laws. Seller shall provide to Buyer such evidence of the completion of such amendments as Buyer shall reasonably request.

5.12.4 Employee Communications. Prior to the Closing, except as required by Law and except for the offers described in Section 5.12.1, Buyer shall not issue any communication (including any electronic communication) to any Business Employee without the prior written approval of Seller (not to be unreasonably withheld). Except as required by Law and the offers described in Section 5.12.1, the Parties shall mutually consider and agree to the contents, scope, form and timing of any communications by Buyer with the Business Employees on all employment-related matters in connection with this Agreement (the "**Employment Matters**"). The Parties agree that at all times prior to the Closing they will consult with each other prior to carrying out any communication sessions relating to Employment Matters (the "**Employee Sessions**") or otherwise effecting any communications to the Business Employees relating to Employment Matters.

5.12.5 Restrictive Covenant Agreements. Seller agrees that, notwithstanding the terms of any non-competition, non-solicit, non-disclosure, or similar restrictive covenant between Seller or any of its Subsidiaries and a Continuing Employee (the "**RCAs**"), such Continuing Employee shall be permitted to provide services to Buyer and its Affiliates following the Closing, and Seller will not, and shall cause its Subsidiaries to not, seek to enforce the terms of any such RCA following the Closing.

5.12.6 Contingent Labor. During the period prior to the Closing, Seller shall and shall cause its Subsidiaries to use commercially reasonable efforts to make individual natural person independent contractors related to the Business and directly engaged by Seller or its Subsidiaries available to Buyer for the purpose of allowing Buyer to interview each such contractor and determine the nature and extent of each such person's continuation with Buyer and its applicable Affiliates, if any. Seller shall provide to Buyer contact information for third-party service providers providing contingent personnel to the Business and reasonably cooperate in identifying and transferring such contingent workforce to the extent requested by Buyer.

5.12.7 Visas. Seller and Buyer shall work collaboratively to use their reasonable best efforts to take any actions the parties determine are necessary to ensure that (a) any Offer Employee offered employment by Buyer or its Affiliate, and (b) any other Business Employee who is a foreign national who requires a visa in order to work in his or her current position may continue to work in such position for Buyer or its Affiliate as of the Closing.

5.12.8 Works Councils. Prior to the Closing Date, Seller and its Subsidiaries shall satisfy all pre-Closing legal or contractual requirement to provide notice to, or to enter into any consultation procedure with, any labor union, labor organization or works council representing any Business Employee, in connection with the transactions contemplated by this Agreement.

5.12.9 Third Party Beneficiaries. This Section 5.12 shall be binding upon and inure solely to the benefit of each of the Parties to this Agreement; nothing in this Section 5.12, expressed or implied, is intended to confer upon any other Person any rights or remedies of any nature whatever; and no provision of this Section 5.12 will create any third-party beneficiary rights in any current or former employee, officer, director or individual service provider of Seller or any of its Affiliates in respect of continued employment (or resumed employment) or service or any other matter. This Section 5.12 shall not be considered, or deemed to be, an amendment to or establishment of any Plan or any other compensation or benefit plan, program, agreement or arrangement. Nothing in this Section 5.12 shall obligate Buyer or any of its Affiliates (i) to continue to employ any Continuing Employee, other Business Employee or other individual service provider for any specific period of time following the Closing Date, subject to the requirements of applicable Law or (ii) limit the right of Buyer or any of its Affiliates to, at any time, change or modify any benefit or compensation plan, program, agreement or arrangement at any time and in any manner.

ARTICLE 6
CONDITIONS PRECEDENT

6.1 Conditions to Obligations of Buyer and Seller. The obligations of Buyer and Seller to complete the transactions contemplated by this Agreement are subject to the satisfaction or waiver (if permitted by applicable Law) at or prior to the Closing of the following conditions:

6.1.1 No Illegality or Action. There shall not be in effect any applicable Law that enjoins or prohibits the transactions contemplated by this Agreement.

6.1.2 Bankruptcy Orders. The Bankruptcy Court shall have entered the Sale Order and the Sale Order shall be in full force and effect and such order shall not have been reversed, modified, amended or stayed.

6.1.3 Regulatory Approvals. Any waiting period (including any extension thereof) or approvals applicable to the consummation of the transaction contemplated by this Agreement under the HSR Act shall have expired or terminated.

6.2 Conditions to Obligations of Buyer. The obligation of Buyer to complete the transactions contemplated by this Agreement is subject to the satisfaction, or waiver (if permitted by applicable Law) by Buyer, at or prior to the Closing of the following additional conditions:

6.2.1 Truth of Representations and Warranties. The representations and warranties of Seller contained in Section 3.1.1 (*Organization; Good Standing; Qualification*), Section 3.1.2 (*Authority and Enforceability*), Section 3.1.4 (*No Broker*), and Section 3.1.5 (*Capitalization*) must be true and correct in all material respects (and in the case of Section 3.1.5, in all but *de minimis* respects) as of the Closing with the same force and effect as if such representations and warranties were made on and as of such date (*provided* that if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date) and all other representations and warranties of Seller contained in Section 3.1 must be true and correct (disregarding any "materiality", "Material Adverse Effect" or similar qualifications contained therein) as of the Closing with the same force and effect as if such representations and warranties were made on and as of such date (*provided* that if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date), except where the failure of such representations and warranties to be so true and correct would not have, or be reasonably expected to have, a Material Adverse Effect. Seller shall also have executed and delivered a certificate confirming the foregoing signed by an officer of Seller.

6.2.2 Performance of Covenants. Seller must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to the Closing. Seller shall also have executed and delivered a certificate confirming the foregoing signed by an officer of Seller.

6.2.3 Material Adverse Effect. Since the date of this Agreement, there shall not have occurred a Material Adverse Effect.

6.2.4 Closing Deliveries. Buyer must have received the following:

(a) a true and complete copy of the Sale Order, as entered by the Bankruptcy Court;

(b) the certificates referred to in Section 6.2.1 and Section 6.2.2;

(c) a receipt acknowledging receipt of the Closing Payment, in satisfaction of Buyer's obligations pursuant to Section 2.3, validly executed by a duly authorized representative of Seller;

(d) original certificates representing all outstanding Equity Securities of each Acquired Entity to the extent they are certificated, and stock powers or assignments evidencing the conveyance of the Equity Securities duly executed in blank; and

(e) each of the Ancillary Agreements to which Seller or any of its Subsidiaries is a party, validly executed by a duly authorized representative of Seller or its applicable Subsidiary.

6.3 Conditions to Obligations of Seller. The obligation of Seller to complete the transactions contemplated by this Agreement is subject to the satisfaction, or waiver (if permitted by applicable Law) by Seller, at or prior to the Closing of the following additional conditions:

6.3.1 Truth of Representations and Warranties**.** The representations and warranties of Buyer contained in Section 3.2 must be true and correct in all respects (disregarding any "materiality" or similar qualifications contained therein) as of the Closing with the same force and effect as if such representations and warranties were made on and as of such date (*provided* that if a representation and warranty speaks only as of a specific date it only needs to be true and correct as of that date), except where the failure of such representations and warranties to be so true and correct would not, or be reasonably expected, to, materially adversely affect the ability of Buyer to consummate the transactions contemplated hereby. Buyer shall also have executed and delivered a certificate confirming the foregoing, signed by an officer of Buyer.

6.3.2 Performance of Covenants. Buyer must have fulfilled or complied, in all material respects, with all covenants contained in this Agreement required to be fulfilled or complied with by it at or prior to the Closing. Buyer shall also have executed and delivered a certificate confirming the foregoing, signed by an officer of Buyer.

6.3.3 Closing Deliveries. Seller must have received the following:

(a) a true and complete copy of the Sale Order, as entered by the Bankruptcy Court;

(b) the certificates referred to in Section 6.3.1 and Section 6.3.2;

(c) each of the Ancillary Agreements to which Buyer or any of its Affiliates is a party, validly executed by a duly authorized representative of Buyer or its applicable Affiliate; and

(d) the Closing Payment in accordance with Section 2.3.1 (along with a U.S. Federal Reserve reference or similar number evidencing execution of such payment).

ARTICLE 7
NO SURVIVAL OF REPRESENTATIONS, WARRANTIES AND PRE-CLOSING COVENANTS

7.1 No Survival. The representations and warranties of the Parties and the covenants and agreements of the Parties that are to be performed prior to the Closing, whether contained in this Agreement or in any agreement or document delivered pursuant to this Agreement, shall not

survive beyond the Closing and there shall be no liability following the Closing in respect thereof, whether such liability has accrued prior to or after the Closing, on the part of any Party or any of its officers, directors, equityholders, managers, agents or Affiliates; *provided*, *however*, that this Section 7.1 shall not limit any covenant or agreement of the parties that by its terms contemplates performance after the Closing, and such covenants or agreements shall survive until fully performed. Notwithstanding anything in this Agreement to the contrary, nothing in this Agreement shall limit or restrict the rights of any Party hereto to maintain or recover any amounts in connection with any action or claim based on Fraud.

7.2 No Recourse. Except to the extent otherwise expressly provided in Section 9.9, Buyer's sole and exclusive remedy (a) for a breach of any representation or warranty made by Seller herein or in any document delivered pursuant hereto or (b) for a breach of any covenant made by Seller herein or in any document delivered pursuant hereto and required to be performed by Seller on or prior to the Closing, shall, in either case, be limited to Buyer's right to terminate this Agreement to the extent permitted pursuant to Section 8.1, in which case Seller shall have not any liability except to the extent expressly provided in Section 8.2 (whether in equity or at Law, in Contract, in tort or otherwise). Except to the extent otherwise expressly provided in Section 9.9, Seller's sole and exclusive remedy (a) for a breach of any representation or warranty made by Buyer herein or in any document delivered pursuant hereto or (b) for a breach of any covenant made by Buyer herein or in any document delivered pursuant hereto and required to be performed by Buyer on or prior to the Closing, shall, in either case, be limited to Seller's right to terminate this Agreement to the extent permitted pursuant to Section 8.1.2 and to receive the Deposit pursuant to Section 8.2, in which case Buyer shall have not any further liability of any kind (whether in equity or at Law, in Contract, in tort or otherwise).

ARTICLE 8
TERMINATION

8.1 Termination. This Agreement may, by Notice in writing given prior to the Closing, be terminated:

8.1.1 by mutual written agreement of Buyer and Seller;

8.1.2 by Buyer or Seller if there has been a material breach of the Bidding Procedures Order, the Sale Order or this Agreement by the other Party such that the conditions of Closing (a) set forth in Section 6.2.1 or Section 6.2.2, in the case of a termination by Buyer, or (b) set forth in Section 6.3.1 or Section 6.3.2, in the case of a termination by Seller, would not be satisfied (*provided* that the non-breaching Party is not also in breach of this Agreement so as to cause the conditions of Closing for the benefit of the other Party to not be satisfied), and such breach has not been cured within twenty (20) days following Notice of such breach by the non-breaching Party; *provided* that, for greater certainty, a failure by Buyer to provide, or cause to be provided, Seller with sufficient funds to complete the transactions contemplated by this Agreement at the time which the Closing should have occurred shall not be subject to this Section 8.1.2 and shall only be subject to Section 8.1.8.

8.1.3 by Buyer or Seller (a) if an Alternative Transaction is entered into other than in connection with an Auction or (b) if there is an Auction, Buyer is not declared the Successful Bidder at the Auction;

8.1.4 by Buyer, if (a) the Bankruptcy Court has not approved and entered the Bidding Procedures Order prior to 11:59 p.m. (prevailing Eastern Time) on April 1, 2024, (b) the Bankruptcy Court has not approved and entered the Sale Order prior to 11:59 p.m. (prevailing Eastern Time) on May 1, 2024, (c) following entry of the Sale Order or the Bidding Procedures Order, such Order is stayed, reversed, modified, vacated or amended in any material respect without the prior written consent of Buyer, which consent may not be unreasonably withheld, and such stay, reversal, modification, vacation or amendment is not eliminated within fourteen (14) days, or (d) the Bankruptcy Court enters any Order materially inconsistent with the Bidding Procedures Order, the Sale Order or the consummation of this Agreement and such order is not reversed, modified or amended to the satisfaction of Buyer within fourteen (14) days;

8.1.5 by Buyer, if (a) the Bankruptcy Court enters a Final Order (i) dismissing the Chapter 11 Cases or converting the Chapter 11 Cases into cases under chapter 7 of the Bankruptcy Code, or (ii) appointing a trustee, receiver or other Person responsible for operation or administration of Seller or its business or assets, or a responsible officer for any of Seller, or an examiner with enlarged powers relating to the operation or administration of Seller or its business or assets (each, an "**Appointee**"); *provided* that, the definition of "Appointee" shall not include any chief restructuring officer that may be appointed by the Seller and authorized by the Bankruptcy Court in the Chapter 11 Cases, or (b) if Seller files any stand-alone plan of reorganization or liquidation, in each case, that does not contemplate consummation of the transactions memorialized in this Agreement (or announces support of any such plan filed by any other party);

8.1.6 by Buyer or Seller if Closing has not occurred by the Outside Date, *provided* that such terminating Party is not in material breach of this Agreement at the time of such termination; *provided, further*, and for the avoidance of doubt, that (a) Buyer shall not have the right to terminate this Agreement pursuant to this Section 8.1.6 during the pendency of any Litigation brought prior to the Outside Date by Seller for specific performance of this Agreement (to the extent available pursuant to Section 9.9) and (b) Seller shall not have the right to terminate this Agreement pursuant to this Section 8.1.6 during the pendency of any Litigation brought before the Outside Date by Buyer for specific performance of this Agreement (to the extent available pursuant to Section 9.9);

8.1.7 by Seller if the Deposit is not received by the Escrow Agent within one (1) Business Day after the date of this Agreement;

8.1.8 by Seller, if (a) (i) all of the conditions set forth in Sections 6.1 and 6.2 are satisfied or waived by Buyer as of the Closing Date (other than those conditions that, by their nature, can only be satisfied as of the Closing Date, but which would be satisfied as of the Closing Date), (ii) Seller has irrevocably notified Buyer in writing that (x) it is ready, willing and able to consummate the transactions contemplated by this Agreement and (y) all conditions set forth in Section 6.3 have been satisfied (other than those conditions that, by their nature, can only be satisfied as of the Closing Date, but which would be satisfied as of the Closing Date) or that it is

willing to irrevocably waive any unsatisfied conditions set forth in Section 6.3, (iii) Seller has given Buyer written Notice at least two (2) Business Days prior to such termination stating Seller's intention to terminate this Agreement pursuant to this Section 8.1.8, and (iv) Buyer does not provide, or cause to be provided, Seller with sufficient funds to complete the transactions contemplated by this Agreement at the time which the Closing should have occurred by the expiration of the two (2) Business Day period contemplated by clause (iii) hereof, or (b) Seller or its board of directors, upon consultation with outside financial advisors and legal counsel, determines in its good faith business judgment that proceeding with the transaction contemplated by this Agreement would violate Law or be inconsistent with its fiduciary obligations under Law;

8.1.9 by Buyer or Seller (*provided* such terminating Party is not in material breach of this Agreement) if a Governmental Authority of competent jurisdiction shall have issued a final and non-appealable Order or taken any other non-appealable final action, in each case, having the effect of permanently making the consummation of the transactions contemplated by this Agreement illegal or otherwise permanently restraining or prohibiting consummation of the Agreement; and

8.1.10 by Buyer, if any creditor of the Seller obtains a final and unstayed Order of the Bankruptcy Court granting relief from the automatic stay to foreclose on any material portion of the Purchased Assets.

8.2 Procedure and Effect of Termination.

8.2.1 Termination of this Agreement by either Buyer or Seller shall be by delivery of a Notice to the other Party. Such Notice shall state the termination provision in this Agreement that such terminating Party is claiming provides a basis for termination of this Agreement. Termination of this Agreement pursuant to the provisions of Section 8.1 shall be effective upon and as of the date of delivery of such Notice as determined pursuant to Section 9.2.

8.2.2 If a Party waives compliance with any of the conditions, obligations or covenants contained in this Agreement, the waiver will be without prejudice to any of its rights of termination in the event of non-fulfilment, non-observance or non-performance of any other condition, obligation or covenant in whole or in part.

8.2.3 If this Agreement is terminated, the Parties are released from all of their obligations under this Agreement, except that each Party's obligations under Sections 5.2, 7.2, 8.2, 8.3, 9.1, 9.2, 9.3, 9.5, 9.9, 9.10, 9.11, 9.14 and 9.15 will survive.

8.2.4 As soon as practicable following a termination of this Agreement for any reason, but in no event more than thirty (30) days after such termination, Buyer and Seller shall, to the extent practicable, withdraw all filings, applications and other submissions relating to the transactions contemplated by this Agreement filed or submitted by or on behalf of such Party to any Governmental Authority or other Person.

8.2.5 Notwithstanding Section 8.2.3, in the event of a termination of this Agreement by Seller pursuant to Section 8.1.2 or Section 8.1.8(a), then Buyer and Seller shall, within two (2) Business Days after the date of such termination, deliver joint written instructions ("**Joint Written Instructions**") to the Escrow Agent directing the Escrow Agent

to deliver to Seller an amount equal to the Deposit plus any accrued investment interest thereon. Buyer acknowledges that the agreements contained in this Section 8.2.5 are an integral part of the Transactions, and that without these agreements, Seller would not have entered into this Agreement; accordingly, if Buyer fails to deliver such Joint Written Instructions or pay any amount due pursuant to this Section 8.2.5 and, in order to obtain the payment, Seller commences a Litigation which results in a judgment against Buyer for any payment set forth in this Section 8.2.5, Buyer shall pay Seller its costs and expenses (including attorneys' fees and disbursements) in connection with such Litigation, together with interest on such payment at 3% per annum (for the avoidance of doubt, using the payment described in this sentence as the applicable payment) through the date such payment was actually received.

8.2.6 Notwithstanding Section 8.2.3 and subject to Section 8.2.5, in the event of a termination of this Agreement other than by Seller pursuant to Section 8.1.2 or Section 8.1.8(a), then Buyer and Seller shall, within two (2) Business Days after the date of such termination, deliver Joint Written Instructions to the Escrow Agent directing the Escrow Agent to deliver to Buyer an amount equal to the Deposit plus any accrued investment interest thereon (less any fees or expenses owing to the Escrow Agent).

8.2.7 In the event of termination of this Agreement pursuant to Section 8.1: (a) Buyer shall return all documents and other material received from Seller relating to Seller and its Subsidiaries, the Products, the Purchased Assets or the Transactions, whether so obtained before or after the execution hereof, to Seller; and (b) all confidential information received by Buyer with respect to Seller and its Subsidiaries, the Products, the Purchased Assets or the Transactions shall be treated in accordance with the Confidentiality Agreement, and with the Confidentiality Agreement remaining in full force and effect in accordance with its terms, notwithstanding the termination of this Agreement.

8.3 Termination Fee; Expense Reimbursement.

8.3.1 In the event that:

(a) this Agreement is terminated by Buyer or Seller, as applicable, in accordance with (i) Section 8.1.3, or (ii) Section 8.1.2 (if terminated by Buyer), or (iii) Section 8.1.5 or (iv) Section 8.1.8(b), then in any of such cases, Seller shall pay Buyer by wire transfer of immediately available funds, to the account specified by Buyer to Seller in writing, the Termination Fee and Expense Reimbursement, and Seller and Buyer agree that neither the Expense Reimbursement nor the Termination Fee is a penalty, but rather is liquidated damages in a reasonable amount that will compensate Buyer for the time and effort associated with initial due diligence and negotiation of this Agreement and the opportunities forgone while negotiating this Agreement and in reliance on this Agreement and on the expectation of the consummation of the transactions contemplated herein; *provided* that, if this Agreement is terminated pursuant to clause (i) above, the Termination Fee and Expense Reimbursement shall be paid on the earlier of (a) the date the Alternative Transaction is consummated and (b) the termination of the definitive agreement contemplating such Alternative Transaction; *provided, further,* that, if this Agreement is terminated pursuant to clauses (ii), (iii) or (iv) above, the Termination Fee and Expense Reimbursement shall be paid within five (5) Business Days of the date of such termination;

(b) this Agreement is otherwise terminated by Buyer in accordance with Section 8.1.4 then Seller shall promptly pay Buyer by wire transfer of immediately available funds to an account specified by Buyer to Seller in writing, and Buyer shall be deemed to have earned, the Expense Reimbursement, which shall be paid within five (5) Business Days of the date of such termination; and

(c) the obligations of Seller to pay the Termination Fee and Expense Reimbursement as provided in this Section 8.3 shall be (i) entitled to superpriority administrative expense status with priority over any and all administrative expenses of the kind specified in Sections 503(b)(1) and 507(a) of the Bankruptcy Code in Seller's Chapter 11 Cases, subject only to the superiority claims set forth in the DIP Financing Order in an amount not to exceed the amount of outstanding DIP Loans (as defined therein), and (ii) if triggered, shall be payable from the proceeds of any Alternative Transaction for the Purchased Assets, at the closing of such Alternative Transaction, free and clear of all liens (including those arising under the DIP Financing Order).

8.3.2 Seller shall seek approval of the Termination Fee and the Expense Reimbursement from the Bankruptcy Court in the Bidding Procedures Order. The Parties acknowledge and agree that the terms and conditions set forth in this Section 8.3 with respect to the payment of the Termination Fee and Expense Reimbursement are subject to the Bankruptcy Court entering the Bidding Procedures Order, it being understood that Buyer may terminate this Agreement if the Bankruptcy Court does not approve the Termination Fee and Expense Reimbursement contemplated hereby (including the contemplated priority change in respect thereof), in which case the Deposit (plus all accrued interest or earnings thereon) shall be forthwith returned to Buyer. The Parties acknowledge that the agreements contained in this Section 8.3 are commercially reasonable and an integral part of the transactions, and that without these agreements, the Parties would not enter into this Agreement or consummate the transactions contemplated hereby. For the avoidance of doubt, but subject to Section 7.2, the covenants set forth in this Section 8.3 are continuing obligations, separate and independent from the other obligations of the Parties expressly set forth in this Agreement (and shall not limit the Parties' other rights expressly set forth in this Agreement), and survive termination of this Agreement.

ARTICLE 9
MISCELLANEOUS

9.1 Governing Law, Jurisdiction, Venue and Service.

9.1.1 Governing Law. This Agreement shall be governed by and construed in accordance with the Laws of the State of New York, including all matters of construction, validity and performance, in each case without reference to any conflicts or choice of Law rule or principle (whether of the State of New York or any other jurisdiction) that might otherwise refer construction or interpretation of this Agreement to the substantive Law of another jurisdiction.

9.1.2 Consent to Jurisdiction and Venue.

(a) Subject to Section 9.9, the Parties hereby irrevocably and unconditionally consent to the exclusive jurisdiction of the Bankruptcy Court for any action, suit

or proceeding (other than appeals therefrom) arising out of or relating to this Agreement or any Ancillary Agreement, and agree not to commence any action, suit or proceeding (other than appeals therefrom) related thereto except in such court. The Parties further hereby irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding (other than appeals therefrom) arising out of or relating to this Agreement in the Bankruptcy Court, and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in the Bankruptcy Court has been brought in an inconvenient forum. If Seller's Chapter 11 Cases are closed, any Litigation arising out of or relating to this Agreement or any Ancillary Agreement shall be heard and determined exclusively in the federal and state courts in the Borough of Manhattan, City of New York, and the Parties hereby irrevocably submit to the exclusive jurisdiction and venue of such courts in any such Litigation and irrevocably waive the defense of any inconvenient forum to the maintenance of any such Litigation.

(b) THE PARTIES HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVE ALL THEIR RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY LITIGATION (WHETHER BASED IN CONTRACT, TORT OR OTHERWISE) ARISING OUT OF OR RELATING TO THIS AGREEMENT, ANY ANCILLARY AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

9.1.3 Service. Each Party further agrees that service of any process, summons, notice or document by registered mail to its address set forth in Section 9.2.2 shall be effective service of process for any action, suit or proceeding brought against it under this Agreement in any such court.

9.2 Notices.

9.2.1 Notice Requirements. Any notice, request, demand, waiver, consent, approval or other communication permitted or required under this Agreement (each, a "**Notice**") shall be in writing, shall refer specifically to this Agreement and shall be deemed given only if delivered by hand or sent by email of a PDF attachment (with transmission confirmed) or by internationally recognized overnight delivery service that maintains records of delivery, addressed to the Parties at their respective addresses specified in Section 9.2.2 or to such other address as the Party to whom Notice is to be given may have provided to the other Party at least five (5) days' prior to such address taking effect in accordance with this Section 9.2. Such Notice shall be deemed to have been given as of the date delivered by hand or internationally recognized overnight delivery service or confirmed that it was received by email (with receipt confirmed by telephone). If a Notice deemed given upon receipt is given after 5:00 p.m. in the place of receipt (the Parties understand and agree that the foregoing applies only to Notice and not to copies), such Notice will be deemed given on the next succeeding Business Day.

9.2.2 Address for Notice.

If to Seller, to:

NanoString Technologies, Inc.
530 Fairview Avenue North

Seattle, WA 98109
Attention: Kathy Surace-Smith
Email: ksmith@nanostring.com

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

Willkie Farr & Gallagher LLP
787 Seventh Avenue
New York, NY 10019
Attention: Rachel Strickland; Thomas Mark; Debra McElligott Sinclair; Tyler Born
Email: rstrickland@willkie.com; tmark@willkie.com; dsinclair@willkie.com; tborn@willkie.com

If to Buyer, to:

Nucleus Buyer, LLC
2884 Sand Hill Rd, Suite #100
Menlo Park, CA 94025
Attention: Neel Varshney; Adam Fliss
Email: neel@patientsquarecapital.com; adam@patientsquarecapital.com

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

601 Lexington Avenue
New York, NY 10022
Attention: Michael E. Weisser, P.C.; Maggie D. Flores, P.C.; Brian Schartz, P.C.
Email: michael.weisser@kirkland.com; maggie.flores@kirkland.com; bschartz@kirkland.com

9.3 No Benefit to Third Parties. Seller and Buyer intend that this Agreement will not benefit or create any right or cause of action in favor of any Person, other than the Parties. No Person, other than the Parties, is entitled to rely on the provisions of this Agreement in any action, suit, proceeding, hearing or other forum. The Parties reserve their right to vary or rescind the rights at any time and in any way whatsoever, if any, granted by or under this Agreement to any Person who is not a Party, without notice to or consent of that Person.

9.4 Waiver. No waiver of any of the provisions of this Agreement will constitute a waiver of any other provision (whether or not similar). No waiver will be binding unless executed in writing by the Party to be bound by the waiver. A Party's failure or delay in exercising any right under this Agreement will not operate as a waiver of that right. A single or partial exercise of any right will not preclude a Party from any other or further exercise of that right or the exercise of any other right.

9.5 Expenses. Except as otherwise expressly provided in this Agreement**,** each Party will pay for their own costs and expenses incurred in connection with this Agreement and the Ancillary Agreements, and the transactions contemplated hereby and thereby; *provided*, *however*,

Buyer shall be responsible for all fees and expenses of the Escrow Agent. The costs and expenses referred to in this Section 9.5 are those that are incurred in connection with the negotiation, preparation, execution and performance of this Agreement and the Ancillary Agreements, and the transactions contemplated hereby and thereby, including the fees and expenses of legal counsel, investment advisers, accountants and other professionals.

9.6 Assignment.

9.6.1 This Agreement becomes effective only when executed by Seller and Buyer. After that time, it will be binding upon and inure to the benefit of Seller, Buyer and their respective heirs, administrators, executors, legal representatives successors and permitted assigns. Any transferee of any Purchased Asset or any interest therein shall be a creditworthy entity and shall agree to assume all obligations under this Agreement and the Ancillary Agreements.

9.6.2 Neither this Agreement nor any of the rights or obligations under this Agreement may be assigned or transferred, in whole or in part, by any Party without the prior written consent of the other Party; *provided*, *however*, that (a) Seller may transfer or assign such rights and obligations under this Agreement to a liquidation trust or similar vehicle under a confirmed chapter 11 plan of liquidation in the Chapter 11 Cases and such liquidation trust or similar vehicle may transfer, assign and sell its right to receive proceeds of the Purchase Price under this Agreement and (b) Buyer may transfer or assign such rights and/or obligations (or any document to be delivered by Buyer pursuant hereto) under this Agreement to one or more Affiliates of Buyer, but no such assignment shall relieve Buyer of its obligations hereunder and Buyer shall in all cases remain responsible for all such obligations.

9.7 Amendment. This Agreement may only be amended, supplemented or otherwise modified by written agreement signed by Buyer and Seller.

9.8 Severability. If any provision of this Agreement is determined to be illegal, invalid or unenforceable by an arbitrator or any court of competent jurisdiction, that provision will be severed from this Agreement and the remaining provisions shall remain in full force and effect.

9.9 Equitable Relief.

9.9.1 The Parties agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that a Party shall be entitled to an injunction or injunctions to prevent breaches of this Agreement and to enforce specifically the terms and provisions of this Agreement. Each Party hereby waives (a) any requirement that the other Party post a bond or other security as a condition for obtaining any such relief and (b) any defenses in any action for specific performance, including the defense that a remedy at law would be adequate.

9.9.2 Each Party hereby agrees not to raise any objections to the availability of equitable remedies to the extent provided for herein, and the Parties further agree that nothing set forth in this Section 9.9 shall require any Party hereto to institute any proceeding for (or limit any Party's right to institute any proceeding for) specific performance under this Section 9.9 prior or as a condition to exercising any termination right under this Agreement, nor shall the commencement of any legal action or legal proceeding pursuant to this Section 9.9 or anything set

forth in this Section 9.9 restrict or limit any Party's right to terminate this Agreement in accordance with the terms hereof.

9.10 No Liability. No director, officer or employee of Buyer or its Affiliates shall have any personal liability whatsoever to Seller under this Agreement or any other document delivered in connection with the transactions contemplated hereby on behalf of Buyer. No director, officer, employee or Affiliate of Seller or its Subsidiaries shall have any personal liability whatsoever to Buyer or its Affiliates under this Agreement or any other document delivered in connection with the transactions contemplated hereby on behalf of Seller.

9.11 English Language. This Agreement shall be written and executed in, and all other communications under or in connection with this Agreement shall be in, the English language. Any translation into any other language shall not be an official version thereof, and in the event of any conflict in interpretation between the English version and such translation, the English version shall control.

9.12 Bulk Sales Statutes. Buyer hereby waives compliance by Seller with the requirements and provisions of any applicable bulk sales or bulk transfer Laws in any jurisdiction that may otherwise be applicable in connection with the transactions contemplated by this Agreement.

9.13 Representation by Counsel. Each Party represents and agrees with the other that (a) it has been represented by, or had the opportunity to be represented by, independent counsel of its own choosing, and that it has had the full right and opportunity to consult with its respective attorney(s) to the extent, that it desired, (b) it availed itself of this right and opportunity, (c) that it or its authorized officers (as the case may be) have carefully read and fully understand this Agreement and the Ancillary Agreements in their entirety and have had them fully explained to them by such Party's respective counsel, (d) that each is fully aware of the contents hereof and thereof and their meaning, intent and legal effect, and (e) that it or its authorized officer (as the case may be) is competent to execute this Agreement and has executed this Agreement free from coercion, duress or undue influence.

9.14 Counterparts. This Agreement may be executed in any number of counterparts, each of which is deemed to be an original, and such counterparts together constitute one and the same instrument. Transmission of an executed signature page by email or other electronic means is as effective as a manually executed counterpart of this Agreement.

9.15 Entire Agreement. This Agreement, together with the Schedules and Exhibits expressly contemplated hereby and attached hereto, the Seller Disclosure Schedules, the Ancillary Agreements, the Confidentiality Agreement and the other agreements, certificates and documents delivered in connection herewith or therewith or otherwise in connection with the transactions contemplated hereby and thereby, contain the entire agreement between the Parties with respect to the transactions contemplated hereby or thereby and supersede all prior agreements, understandings, promises and representations, whether written or oral, between the Parties with respect to the subject matter hereof and thereof, including the Confidentiality Agreement. In the event of any inconsistency between any such Schedules and Exhibits and this Agreement, the terms of this Agreement shall govern.

[Signature page follows]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Execution Date.

NANOSTRING TECHNOLOGIES, INC.

By: DocuSigned by: R. Bradley Gray
2E5454B036C6415...

Name: Brad Gray
Title: President & CEO

NUCLEUS BUYER, LLC

By: DocuSigned by: 7D573A61ACF54D0...
Name: Adam Fliss
Title: Vice President