

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

THG Holdings LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11689 (JTD)

Jointly Administered

**Re: D.I. 175**

**NOTICE OF SUCCESSFUL BIDDER AND FILING OF ASSET PURCHASE  
AGREEMENT AND PROPOSED ORDER APPROVING SALE**

**PLEASE TAKE NOTICE** that on August 22, 2019, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order Pursuant to Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtors; (B) Approving Procedures for the Assumption and Assignment, Assignment of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief [D.I. 175] (the “Bidding Procedures Order”)*<sup>2</sup> by which the Court approved procedures to conduct a sale (the “Sale”) of certain assets (the “Purchased Assets”) free and clear of all liens, claims, encumbrances, and other interests (other than the Assumed Liabilities) and conduct an auction (the “Auction”) pursuant to section 363 of the Bankruptcy Code.

**PLEASE TAKE FURTHER NOTICE** that pursuant to the Bidding Procedures Order, Cleveland Heartlab, Inc. (the “Purchaser”), a wholly owned subsidiary of Quest Diagnostics Incorporated, submitted a bid for the Purchased Assets by the Bid Deadline.

**PLEASE TAKE FURTHER NOTICE** that following negotiations with the Purchaser, the Debtors have agreed upon the terms of the sale of the Purchased Assets to Purchaser, and determined in consultation with the Consultation Parties that the Purchaser’s bid is the highest and best bid for the Purchased Assets and designated Purchaser as the Successful Bidder for the Purchased Assets.

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtors’ federal EIN, are as follows: THG Holdings LLC (8292); True Health Group LLC (9158); True Health Clinical LLC (5272); True Health Diagnostics LLC (9452); True Health IP LLC (5427); Outreach Management Solutions LLC d/b/a True Health Outreach (9424); Health Core Financial LLC d/b/a True Health Financial (6614). The Debtors’ mailing address is 3803 Parkwood Blvd, Suite 400, Frisco, Texas 75034.

<sup>2</sup> Capitalized terms that are not otherwise defined herein have the meanings given to such terms in the Bidding Procedures Order.

**PLEASE TAKE FURTHER NOTICE** that the Debtors received no other Qualified Bids for the Purchased Assets.

**PLEASE TAKE FURTHER NOTICE** that a copy of the fully executed asset purchase agreement between the Debtors and the Purchaser is attached hereto as **Exhibit A** (the "**APA**").

**PLEASE TAKE FURTHER NOTICE** that the proposed form of the order approving the proposed Sale to the Purchaser is attached hereto as **Exhibit B** (the "**Sale Order**").

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek entry of the Sale Order selling the Purchased Assets to the Purchaser pursuant to the APA at the Sale Hearing scheduled for **Friday, September 20, 2019 at 1:30 p.m. (prevailing Eastern Time)**.

Dated: September 18, 2019  
Wilmington, Delaware

MORRIS, NICHOLS, ARSHT & TUNNELL LLP

*/s/ Daniel B. Butz*

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Derek C. Abbott (No. 3376)  
Curtis S. Miller (No. 4583)  
Daniel B. Butz (No. 4227)  
Tamara K. Mann (No. 5643)  
Matthew O. Talmo (No. 6333)  
Paige N. Topper (No. 6470)  
1201 N. Market Street, 16th Floor  
P.O. Box 1347  
Wilmington, Delaware 19899-1347  
Telephone: (302) 658-9200  
Facsimile: (302) 658-3989  
dabbott@mnat.com  
cmiller@mnat.com  
dbutz@mnat.com  
tmann@mnat.com  
mtalmo@mnat.com  
ptopper@mnat.com

*Counsel to the Debtors and Debtors in Possession*

**EXHIBIT A**

Asset Purchase Agreement

**ASSET PURCHASE AGREEMENT**

**BY AND AMONG**

**THG HOLDINGS LLC, TRUE HEALTH GROUP LLC, TRUE HEALTH CLINICAL LLC, TRUE HEALTH DIAGNOSTICS LLC, TRUE HEALTH IP LLC, OUTREACH MANAGEMENT SOLUTIONS LLC AND HEALTH CORE FINANCIAL LLC.**

**AND**

**CLEVELAND HEARTLAB, INC.**

**Dated as of September 18, 2019**

## ASSET PURCHASE AGREEMENT

**THIS ASSET PURCHASE AGREEMENT** (this “Agreement”) is dated as of September 18, 2019 and entered into by and among THG Holdings LLC, a Delaware limited liability company, True Health Group LLC, a Delaware limited liability company, True Health Clinical LLC, a Delaware limited liability company, True Health Diagnostics LLC, a Delaware limited liability company, True Health IP LLC, a Delaware limited liability company, Outreach Management Solutions LLC, a Delaware limited liability company, and Health Core Financial LLC a Delaware limited liability company (each individually, a “Seller”, and collectively, “Sellers”), and Cleveland Heartlab, Inc., a Delaware corporation (“Purchaser”).

**WHEREAS**, Sellers are in the business of providing comprehensive diagnostic testing, health management and clinical integration services to serve clinicians, patients and healthcare organizations (the “Business”);

**WHEREAS**, Sellers filed voluntary petitions for relief under Chapter 11 of Title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (“Bankruptcy Code”), in the United States Bankruptcy Court for the District of Delaware (“Bankruptcy Court”) on July 30, 2019, Case No. 19-11689 (JTD) (the “Chapter 11 Cases”);

**WHEREAS**, Sellers continue in the possession and control of their assets and properties in accordance with §§ 1107 and 1108 of the Bankruptcy Code; and

**WHEREAS**, Sellers desire to sell, assign, transfer, convey and deliver to Purchaser and Purchaser desires to purchase, acquire, assume and accept from Sellers, all of the Acquired Assets and Assumed Liabilities, in each case as specifically provided herein (the “Acquisition”) in accordance with sections 363 and 365 of the Bankruptcy Code.

**NOW, THEREFORE**, in consideration of the foregoing premises, the representations, warranties, covenants and agreements contained herein, and certain other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

### ARTICLE I DEFINITIONS

#### 1.1 Definitions.

As used herein, the following terms shall have the following meanings:

“Accounts Receivable” shall mean all accounts receivable of Sellers and other receivables of Sellers (whether or not billed).

“Acquired Assets” has the meaning assigned to that term in Section 2.1.

“Acquired Intellectual Property” means all of the following to the extent used in the Business: trademarks, service marks, logos, trade names, brand names, corporate names, company names, business names, software, software code (in any form, including source code

and executable or object code) and other identifiers indicating the business or source of goods or services, and other indicia of commercial source or origin (whether registered, arising under common law or statutory law, or otherwise) and any applications for or registrations of any of the foregoing, URLs, domain names, social media accounts, web sites and all goodwill associated with any of the foregoing.

“Acquired Personal Property” has the meaning assigned to that term in Section 2.1(a).

“Acquisition” has the meaning assigned to that term in the Preamble.

“Affiliate” means, with respect to any Person, any other Person that, directly or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with, such Person, and the term “control” (including the terms “controlled by” and “under common control with”) means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through ownership of voting securities, by contract or otherwise.

“Agreement” has the meaning assigned to that term in the Preamble.

“Ancillary Agreements” means any certificate, agreement, document or other instrument to be executed and delivered in connection with this Agreement.

“Approval Order” has the meaning assigned to that term in Section 6.3(a).

“AR Telephone Numbers” shall have the meaning assigned to that term in Schedule 2.1(f).

“Assigned Contracts” means the Contracts set forth on Schedule 1.1.

“Assumed Liabilities” has the meaning assigned to that term in Section 2.3.

“Back-Up Bid” shall have the meaning assigned to such term in the Bidding Procedures Order.

“Bankruptcy Code” has the meaning assigned to that term in the Preamble.

“Bankruptcy Court” has the meaning assigned to that term in the Preamble.

“Bankruptcy Petition” shall mean the voluntary bankruptcy petition filed by each Seller on July 30, 2019 with the Bankruptcy Court, and “Bankruptcy Petitions” shall mean, collectively, the voluntary bankruptcy petitions of all of the Sellers.

“Bidding Procedures” shall have the meaning assigned to such term in the Bidding Procedures Order.

“Bidding Procedures Order” has the meaning assigned to that term in Section 6.2.

“Business” has the meaning assigned to that term in the Preamble.

“Business Day” means any day on which commercial banking institutions are open for business in Wilmington, Delaware and are not required or authorized to close.

“Chapter 11 Cases” has the meaning assigned to that term in the Preamble.

“Closing” has the meaning assigned to that term in Section 3.1.

“Closing Date” has the meaning assigned to that term in Section 3.1.

“Code” means the Internal Revenue Code of 1986, as amended.

“Confidential Information” has the meaning assigned to that term in the Confidentiality Agreement.

“Confidentiality Agreement” has the meaning assigned to that term in Section 8.16.

“Contracts” means all agreements, contracts, leases, consensual obligations, promises or undertakings, whether written or oral.

“Cure Amounts” means all amounts, costs and expenses payable in order to cure any monetary defaults required to be cured under section 365(b)(1) of the Bankruptcy Code or otherwise to effectuate, pursuant to the Bankruptcy Code, the assumption of the Assigned Contracts so that they may be assumed and assigned to Purchaser pursuant to sections 363 and 365 of the Bankruptcy Code.

“Customers” has the meaning assigned to that term in Section 4.9.

“Debtors” shall mean Sellers, and “Debtor” shall mean each Seller individually.

“Deposit” has the meaning assigned to that term in Section 2.6.

“Employee Benefit Plans” shall mean (i) all “employee benefit plans” (as defined in section 3(3) of ERISA), including any employee pension benefit plans; (ii) all employment, consulting, non-competition, employee non-solicitation, employee loan or other compensation agreements, (iii) all collective bargaining agreements, and (iv) all bonus or other incentive compensation, equity or equity-based compensation, stock purchase, deferred compensation, change in control, severance, leave of absence, vacation, salary continuation, medical, life insurance or other death benefit, educational assistance, training, service award, section 125 cafeteria, dependent care, pension, welfare benefit or other material employee or fringe benefit plans, policies, agreements or arrangements, whether written or unwritten, qualified or unqualified, funded or unfunded and all underlying insurance policies, trusts and other funding vehicles, in each case currently maintained by or as to which Sellers have or could reasonably be expected to have any obligation or liability, contingent or otherwise, thereunder for current or former employees, directors or individual consultants of Sellers.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended from time to time, and regulations and formal guidance issued thereunder.

“Escrow Agent” has the meaning assigned to that term in Section 2.6.

“Escrow Agreement” has the meaning assigned to that term in Section 2.6.

“Estate” shall mean the estate of each Debtor created by section 541 of the Bankruptcy Code upon the filing of the Bankruptcy Petition, and “Estates” shall mean, collectively, the estates of all of the Debtors created by section 541 of the Bankruptcy Code in the Chapter 11 Case.

“Estate Causes of Action” shall mean (i) any avoidance or recovery action that belongs to or could have been raised by the Sellers or their respective Estates under article 5 of the Bankruptcy Code, and (ii) any and all causes of action, defenses, and counterclaims owned by or accruing to the Sellers or that is property of their Estates, based upon facts, circumstances and transactions that occurred prior to the Closing Date, except for causes of action, defenses and counterclaims arising from breaches of warranty relating to the Acquired Assets.

“Excluded Assets” has the meaning assigned to that term in Section 2.2.

“Excluded Liabilities” has the meaning assigned to that term in Section 2.4.

“Financial Statements” has the meaning assigned to that term in Section 4.7.

“Fraud” means with respect to (a) Sellers, the intentional misrepresentation by Sellers in the making by such Sellers to Purchaser of the representations and warranties set forth in ARTICLE IV or (b) Purchaser, the intentional misrepresentation by Purchaser in the making by Purchaser to Sellers of the representations and warranties set forth in ARTICLE V, in the case of each of clauses (a) or (b) that constitutes common law fraud under Delaware Law (and does not include any fraud claim based on constructive knowledge, negligent misrepresentation, recklessness or a similar theory).

“GAAP” means generally accepted accounting principles in the United States as of the date hereof.

“Governmental Authorization” means any consent, franchise, license, registration, permit, order or approval issued, granted, given or otherwise made available by or under the authority of any Governmental Body or pursuant to any Law, including, as the context may require, any declarations or filings with, or expiration of waiting periods imposed by, any such Governmental Body.

“Governmental Body” means any (i) nation, state, county, city, town, borough, village, district or other jurisdiction, (ii) federal, state, local, municipal, foreign or other government, (iii) governmental or quasi-governmental body of any nature (including any agency, branch, department, board, commission, court, tribunal or other entity exercising governmental or quasi-governmental powers), (iv) multinational organization or body, (v) body exercising, or



entitled or purporting to exercise, any administrative, executive, judicial, legislative, police, regulatory or taxing authority or power, or (vi) official of any of the foregoing.

“Indebtedness” of any Person means, without duplication, (i) the principal of, interest and premium (if any) in respect of (A) indebtedness of such Person for money borrowed and (B) indebtedness evidenced by notes, debentures, bonds or other similar instruments for the payment of which such Person is responsible or liable; (ii) all obligations of such Person issued or assumed as the deferred purchase price of property, all conditional sale obligations of such Person and all obligations of such Person under any title retention agreement (but excluding trade accounts payable and other accrued current liabilities arising in the ordinary course of business); (iii) all obligations of such Person under leases required to be capitalized in accordance with GAAP; (iv) all obligations of such Person for the reimbursement of any obligor on any letter of credit, banker’s acceptance or similar credit transaction; (v) the liquidation value of all redeemable preferred stock of such Person; (vi) all obligations of the type referred to in clauses (i) through (v) of any Persons for the payment of which such Person is responsible or liable, directly or indirectly, as obligor, guarantor, surety or otherwise, including guarantees of such obligations; and (vii) all obligations of the type referred to in clauses (i) through (vi) of other Persons secured by any Lien on any property or asset of such Person (whether or not such obligation is assumed by such Person).

“Intellectual Property” means all trademarks, trade names, corporate names, company names, business names, product or brand names, service marks, patents, copyrights (including moral rights), and any applications for or registrations of any of the foregoing, works of authorship, know-how, logos, proprietary information, protocols, schematics, specifications, software, software code (in any form, including source code and executable or object code), subroutines, techniques, user interfaces, URLs, domain names, web sites, works of authorship and other forms of technology (whether or not embodied in any tangible form and including all tangible embodiments of the foregoing, such as instruction manuals, laboratory notebooks, prototypes, samples, studies and summaries) inventions, trade secrets and any other intellectual property or intangible property that are used in the Business as presently conducted and any rights relating to any of the foregoing.

“Inventory” means all supplies, goods, raw or other materials, work in process, inventory and finished goods owned by any Seller exclusively for use or sale in the ordinary course of Business, but specifically excluding (1) goods which belong to sublessees, licensees or concessionaires of any Seller, and (2) goods held by any Seller on memo, on consignment, or as bailee.

“Knowledge” of Sellers or Purchaser means the knowledge, after due inquiry, of the officers and directors of each Seller, on one hand, or Purchaser, on the other hand, as applicable.

“Law” means any applicable federal, state, local, municipal, foreign, international, multinational or other constitution, law, ordinance, principle of common law, code, regulation, statute or treaty (including the Bankruptcy Code).

“Legal Proceeding” means any judicial, administrative or arbitral actions, suits, proceedings (public or private), investigation or claims or any proceedings by or before a Governmental Body.

“Liability” means any and all obligations, liabilities, debts and commitments, whether known or unknown, asserted or unasserted, fixed, absolute or contingent, matured or unmatured, accrued or unaccrued, liquidated or unliquidated, due or to become due, whenever or however arising (including whether arising out of any contract or tort based on negligence, strict liability, or otherwise) and whether or not the same would be required by GAAP to be reflected as a liability in financial statements or disclosed in the notes thereto.

“Lien” means any lien (statutory or common law), encumbrance, claim (as defined in section 101(5) of the Bankruptcy Code), security or other interest, mortgage, deed of trust, pledge, charge, title defect, hypothecation, easement, judgment, conditional sale or other title retention agreement, or similar restriction of any kind, in each case whether contingent, fixed or otherwise.

“Material Customer” has the meaning assigned to that term in Section 4.9.

“Person” means any individual, corporation, partnership, joint venture, trust, association, limited liability company, unincorporated organization, other entity, or Governmental Body or subdivision, agency, commission or authority thereof.

“Personal Property” means supplies (including packaging materials), materials, machinery, equipment (including equipment that is subject to a capital lease, but such equipment shall only be considered Acquired Personal Property, as relevant, to the extent that Purchaser assumes such capital lease as an Assigned Contract), tools, fixtures, furnishings, leasehold improvements, goods, and other tangible personal property owned by Sellers.

“Purchase Price” has the meaning assigned to that term in Section 2.5.

“Purchaser” has the meaning assigned to that term in the Preamble.

“Sale Hearing” has the meaning assigned to that term in Section 6.3(a).

“Seller” or “Sellers” has the meaning assigned to that term in the Preamble.

“Subsidiary” means any Person of which (i) a majority of the outstanding voting securities or other voting equity interests are owned, directly or indirectly, by any Seller or (ii) any Seller is entitled, directly or indirectly, to appoint a majority of the board of directors or managers or comparable supervisory body of such Person.

“Successful Bid” shall have the meaning assigned to such term in the Bidding Procedures Order.

“Successful Bidder” shall have the meaning assigned to such term in the Bidding Procedures Order.

“Tax” or “Taxes” means (i) any federal, state, local, or foreign income, gross receipts, license, payroll, employment, excise, severance, stamp, occupation, premium, windfall profits, environmental, custom duties, capital stock, franchise, profits, withholding, social security (or similar excises), unemployment, disability, ad valorem, real property, personal property, sales, use, transfer, registration, value added, alternative or add-on minimum, estimated, or other tax of any kind whatsoever, including any interest, penalty, or addition thereto, whether disputed or not, imposed by any Governmental Body responsible for imposition of any such tax (domestic or foreign) and (ii) any Liability in respect of any items described in clause (i) payable by reason of any Contract, assumption, transferee liability, operation of Law, Treasury Regulations section 1.1502-6(a) (or any predecessor or successor thereof or any analogous or similar provision under Law) or otherwise.

“Taxing Authority” means the U.S. Internal Revenue Service and any other Governmental Body responsible for the administration of any Tax.

“Tax Return” means any return, report or statement required to be filed with respect to any Tax (including any attachments thereto, and any amendment thereof), including any information return, claim for refund, amended return or declaration of estimated Tax, and including, where permitted or required, combined, consolidated or unitary returns for any group of entities that includes the Sellers, any of their Subsidiaries, or any of their Affiliates.

“Transactions” means the transactions contemplated by this Agreement and the Ancillary Agreements.

“Transfer Taxes” has the meaning given in Section 6.8(a).

“Trustee” means any trustee or fiduciary appointed to act on behalf of the Debtors or as successor to the Debtors.

## ARTICLE II SALE AND PURCHASE OF ASSETS

2.1 **Sale and Purchase of Assets.** On the terms and subject to the conditions set forth in this Agreement, on the Closing Date, Purchaser shall purchase, acquire, assume and accept from Sellers, and Sellers shall sell, assign, transfer, convey and deliver to Purchaser, all of each Sellers’ right, title and interest in, to and under the Acquired Assets free and clear of all Liens to the extent permissible under section 363(f) of the Bankruptcy Code. The “Acquired Assets” shall mean all of Sellers’ right, title and interest in, to and under the following:

(a) all Personal Property (“Acquired Personal Property”) set forth on **Schedule 2.1(a)**;

(b) all causes of action of Sellers arising under express or implied warranties from suppliers or other third parties with respect to the Acquired Assets, except for Estate Causes of Action;

(c) all customer lists, vendor lists, pricing information and customer and contractor relationship information, in each case relating to the Business;

(d) all Acquired Intellectual Property including as set forth on Schedule 2.1(d);

(e) all Assigned Contracts solely to the extent that such Assigned Contracts are designated by Purchaser to be assumed and assigned on the Closing Date in accordance with the Bidding Procedures Order and that Purchaser shall have provided adequate assurance of future performance under section 365(b)(1)(C) of the Bankruptcy Code with respect to any such contract, together with the right to receive income in respect of such Assigned Contracts after Closing, and any causes of action which may be brought by Sellers relating to past or current breaches of the Assigned Contracts; provided, however, that Purchaser shall have the right, by written notice delivered to the Sellers at any time during the period from and after the date hereof and until September 27, 2019 to (i) delete any Contract from Schedule 1.1 and (ii) add any Contract that is primarily related to the Business to Schedule 1.1;

(f) Subject to applicable law, all telephone and facsimile numbers with respect to the Business that are held in the name of any Seller, including those set forth on Schedule 2.1(f), in each case to the extent transferable; provided, however, the Purchaser agrees to permit Sellers to retain access to and use the AR Telephone Numbers for a period of ninety (90) days following Closing solely for the purpose of collecting Accounts Receivable;

(g) all rights of Sellers under non-disclosure or confidentiality agreements entered into with any Person to the extent relating to the Acquired Assets (or any portion thereof) together with copies of such non-disclosure or confidentiality agreements; and

(h) all goodwill and going concern value associated with any Acquired Asset.

2.2 **Excluded Assets.** The Acquired Assets do not include, and Purchaser shall not purchase, acquire, assume or accept from Sellers, and Sellers shall not sell, assign, transfer, convey or deliver to Purchaser, any of each Sellers' right, title and interest in, to or under any assets except as expressly provided in Section 2.1 (collectively, the "Excluded Assets"), including the following:

(a) all cash, bank deposits, securities and cash equivalents, including for this purpose, all cash and cash equivalents if credited to Sellers' bank accounts prior to the Closing Date;

(b) all Contracts other than the Assigned Contracts;

(c) all Accounts Receivable, including, without limitation, any and all amounts owed to Sellers by Centers for Medicare & Medicaid Services;

(d) all corporate minute books and records of internal corporate proceedings, stock transfer ledgers, blank stock certificates, corporate seals, tax and accounting records, work

papers and other records relating to the organization or maintenance of the legal existence of each Seller;

(e) any books, records or other information related solely and exclusively to the Excluded Assets;

(f) all records that Sellers are required by law to retain;

(g) all refunds (or credits in lieu thereof) of Taxes relating to the Acquired Assets with respect to the periods (or portions thereof) ending on or prior to the Closing Date;

(h) all Estate Causes of Action;

(i) all equity interests, or interests convertible into or exchangeable for equity interests, held by any Seller including any such interests of any Seller in another Seller;

(j) all interests in real property, together with all plants, buildings, structures, fixtures and improvements of all kinds situated thereon, and all privileges, rights, easements, hereditaments and appurtenances belonging to or for the benefit of such real property;

(k) all Inventory; and

(l) all Governmental Authorizations and all pending applications therefor or renewals thereof.

2.3 **Assumed Liabilities.** Upon the terms and subject to the conditions set forth herein, at the Closing, Purchaser shall assume and shall timely perform and discharge in accordance with their respective terms only the Liabilities set forth in this Section 2.3 (collectively, the “Assumed Liabilities”):

(a) all Liabilities and Cure Amounts with respect to the Assigned Contracts;

(b) all Liabilities (including for any Tax) that arise after the Closing with respect to Purchaser’s ownership or operation of the Acquired Assets after the Closing; and

(c) all Liabilities for Transfer Taxes.

2.4 **Excluded Liabilities.** The Assumed Liabilities do not include and Purchaser shall not assume, perform or discharge, any Liability except as expressly provided in Section 2.3 (the “Excluded Liabilities”), including the following:

(a) all Liabilities in respect of any activities of or services performed by the Sellers on or prior to the Closing Date;

(b) all Liabilities for Cure Amounts other than Cure Amounts with respect to the Assigned Contracts;

(c) all Liabilities arising out of, relating to or with respect to (i) the employment or performance of services, or termination of employment or services by Sellers or any of their Affiliates of any individual, (ii) workers' compensation claims against Sellers or any of their Subsidiaries, irrespective of whether such claims are made prior to or after the Closing or (iii) any Liabilities in respect of Employee Benefit Plans;

(d) all Liabilities arising out of, under or in connection with Contracts that are not Assigned Contracts and, with respect to Assigned Contracts, Liabilities arising from a breach by or default of Sellers that occurred under such Contracts prior to Closing (other than Cure Amounts with respect to the Assigned Contracts);

(e) all Liabilities arising out of, under or in connection with any Indebtedness of Sellers or any of their Subsidiaries;

(f) all Liabilities for (i) Taxes of Sellers, (ii) Taxes relating to the Acquired Assets or the Assumed Liabilities with respect to periods (or portions thereof) ending on or prior to the Closing Date, and (iii) payments under any Tax allocation, sharing or similar agreement (whether oral or written);

(g) all Liabilities in respect of any pending or threatened Legal Proceeding, or any claim arising out of, relating to or otherwise in respect of (i) the operation of the Business, (ii) the ownership of the Acquired Assets to the extent such Legal Proceeding or claim relates to such ownership on or prior to the Closing Date, or (iii) any Excluded Asset; and

(h) all Liabilities relating to amounts required to be paid by Sellers under this Agreement.

2.5 **Purchase Price.** The aggregate consideration for the sale and transfer of the Acquired Assets shall be (a) eight million five hundred thousand dollars (\$8,500,000.00) (the "Purchase Price"), and (b) the assumption by Purchaser of the Assumed Liabilities. At the Closing, Purchaser shall deliver the Purchase Price (less the Deposit) to Sellers by wire transfer of immediately available funds to an account designated in writing by Sellers to Purchaser no less than two (2) Business Days prior to the Closing Date.

2.6 **Deposit.** On September 13, 2019, Purchaser paid a deposit to Delaware Trust Company as escrow agent (the "Escrow Agent") of seven hundred thousand dollars (\$700,000.00) and, within two (2) Business Days following the date of this Agreement, Purchaser will pay an additional deposit to the Escrow Agent of one hundred and fifty thousand dollars (\$150,000.00) (collectively, the "Deposit"), in each case, by wire transfer which Deposit is held in escrow in a segregated account pursuant to the Bidding Procedures Order and that certain escrow agreement dated September 10, 2019 entered into by and between THG Holdings LLC and the Escrow Agent (the "Escrow Agreement"). Upon the terms and subject to the conditions of the Escrow Agreement, THG Holdings LLC shall deliver a written instruction to the Escrow Agent to distribute the Deposit as follows:

(a) if the Closing shall occur, the Deposit shall be applied towards the Purchase Price payable by Purchaser to Sellers pursuant to Section 2.5 and delivered to Sellers;

(b) if this Agreement is terminated by Sellers pursuant to Section 7.1(i), the Deposit shall be delivered to Sellers to an account designated in writing by Sellers to Purchaser within two (2) Business Days of receipt of such account information; or

(c) if this Agreement is terminated other than by Sellers pursuant to Section 7.1(i), the Deposit shall be delivered to Purchaser to an account designated in writing by Purchaser to Sellers within two (2) Business Days of receipt of such account information (or with respect to a termination pursuant to Section 7.1(c) or Section 7.1(d), within such time as is set forth in the Bidding Procedures).

**2.7 Non-Transferrable Acquired Assets.** Notwithstanding any other provision of this Agreement to the contrary, this Agreement shall not constitute an agreement to assign any Acquired Asset or any right thereunder if an attempted assignment, without the consent of a third party, would, after giving effect to the Approval Order and the Bankruptcy Code, constitute a breach or other contravention thereof or a violation of Law to which any Seller is bound or in any way adversely affect the rights of any Seller or, upon transfer, Purchaser thereunder that cannot be excused or rendered ineffective by operation of the Bankruptcy Code, the Approval Order or applicable non-bankruptcy Law. If such consent is not obtained or such assignment is not attainable pursuant to an Order of the Bankruptcy Court under sections 105, 363 and/or 365 of the Bankruptcy Code, in form and substance acceptable to Sellers and Purchaser, then such Acquired Assets shall not be transferred hereunder, and the Closing shall proceed with respect to the remaining Acquired Assets and Sellers shall use their commercially reasonable efforts, and Purchaser shall reasonably cooperate with Sellers, to obtain any such consent after the Closing and to provide to Purchaser the benefits under any such Assigned Contract or any claim or right, including enforcement for the benefit of Purchaser of any and all rights of Sellers against a third party thereto arising out of the default or cancellation by such third party or otherwise. In addition, in the event that the software (including the licenses, kits and interfaces) listed in Schedule 2.1(d) as Acquired Intellectual Property cannot be assigned to Purchaser at Closing because the Agreements do not permit the assignment and Sellers have otherwise complied with this Agreement, such failure to assign such Acquired Intellectual Property shall not constitute a breach of this Agreement and Closing shall proceed with respect to the remaining Acquired Assets and Sellers shall reasonably cooperate with Purchaser, if requested by Purchaser, to transfer such software following Closing.

**2.8 Cure Amounts.** At Closing and pursuant to section 365 of the Bankruptcy Code, Sellers shall assume and assign to Purchaser the Assigned Contracts. The Cure Amounts with respect to the Assigned Contracts, as determined by the Bankruptcy Court, if any, shall be paid by Purchaser on or before the Closing.

**2.9 Bulk Sales Laws.** Purchaser hereby waives compliance by Sellers with the requirements and provisions of any “bulk-transfer” Laws of any jurisdiction that may otherwise be applicable with respect to the sale of any or all of the Acquired Assets to Purchaser. Pursuant to section 363(f) of the Bankruptcy Code, the transfer of the Acquired Assets shall be free and clear of any Liens in the Acquired Assets, including any liens or claims arising out of the bulk transfer laws, and the parties hereto shall take such steps as may be necessary or appropriate to so provide in the Approval Order.

### ARTICLE III CLOSING; CONDITIONS TO CLOSING

3.1 **Closing.** Subject to the terms and conditions of this Agreement, the closing (the “Closing”) of the sale and purchase of the Acquired Assets and the assumption of the Assumed Liabilities shall take place on October 1, 2019 (unless otherwise agreed by Sellers and Purchaser) at a location to be specified by Sellers. The time and date upon which the Closing occurs is referred to herein as the “Closing Date.” All Transactions that occur at the Closing shall be deemed to take place simultaneously and none shall be deemed to have taken place until all shall have taken place.

3.2 **Conditions to Obligations of Purchaser and Sellers.** The obligations of Purchaser and Sellers to consummate the Transactions are subject to the satisfaction, at or before the Closing, of each of the following conditions, any of which conditions may be waived by the parties:

(a) **Approval Order.** The Bankruptcy Court’s entry of the Approval Order in a form and substance acceptable to Purchaser and such order shall not be subject to a stay. The Approval Order shall not be subject to any challenge of Purchaser’s good faith under section 363(m) of the Bankruptcy Code.

(b) **No Legal Proceedings.** No Legal Proceedings (including any proceeding over which the Bankruptcy Court has jurisdiction under 28 U.S.C. § 157(b) and (c)) shall have been instituted or threatened or claim or demand made against Sellers or Purchaser seeking to restrain or prohibit or to obtain substantial damages with respect to the consummation of the Transactions, and there shall not be in effect any order by a Governmental Body of competent jurisdiction restraining, enjoining or otherwise prohibiting the consummation of the Transactions.

3.3 **Conditions to Obligations of Purchaser.** The obligation of Purchaser to consummate the Transactions is also subject to the satisfaction, at or before the Closing, of each of the following conditions, any of which conditions may be waived by Purchaser in its sole discretion:

(a) **Representations and Warranties.** The representations and warranties of Sellers set forth in ARTICLE IV shall be true and correct in all material respects (except for those representations and warranties qualified by materiality and the representations and warranties set forth in Section 4.5, each of which shall be true and correct in all respects) on and as of the Closing Date, as though made on and as of the Closing Date (except, in each case, for representations and warranties made as of a specified date, which shall be true and correct only as of the specified date).

(b) **Agreements and Covenants.** Sellers shall have performed and complied with each agreement, covenant and obligation required to be performed or complied with by them under this Agreement at or before the Closing in all material respects.



(c) Deliveries at Closing. Purchaser shall have received from Sellers all fully executed instruments or documents as Purchaser may reasonably request (including appropriate certificates under section 1445 of the Code establishing that no withholding is required with respect to the Transactions) to fully effect the transfer of all of the Acquired Assets free and clear of any Lien and the assumption of the Assumed Liabilities, in each case as contemplated by this Agreement, and to otherwise consummate the Transactions. Except with respect to any Assigned Contracts that the Bankruptcy Court has ruled are not assignable without the counterparty's consent and any Assigned Contract that Purchaser has proposed to renegotiate and is not being assumed by Sellers on or before the Closing, Sellers shall have assumed each applicable Assigned Contract to be assumed on or before the Closing.

3.4 Conditions to Obligations of Sellers. The obligation of Sellers to consummate the Transactions is also subject to the satisfaction, at or before the Closing, of each of the following conditions, any of which conditions may be waived by Sellers in their sole discretion:

(a) Representations and Warranties. The representations and warranties of Purchaser set forth in ARTICLE V shall be true and correct in all material respects (except for those representations and warranties qualified by materiality, which shall be true and correct in all respects) on and as of the Closing Date, as though made on and as of the Closing Date (except, in each case, for representations and warranties made as of a specified date, which shall be true and correct only as of the specified date).

(b) Agreements and Covenants. Purchaser shall have performed and complied with each agreement, covenant and obligation required to be performed or complied with by it under this Agreement at or before the Closing in all material respects.

(c) Receipt of Purchase Price. Sellers shall have received the Purchase Price (less the Deposit) from Purchaser.

3.5 Delivery of Possession of Assets. Right to possession of all Acquired Assets shall transfer to Purchaser at the Closing. Purchaser shall bear all risk of loss with respect to the Acquired Assets from and after the Closing.

3.6 Frustration of Closing Conditions. Neither Sellers nor Purchaser may rely on the failure of any condition set forth in Section 3.2, Section 3.3 or Section 3.4, as the case may be, if such failure was caused by such party's failure to comply with any provision of this Agreement.

## **ARTICLE IV REPRESENTATIONS AND WARRANTIES OF SELLERS**

Sellers, jointly and severally, represent and warrant to Purchaser that the statements contained in this ARTICLE IV are true and correct as of the date hereof and will be true and correct in all material respects on the Closing Date (except for those representations and warranties qualified by materiality, which shall be true and correct in all respects).

4.1 **Organization, Good Standing and Power.** Each Seller is validly existing and in good standing under the laws of the state of its formation. Subject to the applicable provisions of the Bankruptcy Code, each Seller has the power to own its properties and carry on its business as now being conducted and is qualified or licensed to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary.

4.2 **Authority Relative to this Agreement; Execution and Binding Effect.** Each Seller has full power and authority to execute and deliver this Agreement and the Ancillary Agreements, perform its obligations hereunder and thereunder and, subject to receipt of any necessary Bankruptcy Court approval in accordance with the Bankruptcy Code, to consummate the Transactions. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Transactions have been duly and validly approved and adopted by the members, board of directors, or board of managers, as applicable, of each Seller, and, except for Bankruptcy Court approval, no other proceedings or approvals on the part of any Seller are necessary to approve this Agreement and the Ancillary Agreements and to consummate the Transactions. This Agreement has been, and each Ancillary Agreement will be at or prior to the Closing, duly and validly executed and delivered by each Seller. Assuming due authorization, execution and delivery by Purchaser, this Agreement constitutes, and each of the Ancillary Agreements at the Closing will constitute, the valid and binding obligation of Sellers, enforceable against Sellers in accordance with their terms, except as such enforcement may be limited by (a) the effect of bankruptcy, insolvency, reorganization, receivership, conservatorship, arrangement, moratorium or other laws affecting or relating to the rights of creditors generally, or (b) the rules governing the availability of specific performance, injunctive relief or other equitable remedies and general principles of equity, regardless of whether considered in a proceeding in equity or at law.

4.3 **Governmental and Other Consents.** Except for the receipt of any necessary Bankruptcy Court approval in accordance with the Bankruptcy Code, no consent, notice, authorization or approval of, or exemption by, or filing with or notifications to any Governmental Body or any other Person, whether pursuant to contract or otherwise, is required in connection with the execution and delivery by each Seller of this Agreement and the Ancillary Agreements and the consummation of the Transactions.

4.4 **Conflicts.** Except as a result of the Chapter 11 Cases, none of the execution and delivery by Sellers of this Agreement or the Ancillary Agreements, the consummation of the Transactions, or compliance by Sellers with any of the provisions hereof or thereof will conflict with, or result in any violation of or default (with or without notice or lapse of time, or both) under, or give rise to a right of termination, cancellation or acceleration of any obligation or to loss of a material benefit under, or give rise to any obligation of Sellers to make any payment under, or to the increased, additional, accelerated or guaranteed rights or entitlements of any Person under, or result in the creation of any Liens upon any of the Acquired Assets under any provision of (a) the certificate of incorporation and by-laws or comparable organizational documents of any Seller; (b) subject to entry of the Approval Order and any requirements of the Bankruptcy Court, any Contract or permit to which any Seller is a party or by which any of the properties or assets of any Seller is bound; (c) subject to entry of the Approval Order, any order of any court, Governmental Body or arbitrator applicable to the Sellers or any of the properties

or assets of any Seller as of the date hereof; or (d) subject to entry of the Approval Order, any applicable Law.

4.5 **Title to Acquired Assets.** Sellers own and have good title to each of the Acquired Assets, and at the Closing, Sellers shall convey to Purchaser each of the Acquired Assets free and clear of all Liens.

4.6 **Cure Amounts.** Sellers estimate that, based on Sellers' good faith estimate of all information available as of the date of this Agreement, that the Cure Amounts attributable to the Assigned Contracts are as set forth on **Schedule 1.1.**

4.7 **Financial Statements.** Sellers have delivered to Purchaser copies of (a) the audited consolidated balance sheets of Sellers as at December 31, 2016 and December 31, 2017 and the related audited consolidated statements of operations, changes in members' equity and of cash flows of Sellers for the years then ended (such audited statements, including the related notes and schedules thereto, are referred to herein as the "**Financial Statements**") and (b) the unaudited monthly consolidated balance sheets of Sellers for each month from January 2018 through June 2019 and the related monthly consolidated statements of income of Sellers for each month then ended. Each of the Financial Statements is complete and correct in all material respects, has been prepared in accordance with GAAP consistently applied without modification of the accounting principles used in the preparation thereof throughout the periods presented and presents fairly, in all material respects, the consolidated financial position, results of operations and cash flows of Sellers as at the dates and for the periods indicated.

4.8 **Intellectual Property.** The Acquired Assets, the use of the Acquired Assets by Sellers prior to the date hereof and the conduct of the Business does not and has not infringed or misappropriated the Intellectual Property rights of any third party. There is no Intellectual Property owned by Sellers or any Affiliate of Sellers which Intellectual Property covers the Acquired Assets and is not included in the Acquired Assets. There are no licenses or similar rights of third parties under the Intellectual Property included in the Acquired Assets that would in any way restrict Purchaser's operation of the Acquired Assets following the Closing. Sellers are not party to any license agreements with respect to Intellectual Property that are necessary or useful for the operation of the Acquired Assets that are not included in the Acquired Assets. Sellers have at all times used reasonable efforts to maintain the confidentiality of all non-public information included in the Acquired Assets.

4.9 **Material Customers.** With respect to each Person who has ordered services from the Sellers related to the Business (the "**Customers**"), the 25 largest Customers of the Business (measured by the test code order volume for the Business with respect to each Customer) (each, a "**Material Customer**") for the six (6) month period ended August 31, 2019 and the two (2) week period ended September 13, 2019 are set forth in **Schedule 4.9.** Except as described on **Schedule 4.9,** as of the date of this Agreement, no Seller has received any written or verbal indication from any Material Customer to the effect that any such Material Customer intends to cease doing business with or materially diminish the amount of the business that it is now doing with Sellers with respect to the Business or, after the Closing Date, will be doing with Purchaser. Sellers have not made any commitment of any kind to any Customer to implement any material price reductions, material adjustments or any material change in the nature of

services or a material change in the service levels provided at a future date outside the ordinary course of business. The test code order volume set forth in **Schedule 4.9** is attributable solely to the Business, and not to any other business of Sellers.

4.10 **Financial Advisors.** Except as set forth on **Schedule 4.10**, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Sellers in connection with the Transactions and no Person is entitled to any fee or commission or like payment in respect thereof.

#### 4.11 **Taxes.**

(a) Other than any Taxes the timely payment of which is precluded by the Chapter 11 Cases and 2018 and 2019 personal property taxes from the City of Richmond, each Seller has paid (or has caused to be paid) in full all material amounts of Taxes payable by or on behalf of such Seller.

(b) Each of the Sellers is, and at all times since the date of its formation has been, properly classified for U.S. federal income (and applicable state and local) tax purposes as either a “partnership” or disregarded entity, in each case, as described in Treasury Regulations Section 301.7701-3.

### **ARTICLE V REPRESENTATIONS AND WARRANTIES OF PURCHASER**

Purchaser represents and warrants to Sellers that the statements contained in this **ARTICLE V** are true and correct as of the date hereof and will be true and correct in all material respects on the Closing Date (except for those representations and warranties qualified by materiality, which shall be true and correct in all respects).

5.1 **Organization, Good Standing and Power.** Purchaser is validly existing and in good standing under the laws of the state of its formation. Purchaser has the power to own its properties and carry on its business as now being conducted and is qualified or licensed to do business in each jurisdiction in which the nature of its business or the ownership or leasing of its properties makes such qualification or licensing necessary.

5.2 **Authority Relative to this Agreement; Execution and Binding Effect.** Purchaser has full power and authority to execute and deliver this Agreement and the Ancillary Agreements, perform its obligations hereunder and thereunder and to consummate the Transactions. The execution and delivery of this Agreement and the Ancillary Agreements and the consummation of the Transactions have been duly and validly approved and adopted by all necessary action of Purchaser and no other proceedings or approvals (shareholder, member or otherwise) on the part of Purchaser are necessary to approve this Agreement and the Ancillary Agreements and to consummate the Transactions. This Agreement has been, and each Ancillary Agreement will be at or prior to the Closing, duly and validly executed and delivered by Purchaser. Assuming due authorization, execution and delivery by Sellers, this Agreement constitutes, and each of the Ancillary Agreements at the Closing will constitute, the valid and binding obligation of Purchaser, enforceable against Purchaser in accordance with their terms.

5.3 **Governmental and Other Consents.** No consent, notice, authorization or approval of, or exemption by, or filing with or notifications to any Governmental Body or any other Person, whether pursuant to contract or otherwise, is, after giving effect to the Approval Order and the Bankruptcy Code, required in connection with the execution and delivery by Purchaser of this Agreement and the Ancillary Agreements and the consummation of the Transactions.

5.4 **Financial Ability.** Purchaser has cash available that is sufficient to enable it to pay the Purchase Price and all other amounts otherwise payable to consummate the Transactions pursuant to and in accordance with this Agreement.

## ARTICLE VI COVENANTS

6.1 **Operation of Business.** Subject to the requirements of, and the obligations imposed upon, Sellers as debtors-in-possession and pursuant to the Bankruptcy Code and except (i) as otherwise contemplated by this Agreement or the Bidding Procedures Order, (ii) as required by the Bankruptcy Court or (iii) as required to comply with the debtor-in-possession financing obtained by Sellers, Sellers shall:

(a) use their commercially reasonable efforts to (i) preserve their present operation of the laboratory services and facilities of the Business (including maintaining current levels of service and turnaround times) and goodwill of Sellers and (ii) preserve the present relationships with Persons having business dealings relating to the Acquired Assets (including Customers and suppliers of the Business);

(b) continue the receipt of laboratory specimens in connection with the operation of the laboratory services of the Business until at least September 26, 2019;

(c) not terminate the employment of any person who is employed by the Sellers in connection with the operation of the laboratory services of the Business;

(d) maintain (i) all of the Acquired Assets in their current condition, ordinary wear and tear excepted and (ii) insurance upon all of the Acquired Assets in such amounts and of such kinds comparable to that in effect on the date of this Agreement; and

(e) not take any action or fail to take any action which would adversely affect or be reasonably expected to adversely affect the ability of the parties to consummate the Transactions or result in a reversal, avoidance, revocation, vacating or modification, or a stay of, the Transactions pending appeal.

6.2 **Bidding Procedures and Orders.** The purchase and sale of the Acquired Assets will be subject to competitive bidding in accordance with (and only in accordance with) the terms of the order approving the sale and bidding procedures attached hereto as Exhibit A (the “Bidding Procedures Order”).

### 6.3 Approval Order.

(a) Prior to the Closing, and subject to the provisions of this Agreement, Purchaser and Sellers shall use their commercially reasonable efforts to obtain entry of an order or orders by the Bankruptcy Court pursuant to sections 363 and 365 of the Bankruptcy Code (the “Approval Order”) on the date previously set for the hearing to approve the Acquisition (the “Sale Hearing”), or such other date set by the Bankruptcy Court, which Approval Order shall approve of this Agreement and the Transactions, and which shall contain the following provisions in terms reasonably acceptable to the parties (it being understood that certain of such provisions may be contained in either the findings of fact or conclusions of law to be made by the Bankruptcy Court as part of the Approval Order) and be otherwise acceptable to the Purchaser:

(i) that Sellers may sell, transfer and assign the Acquired Assets and assume and assign the Assigned Contracts, if any, to Purchaser pursuant to this Agreement and Bankruptcy Code sections 105, 363 and 365, as applicable, and the release of Purchaser of any rights otherwise associated with, and which may otherwise be to the benefit of, any third parties;

(ii) the transfers of the Acquired Assets by Sellers to Purchaser (A) vest or will vest Purchaser with all right, title and interest of Sellers in and to the Acquired Assets, free and clear of all Liens, and (B) constitute transfers for reasonably equivalent value and fair consideration under the Bankruptcy Code and the laws of the State of Delaware;

(iii) the Transactions are undertaken by Purchaser and Sellers at arm’s length, without collusion and in good faith within the meaning of section 363(m) of the Bankruptcy Code, and such parties are entitled to the protections of section 363(m) of the Bankruptcy Code;

(iv) that selling the Acquired Assets free and clear of all Liens is in the best interest of the Estates;

(v) that the Purchaser is not and shall not be deemed a successor to the Sellers, that the Acquisition is not a de facto merger or consolidation of the Sellers and Purchaser, that Purchaser’s business is not an alter ego or a mere continuation or substantial continuation of the Sellers’ business, and the Purchaser is entering into the Acquisition in good faith and not for the purpose of avoiding the Sellers’ liabilities;

(vi) that Purchaser shall not assume any of the Excluded Liabilities;

(vii) that neither Purchaser nor any of its Affiliates or members will have any derivative, successor, transferee or vicarious liability of any kind or character whether known or unknown as of the Closing, whether now existing or hereafter arising, or whether fixed or contingent, for Liabilities of Sellers (whether under Law or otherwise and including any Taxes) arising, accruing, or payable under, out of, in connection with, or in any way relating to the operation of Sellers’ business on or prior to the Closing or in connection with the Transactions and the Approval Order; and

(viii) the Transactions shall not be subject to any “bulk sales,” “bulk transfer” and similar Laws, including those related to Taxes.

(b) If the Approval Order or any other orders of the Bankruptcy Court relating to this Agreement shall be appealed by any person (or a petition for certiorari or motion for rehearing or reargument shall be filed with respect thereto), each party hereto agrees to use commercially reasonable efforts to obtain an expedited resolution of such appeal; provided, however, that nothing herein shall preclude the parties hereto from consummating the Transactions if the Approval Order shall have been entered and has not been stayed in which event Purchaser shall be able to assert the benefits of section 363(m) of the Bankruptcy Code.

(c) Sellers shall provide notice of any matter relating to the Sale Hearing, this Agreement, any other transaction documents, or the Approval Order to all Persons necessary to provide Purchaser with the benefits and protections set forth in the Approval Order (including the Taxing Authorities of Texas and Virginia), in each case as required by the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure, any applicable local rules of bankruptcy procedure and as otherwise ordered by the Bankruptcy Court.

#### 6.4 **Bankruptcy and Other Filings.**

(a) Subject to the provisions of the Bankruptcy Code, the Bidding Procedures Order, the Bid Procedures and Sellers’ right to make such filings and disclosures as they in good faith deem necessary or appropriate in connection with the Chapter 11 Cases, Sellers shall not make or issue, or cause to be made or issued, any public announcement or written statement concerning this Agreement or the Transactions without the prior written consent of the Purchaser (which will not be unreasonably withheld or delayed), unless counsel to such party advises that such announcement or statement is required by Law (in which case the parties hereto shall make reasonable efforts to consult with each other prior to such required announcement).

(b) Sellers shall provide Purchaser with a reasonable opportunity to review any filings or disclosures it intends to make relating to this Agreement or the Transactions and shall incorporate all reasonable comments received from Purchaser or its representatives, including any redactions or requests for confidential treatment.

6.5 **Assumption and Assignment of Assigned Contracts.** From the date of this Agreement through and including the Closing Date, to the extent the Sellers become aware of any changes to any of the Cure Amounts, the Sellers shall notify Purchaser of any such changes. The Sellers shall be responsible for the verification of all Cure Amounts for each Assigned Contract and shall, in consultation with Purchaser, use commercially reasonable efforts to finalize the Cure Amounts, if any, for each Assigned Contract prior to the Closing Date.

#### 6.6 **Access to Facilities, Personnel, and Information.**

(a) Prior to the Closing, Sellers shall permit representatives of Purchaser to have reasonable access during regular business hours and upon reasonable notice, and in a manner so as not to interfere with the normal business operations of Sellers, to all premises, property, books, records (including Tax records), Contracts, and documents of or pertaining to

the Business (provided that any representatives of Purchaser shall be subject to the confidentiality obligations under the Confidentiality Agreement or otherwise agree in writing to be bound by the terms of such Confidentiality Agreement applicable to Purchaser thereunder).

(b) From the Closing Date through and including the second anniversary of the Closing Date, Purchaser shall grant Sellers, the Trustee, and their respective representatives reasonable access to the books and records transferred to Purchaser pursuant to this Agreement during regular business hours and upon reasonable notice for the purpose of allowing Sellers or their successors, the Trustee or their respective representatives to perform the duties necessary for the liquidation of the Debtors' Estates.

#### 6.7 **Further Assurances.**

(a) Purchaser and Sellers shall use commercially reasonable efforts to take, and shall cause their respective Affiliates to take, such further actions and execute such other documents as may be reasonably required to fulfill the conditions to Closing and, after Closing, to fully effect the Transactions and further secure to each party the rights intended to be conferred hereby and thereby (including the transfer of ownership of any software or other Intellectual Property held by Sellers that is required to effect to the transfer of any Acquired Asset); provided, however, that nothing in this Section 6.7 shall prohibit Sellers from ceasing operations or winding up its affairs following the Closing. Purchaser shall use commercially reasonable efforts to cooperate with Sellers and provide Sellers with information reasonably sufficient to enable Sellers to demonstrate adequate assurance of future performance (as required by section 365 of the Bankruptcy Code) as to Purchaser.

(b) From time to time following the Closing, Sellers and Purchaser shall, and shall cause their respective Affiliates to, execute, acknowledge and deliver all such further conveyances, notices, assumptions, releases and acquaintances and such other instruments, and shall take such further actions, as may be necessary or appropriate to assure fully to Purchaser and its respective successors or assigns, all of the properties, rights, titles, interests, estates, remedies, powers and privileges intended to be conveyed to Purchaser under this Agreement and the Ancillary Agreements, free and clear of any Liens, and to assure fully to Sellers and their Affiliates and their successors and assigns, the assumption of the liabilities and obligations intended to be assumed by Purchaser under this Agreement and the Ancillary Agreements, and to otherwise make effective the Transactions.

#### 6.8 **Tax Matters.**

(a) All sales, use, transfer, stamp, conveyance, value added or other similar Taxes, duties, excises or governmental charges imposed by any Taxing Authority ("Transfer Taxes"), and all recording or filing fees, notarial fees and other similar costs of Closing will be borne by Purchaser.

(b) Purchaser shall prepare and deliver to Sellers no later than ninety (90) days after the Closing Date, an allocation of the Purchase Price (including the Assumed Liabilities, as applicable) among the Acquired Assets. Purchaser and Sellers shall each file all Tax Returns (and IRS Form 8594, if applicable) on the basis of such allocation, as it may be



amended, and no party shall thereafter take a Tax Return position inconsistent with such allocation unless such inconsistent position shall arise out of or through an audit or other inquiry or examination by the Internal Revenue Service or other Taxing Authority.

(c) All personal property Taxes, ad valorem Taxes and similar recurring Taxes (but excluding Transfer Taxes) imposed upon the Acquired Assets for the Tax period in which the Closing occurs will be apportioned and prorated between the Sellers and Purchaser as of the close of business on the Closing Date. Purchaser shall bear its proportionate share of such Taxes (which shall be equal to the product obtained by multiplying (i) a fraction, the numerator being the amount of the Taxes and the denominator being the total number of days in the prorated Tax period, times (ii) the number of days in such Tax period following the Closing Date), and Sellers shall bear the remaining portion of such Taxes. If the precise amount of any such Tax cannot be ascertained as of the Closing Date, apportionment and proration shall be computed on the basis of the amount payable for each respective item during the Tax period immediately preceding the prorated Tax period and any proration shall be adjusted thereafter on the basis of the actual charges for such items in the prorated Tax Period. When the actual amounts become known, such proration shall be recalculated promptly, and Purchaser or Sellers, as applicable, shall within ten (10) days after notice of payment due and delivery of reasonable supporting documentation with respect to such amounts shall make any additional payment or refund so that the correct prorated amount is paid by each of Purchaser and Sellers.

6.9 **Notice of Developments.** Sellers and Purchaser will give prompt written notice to the other parties hereto of (a) the existence of any fact or circumstance, or the occurrence of any event, of which it has Knowledge, that would reasonably be likely to cause a condition to a party's obligations to consummate the Transactions set forth in Section 3.2, Section 3.3 or Section 3.4, as applicable, not to be satisfied as of a reasonably foreseeable Closing Date, or (b) the receipt of any notice or other communication from any Governmental Body in connection with the Transactions; provided, however, that the delivery of any such notice pursuant to this Section 6.9 shall not be deemed to amend or supplement this Agreement.

6.10 **Consents.** Sellers shall use their commercially reasonable efforts, and Purchaser shall cooperate with Sellers, to obtain at the earliest practicable date all consents and approvals required to consummate the Transactions.

6.11 **Return of Confidential Information.**

(a) From and after the date hereof, Sellers shall not and shall cause their Affiliates and their respective officers, and directors not to, directly or indirectly, disclose, reveal, divulge or communicate to any Person other than authorized officers, directors, employees and representatives of Purchaser or use or otherwise exploit for its own benefit or for the benefit of anyone other than Purchaser, any Confidential Information related to, or included in, the Acquired Assets.

(b) Promptly following the date hereof, Sellers shall (i) remove access to copies of any Acquired Assets (including customer lists) in any electronic data rooms maintained by the Sellers in connection with the Chapter 11 Cases or otherwise for all Persons; provided, however, that all Persons deemed a "Qualified Bidder" pursuant to the Bidding Procedures, if

applicable, may continue to have access to such documents until the Sellers appoint a “Successful Bidder” and “Back-up Bidder” pursuant to the Bidding Procedures, in each case if applicable, at which time only such “Successful Bidder” and “Back-up Bidder” shall continue to have access to such documents until their respective bids are no longer open and irrevocable pursuant to the Bidding Procedures and (ii) use reasonable best efforts to cause any Persons, other than authorized officers, directors, employees and representatives of Purchaser, that have been provided with any Confidential Information related to, or included in, the Acquired Assets (including in connection with the Chapter 11 Cases, in accordance with the Bidding Procedures Order or provided to any bidders or potential bidders for the Acquired Assets) to destroy such Confidential Information or deliver such Confidential Information to the Purchaser.

(c) Promptly following the date hereof, Sellers shall provide Purchaser with a list of all Persons that were provided with any customer lists relating to the Business in connection with the Chapter 11 Cases, in accordance with the Bidding Procedures Order or otherwise provided to any bidders or potential bidders for the Acquired Assets.

6.12 **Escrow Agreement.** THG Holdings LLC acknowledges and agrees that it will not at any time (a) amend or modify, or seek to amend or modify, the Escrow Agreement in whole or in part, (b) waive, or seek to waive, any rights held by it under the Escrow Agreement or (c) issue any written instruction to the Escrow Agent under the Escrow Agreement with respect to delivery of the Deposit other than as contemplated by Section 2.6, in each case without the prior written consent of Purchaser.

## ARTICLE VII TERMINATION; EFFECT OF TERMINATION

7.1 **Termination.** This Agreement may, by notice given prior to or at the Closing, be terminated:

- (a) by mutual written consent of Purchaser and Sellers;
- (b) by Purchaser or Sellers in the event the Closing has not occurred on or before October 1, 2019;
- (c) if Purchaser’s bid is not chosen by Sellers to be the Successful Bid or Back-Up Bid, by Purchaser or Sellers on or following the date of entry by the Bankruptcy Court approving the sale of all or part of the Acquired Assets to a Person (or group of Persons) other than Purchaser or an Affiliate of Purchaser;
- (d) if Purchaser’s bid is chosen by Sellers to be the Back-Up Bid, by Purchaser or Sellers upon the earlier of (i) the consummation of the sale of all or part of the Acquired Assets to the Successful Bidder or (ii) twenty-five (25) Business Days following the date of the order approving the sale of all or part of the Acquired Assets to the Successful Bidder;
- (e) by Purchaser or Sellers if there shall be in effect a final nonappealable order of a Governmental Body of competent jurisdiction restraining, enjoining or otherwise

prohibiting the consummation of the Transactions; it being agreed that the parties hereto shall promptly appeal any adverse determination which is not nonappealable (and pursue such appeal with reasonable diligence);

(f) by Purchaser if (i) the Bankruptcy Court enters an order appointing a trustee or examiner with expanded powers or responsible officer in the Chapter 11 Cases or (ii) the Chapter 11 Cases are converted to a case under chapter 7 of the Bankruptcy Code or (iii) the Chapter 11 Cases are dismissed;

(g) by Purchaser, if any of the conditions to the obligations of Purchaser set forth in Section 3.2 and Section 3.3 shall have become incapable of fulfillment other than as a result of a breach by Purchaser of any covenant or agreement contained in this Agreement, and such condition is not waived by Purchaser (if capable of waiver in accordance with this Agreement);

(h) by Sellers, if any condition to the obligations of Sellers set forth in Section 3.2 and Section 3.4 shall have become incapable of fulfillment other than as a result of a breach by Sellers of any covenant or agreement contained in this Agreement, and such condition is not waived by Sellers (if capable of waiver in accordance with this Agreement); or

(i) by the non-breaching party upon a material breach of any provision of this Agreement provided that such breach has not been waived by the non-breaching party and has continued after notice to the breaching party by the non-breaching party without cure for a period of three (3) Business Days.

7.2 **Effect of Termination.** Other than in the case of Fraud, if this Agreement is terminated pursuant to Section 7.1, other than forfeiture of the Deposit on the terms and conditions set forth in Section 2.6, no party shall have any Liability or obligations under this Agreement; provided, however, that the obligations of the parties set forth in Section 2.6, Section 7.2 and ARTICLE VIII shall survive any such termination and shall be enforceable hereunder; provided, further, however, that nothing in this Section 7.2 shall relieve Purchaser or Sellers of any liability for a breach of this Agreement prior to the effective date of such termination.

## ARTICLE VIII GENERAL PROVISIONS

8.1 **Transaction Expenses.** Except as expressly provided for herein, each party shall pay all fees, costs and expenses incurred by it with respect to this Agreement, whether or not the Transactions are consummated. In accordance with the Bidding Procedures, Purchaser agrees to waive its right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code arising out of the submission of its bid or participation in any auction.

8.2 **Certain Interpretive Matters and Definitions.** Unless the context requires, (a) references to the plural include the singular and references to the singular include the plural, (b) references to any gender includes the other gender, (c) the words “include,” “includes” and

“including” do not limit the preceding terms or words and shall be deemed to be followed by the words “without limitation”, (d) the terms “hereof”, “herein”, “hereunder”, “hereto” and similar terms in this Agreement refer to this Agreement as a whole and not to any particular provision of this Agreement, and (e) all references to Sections, Articles, Exhibits or Schedules are to Sections, Articles, Exhibits or Schedules of or to this Agreement.

8.3 **Termination of Representations and Warranties.** The representations and warranties of the parties set forth in this Agreement shall terminate and be of no further force or effect after the Closing.

8.4 **Amendment.** This Agreement may be amended or modified in whole or in part at any time by an agreement in writing among the parties.

8.5 **Waiver.** The waiver by a party of a breach of any covenant, agreement, condition or undertaking contained herein shall be made only by a written waiver in each case. No waiver of any breach of any covenant, agreement, condition or undertaking contained herein shall operate as a waiver of any prior or subsequent breach of the same covenant, agreement, condition or undertaking or as a waiver of any breach of any other covenant, agreement, condition or undertaking. No failure on the part of any party to exercise, and no delay in exercising, any right, power or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of such right, power or remedy by such party preclude any other or further exercise thereof or the exercise of any other right, power or remedy. All remedies hereunder are cumulative and are not exclusive of any other remedies provided by Law.

8.6 **Notices.** All notices, requests and other communications hereunder will be deemed to have been duly given if delivered (a) personally by hand, (b) by an established overnight delivery company, (c) by certified or registered mail, postage prepaid, return receipt requested or (d) by email, return receipt requested, as follows:

If to Sellers:

FTI Consulting, Inc.  
Attn: Clifford A. Zucker  
Three Times Square  
9th Floor  
New York, NY 10036  
Email: cliff.zucker@fticonsulting.com

with a copy to:

Morris, Nichols, Arsht & Tunnell LLP  
Attn: Derek C. Abbott  
Curtis S. Miller  
1201 N. Market St.  
Suite 1600  
Wilmington, DE 19801  
Email: dabbott@mnat.com

cmiller@mnat.com

If to Purchaser:

c/o Quest Diagnostics Incorporated  
Attn: SVP, Ventures, M&A and Strategy  
500 Plaza Drive  
Secaucus, NJ 07094  
Email: Dermot.V.Shorten@questdiagnostics.com

with copies to:

Quest Diagnostics Incorporated  
Attn: General Counsel  
500 Plaza Drive  
Secaucus, NJ 07094  
Email: Michael.E.Prevoznik@questdiagnostics.com

Weil, Gotshal & Manges LLP  
Attn: Michael E. Lubowitz  
Jessica Liou  
767 Fifth Avenue  
New York, NY 10153  
Email: michael.lubowitz@weil.com  
jessica.liou@weil.com

or to such other address as may hereafter be designated by a party by the giving of notice in accordance with this Section 8.6. All notices, requests or other communications shall be deemed given when actually delivered if delivered personally or by an established overnight delivery company or upon actual receipt if delivered by certified or registered mail, postage prepaid, return receipt requested.

**8.7 Jurisdiction.** The parties agree that the Bankruptcy Court shall retain exclusive jurisdiction to resolve any controversy or claim arising out of or relating to this Agreement or the implementation or breach hereof; provided, however, that in the event the Bankruptcy Court abstains from exercising or declines to exercise jurisdiction with respect to any matter provided for in this sentence or is without jurisdiction, then the parties agree that the state or federal courts in the County of New Castle, State of Delaware, shall have jurisdiction. The parties hereby irrevocably waive, to the fullest extent permitted by applicable Law, any objection which they may now or hereafter have to the laying of venue of any such dispute brought in such court or any defense of inconvenient forum for the maintenance of such dispute. Each of the parties hereto agrees that a judgment in any such dispute may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by Law. Each of the parties hereto hereby consents to process being served by any party to this Agreement in any suit, action or proceeding by the mailing of a copy thereof in accordance with the provisions of Section 8.6.

8.8 **Waiver of Trial by Jury.** Each party to this Agreement waives any right to trial by jury in any action, matter or proceeding regarding this Agreement or any provision hereof.

8.9 **Governing Law.** To the extent not governed by the Bankruptcy Code, this Agreement shall be governed by and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of laws.

8.10 **Damages.** NOTWITHSTANDING ANYTHING HEREIN TO THE CONTRARY, NO PARTY SHALL BE LIABLE FOR CONSEQUENTIAL, INCIDENTAL, EXEMPLARY, SPECIAL, INDIRECT OR PUNITIVE DAMAGES (INCLUDING LOST PROFITS, LOSS OF PRODUCTION OR OTHER DAMAGES ATTRIBUTABLE TO BUSINESS INTERRUPTION) ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT.

8.11 **Time is of the Essence.** Time is of the essence in this Agreement, and all of the terms, covenants and conditions hereof.

8.12 **Severability.** If any provision of this Agreement shall be held invalid, illegal or unenforceable, in whole or in part, the validity, legality, and enforceability of the remaining part of such provision, and the validity, legality and enforceability of all other provisions hereof or thereof, shall not be affected thereby.

8.13 **Titles and Headings.** Titles and headings of Sections of this Agreement are for convenience of reference only and shall not affect the construction of any provision of this Agreement.

8.14 **Assignment; Successors and Assigns.** This Agreement and the rights, duties and obligations hereunder may not be assigned by any party without the prior written consent of the other party, and any attempted assignment without consent shall be void. Subject to this Section 8.14, this Agreement and the provisions hereof shall be binding upon each of the parties, their successors and permitted assigns.

8.15 **No Third-Party Rights.** The parties do not intend to confer any benefit hereunder on any Person other than the parties hereto.

8.16 **Confidentiality Agreement.** The parties acknowledge that the Confidentiality Agreement dated as of August 12, 2019, between Quest Diagnostics Incorporation and THG Holdings LLC (the "Confidentiality Agreement") shall remain in full force and effect during the term specified therein; provided, however, that in accordance with the Confidentiality Agreement and notwithstanding anything contained therein, THG Holdings LLC hereby provides its consent to the Purchaser and its Affiliates to initiate, accept or engage in any discussions or contacts of any kind with any customer of the Sellers from and after the date of this Agreement.

8.17 **Entire Agreement.** This Agreement, the Ancillary Agreements and the Confidentiality Agreement constitute the entire agreement between the parties regarding the subject matter hereof and no extrinsic evidence whatsoever may be introduced in any Legal

Proceeding involving this Agreement, the Ancillary Agreements or the Confidentiality Agreement.

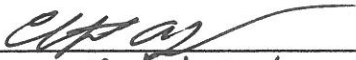
8.18 **Execution of this Agreement.** This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement. The exchange of copies of this Agreement and of signature pages by electronic transmission shall constitute effective execution and delivery of this Agreement as to the parties and may be used in lieu of the original Agreement for all purposes. Signatures of the parties transmitted by electronic transmission shall be deemed to be their original signatures for all purposes.

*(Signatures appear on following page)*


IN WITNESS WHEREOF, the parties have caused their duly authorized officers to execute this Agreement as of the day and year first written above.

**SELLERS:**


**THG HOLDINGS LLC**

By:   
Name: Clifford A Zucker  
Title: CRO

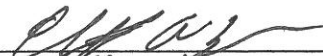
**TRUE HEALTH GROUP LLC**

By:   
Name: Clifford A Zucker  
Title: CRO


**TRUE HEALTH CLINICAL LLC**

By:   
Name: Clifford A Zucker  
Title: CRO


**TRUE HEALTH DIAGNOSTICS LLC**

By:   
Name: Clifford A Zucker  
Title: CRO


**TRUE HEALTH IP LLC**

By:   
Name: Clifford A Zucker  
Title: CRO

**OUTREACH MANAGEMENT SOLUTIONS  
LLC**

By:   
Name: Clifford A Zucker  
Title: CRO

**HEALTH CORE FINANCIAL LLC**

By:   
Name: Clifford A Zucker  
Title: CRO



**PURCHASER:**

**CLEVELAND HEARTLAB, INC.**

By: Dee V Shorten

Name: Dee V Shorten

Title: SVP, Strategies, M&A and Ventures

**EXHIBIT A**

**Bidding Procedures Order**

*Attached.*

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

THG Holdings LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11689 (JTD)

Jointly Administered

RE D.I. 16

**ORDER PURSUANT TO SECTIONS 105, 363, 364, 365 AND 541 OF THE  
BANKRUPTCY CODE, BANKRUPTCY RULES 2002, 6004, 6006 AND 9007 AND  
DEL. BANKR. L.R. 2002-1 AND 6004-1 (A) APPROVING BIDDING PROCEDURES  
FOR THE SALE OF SUBSTANTIALLY ALL ASSETS OF DEBTORS; (B) APPROVING  
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT, ASSIGNMENT  
OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES; (C)  
SCHEDULING THE AUCTION AND SALE HEARING; (D) APPROVING FORMS AND  
MANNER OF NOTICE OF RESPECTIVE DATES, TIMES, AND PLACES IN  
CONNECTION THEREWITH; AND (E) GRANTING RELATED RELIEF**

Upon the *Debtors' Motion for an Order Pursuant To Sections 105, 363, 364, 365 and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9007 and Del. Bankr. L.R. 2002-1 and 6004-1 (A) Approving Bidding Procedures for the Sale of Substantially All Assets of Debtors; (B) Approving Procedures for the Assumption and Assignment, Assignment or Rejection of Designated Executory Contracts and Unexpired Leases; (C) Scheduling the Auction and Sale Hearing; (D) Approving Forms and Manner of Notice of Respective Dates, Times, and Places in Connection Therewith; and (E) Granting Related Relief* (the "Motion");<sup>2</sup> and the Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtors' federal EIN, are as follows: THG Holdings LLC (8292); True Health Group LLC (9158); True Health Clinical LLC (5272); True Health Diagnostics LLC (9452); True Health IP LLC (5427); Outreach Management Solutions LLC d/b/a True Health Outreach (9424); Health Core Financial LLC d/b/a True Health Financial (6614). The Debtors' mailing address is 3803 Parkwood Blvd, Suite 400, Frisco, Texas 75034.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings given to such terms in the Motion or Bidding Procedures (as defined below), as applicable.

Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012; and the Court having found this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2) and the Court may enter an order consistent with Article III of the United States Constitution; and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having considered the statements of counsel, the First Day Declaration, any objections raised, and the evidence presented at the Bidding Procedures Hearing; and it appearing that the relief requested in the Motion is reasonable and in the best interests of the Debtors' bankruptcy estates, their creditors and other parties in interest; and after due deliberation and sufficient cause appearing therefor;

**IT IS HEREBY FOUND AND DETERMINED THAT:**

A. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates, creditors, and other parties in interest will be served by the Court granting the relief requested in the Motion to be approved pursuant to this Bidding Procedures Order.

B. The Bidding Procedures enable the Debtors to maximize the value of their assets for the benefit of all stakeholders and constitute a reasonable, sufficient, adequate and proper means to provide potential competing bidders with an opportunity to submit bids, and are reasonably calculated to enable the Debtors to pursue higher or otherwise better offers for the Purchased Assets.

C. The Debtors' option to accept a Stalking Horse Bid in the Debtors' business judgment (upon consultation with the Consultation Parties) and, upon such designation and after consultation with the Consultation Parties, seek Bankruptcy Court approval of any Bid

Protections on an expedited basis are reasonably calculated to enable the Debtors to further maximize the value of its assets by providing the opportunity to set the floor for bids and contributing to a robust auction process, for the benefit of the Debtors' estates, creditors, and other parties in interest.

D. The Debtors' estates will suffer harm if the relief requested in the Motion to be approved by this Bidding Procedures Order is not granted.

E. The Debtors have articulated good and sufficient reasons for, and the best interests of their estates and stakeholders will be served by, the Court scheduling or fixing dates pursuant to this Bidding Procedures Order for the (i) Bid Deadline (as defined below), (ii) Sale Objection Deadline (as defined below), (iii) Auction, (iv) Assignment Objection Deadline, and (v) Sale Hearing.

F. The Sale Notice and Assignment Notice, in conjunction with the notice of the Motion (D.I. 93) previously served upon all creditors of the Debtors, are reasonably calculated to provide the Sale Notice Parties, the other Contract Counterparties, and other interested parties with proper notice of the (i) Bidding Procedures, (ii) Auction, (iii) Assignment Procedures (including with respect to Cure Costs and the Assignment Objection Deadline), (iv) Sale Hearing, and (v) Sale.

G. The Motion and this Bidding Procedures Order comply with all applicable provisions of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

H. Due, sufficient and adequate notice of the relief granted herein and the Sale Hearing has been given to all parties in interest as set forth in paragraph 27 of the Motion.

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. All formal and informal objections, if any, to the relief requested in the Motion that have not been withdrawn, waived, or settled are overruled on the merits.
2. The Bidding Procedures, which are attached hereto as **Exhibit 1** and incorporated herein by reference, are hereby approved in all respects and shall govern all bidders and bids, including those that may be submitted by Qualified Bidders at the Auction.
3. Qualified Bidders seeking to submit bids for the Purchased Assets must do so in accordance with the terms of the Bidding Procedures and this Bidding Procedures Order.
4. The DIP Lenders are a Qualified Bidder and pursuant to section 363(k) of the Bankruptcy Code, are authorized to submit a Credit Bid.
5. As set forth in the Bidding Procedures, the Debtors have the option, but are not required to, designate a Stalking Horse Bidder in the Debtors' business judgment (upon consultation with the Consultation Parties).
6. To the extent the Debtors designate a Stalking Horse Bidder, the Debtors shall within two (2) days thereof file the Stalking Horse Bidder Notice and, upon consultation with the Consultation Parties, seek Bankruptcy Court approval of any Bid Protections on an expedited basis. The Stalking Horse Bidder Notice, if filed, shall also include a copy of the Stalking Horse Bidder's Qualified Bidder Purchase Agreement, which competing Qualified Bidders must then use as the basis to submit their Qualified Bids, and shall include modifications to the bidding and auction procedures necessary to account for the Stalking Horse Bid.
7. Notwithstanding that it may contain terms and conditions which may be inconsistent with the requirements for a Qualified Bid or other provisions of the Bidding Procedures, if the Debtors accept a Stalking Horse Bid, such Stalking Horse Bid shall be deemed

to constitute a Qualified Bid and such Stalking Horse Bidder shall be deemed to be a Qualified Bidder.

8. The deadline for all competing bidders to submit a Qualified Bid (other than a Stalking Horse Bid) is **September 13, 2019, at 4:00 p.m.** (prevailing Eastern Time) (the “Bid Deadline”), as further governed by the Bidding Procedures.

9. As further governed by the Bidding Procedures, if more than one Qualified Bid is received by the Bid Deadline, the Debtors may hold the Auction on **September 17, 2019, at 10:00 a.m.** (prevailing Eastern Time) in accordance with the Bidding Procedures at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801.

10. Following the Auction, the Debtors shall promptly file with the Court the Supplement described in the Bidding Procedures, but shall not be required to serve the same on any parties-in-interest in this Chapter 11 Cases.

11. If the Debtors receive only one (1) Bid that is a Qualified Bid (which may be a Stalking Horse Bid, as applicable), the Debtors, in their business judgment upon consultation with the Consultation Parties, shall (i) notify all Potential Bidders and the Bankruptcy Court in writing that (a) the Auction is cancelled and (b) such Qualified Bid is the Successful Bid, and (ii) seek authority at the Sale Hearing to consummate the Sale transactions with such Qualified Bidder contemplated by its Qualified Bidder Purchase Agreement (or the Stalking Horse Bidder Purchase Agreement, as applicable).

12. The Court shall conduct the Sale Hearing on September 20, 2019, at 1:30 p.m. (prevailing Eastern Time), at which time the Court will consider approval of the Sale to the Successful Bidder. Following the conclusion of the Auction, with the consent of the Successful

Bidder and subject to the Milestones (as defined in the interim and final orders, as applicable, authorizing the Debtors to obtain post-petition financing (the “DIP Order”)), or as otherwise directed by the Bankruptcy Court, the Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing or by filing a notice on the docket for this Chapter 11 Cases.

13. The Debtors are hereby authorized to conduct the Sale without the necessity of complying with any state or local transfer laws or requirements.

14. The Sale Notice and the revised Assignment and Rejection Notice (the “Assignment Notice”) substantially in the forms attached hereto as Exhibit 2 and Exhibit 3, respectively, to this Bidding Procedures Order, are approved in all respects. No other or further notice of the Bidding Procedures, Assignment Procedures, the Sale Hearing, relevant objection or other deadlines, or the Sale is required. The Sale Notice shall be served on: (a) the United States Trustee for the District of Delaware; (b) counsel to the Prepetition Lenders and DIP Lenders, Proskauer Rose LLP, (c) counsel to the Subordinated Lenders, (d) counsel to the Committee, (e) all parties asserting a security interest in the Purchased Assets to the extent any such interest is reasonably known to the Debtors; (f) relevant federal, state, county and city tax and regulatory authorities; (g) all entities known to have expressed an interest in a transaction with respect to the Purchased Assets or that have been identified by the Debtors or their advisors as a potential purchaser of the Purchased Assets; (h) the United States Department of Health and Human Services and the Centers for Medicare and Medicaid Services; (i) local, state and federal authorities and agencies that have issued licenses or permits to the Debtors with respect to the operation and use of the Purchased Assets; (j) the contract counterparties whose contracts are



identified as potentially being assigned; and (k) all parties requesting notice pursuant to Bankruptcy Rule 2002.

15. To be considered, any objection to the Sale, except for objections governed by the Assignment Procedures as set forth herein and the attached Bidding Procedures, must (a) comply with the Bankruptcy Rules and the Local Rules, (b) be made in writing and filed with the Court, and (c) be filed on or before **September 13, 2019, at 4:00 p.m.** (prevailing Eastern Time) (the “Sale Objection Deadline”).

16. The failure of any objecting person or entity to timely file an objection prior to the Sale Objection Deadline shall be a bar to the assertion at the Sale Hearing or thereafter of any objection to the relief requested by the Debtors, or the consummation and performance of the Sale of the Purchased Assets to the Successful Bidder, including the transfer of the Purchased Assets free and clear of all liens, claims, interests and other encumbrances (with the same to attach to the cash proceeds of the Sale to the same extent and with the same order of priority, validity, force and effect which they previously had against the Purchased Assets, subject to the rights and defenses of the Debtors and the Debtors’ estates with respect thereto), and the Debtors’ assumption and assignment of the Transferred Contracts to the Successful Bidder; provided, however, any party in interest may raise an objection at the Sale Hearing solely with respect to the outcome of the Auction.

17. No Qualified Bidder or any other person or entity, other than a potential Stalking Horse Bidder, if any, shall be entitled to any expense reimbursement, break-up fee, termination or other similar fee or payment in connection with the Sale.

18. The Assignment and Rejection Procedures, as described in the Motion, are hereby approved only with respect to the assumption and assignment of executory contracts and

unexpired leases and are not approved with respect to any rejection procedures (the “Assignment Procedures”). The failure to specifically include or reference any particular provision of the Assignment Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Court that the Assignment Procedures be authorized and approved in their entirety as set forth herein.

19. As further governed by the Assignment Procedures, the Assignment Objection Deadline is **September 17, 2019, at 4:00 p.m.** (prevailing Eastern Time). If a timely objection is filed and cannot be resolved consensually, such objection will be resolved at a hearing to be held on September 20, 2019, or on such other date prior to or after the Sale Hearing as the Debtors may designate. Any Contract Counterparty that fails to file an Assignment Objection by the Assignment Objection Deadline in accordance with the Assignment Procedures (i) shall be deemed to have forever waived and released any right to assert an Assignment Objection, (ii) to have consented to the assumption and assignment, or assignment, as the case may be, of their Transferred Contract without the necessity of obtaining any further order of the Bankruptcy Court, and (iii) shall be forever barred and estopped from (a) objecting to the Cure Amount set forth on the Cure Schedule with respect to the Transferred Contract, (b) seeking additional amounts arising under the Transferred Contract prior to the closing from the Debtors or Successful Bidder, and (c) objecting to the assumption and assignment, or assignment, as the case may be, of its Transferred Contract to the Successful Bidder.

20. Notwithstanding anything in this Order or the Bidding Procedures to the contrary, unless Cigna Health Corporation (“Cigna”) and the Debtors agree otherwise, assumption and assignment of the Cigna Agreement (as identified in Cigna's Objection [D.I. 128] to the Sale Motion) shall not be considered or approved at any hearing unless, at least five (5) business days

prior to such hearing, Cigna, through its counsel of record, is provided with (i) written, irrevocable notice of Debtors' proposed assumption and assignment of the Cigna Agreement as part of the Sale; (ii) the identity of the proposed assignee; and (iii) adequate assurance information for the proposed assignee.

21. Nothing herein shall amend or modify any provisions, terms, or conditions of the DIP Order or DIP Loan Documents (as defined in the DIP Order). If the DIP Lenders submit a bid for all or any portion of the Purchased Assets, the DIP Lenders shall no longer be a Consultation Party unless and until the DIP Lenders irrevocably revoke such bid.

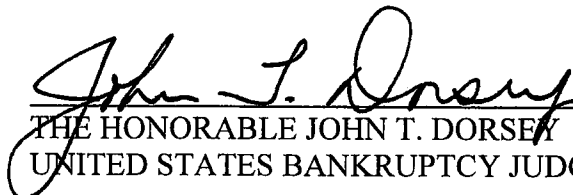
22. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h) or 6006(d), the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

23. The Debtors are authorized and empowered to take such actions as may be necessary to implement and effectuate the terms and requirements established and relief granted in this Bidding Procedures Order.

24. To the extent of any inconsistencies between the Bidding Procedures and this Bidding Procedures Order, this Bidding Procedures Order shall govern.

25. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the Bidding Procedures or this Bidding Procedures Order.

Dated: August 22, 2019  
Wilmington, Delaware

  
\_\_\_\_\_  
THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE

# EXHIBIT 1

## **BIDDING PROCEDURES**

The following procedures (collectively, the “Bidding Procedures”) shall govern the proposed sale (the “Sale”) of all or substantially all of the Debtors’ assets (collectively, the “Purchased Assets”) and the assumption of certain of the Debtors’ liabilities (collectively, the “Assumed Liabilities”) of True Health Group LLC and its affiliated debtors and debtors in possession (the “Debtors”) in Case No. 19-11689 (JTD) (the “Chapter 11 Cases”) pending in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”). The Purchased Assets and Assumed Liabilities will be set forth in a form asset purchase agreement (the “Form Purchase Agreement”), or if the Debtors designate a Stalking Horse Bidder (as defined below) upon consultation with (i) the DIP Lenders; (ii) the Subordinated Lenders; and (iii) the official committee of unsecured creditors appointed by the Office of the United States Trustee (a “Committee,” and together with the DIP Lenders and the Subordinated Lenders, the “Consultation Parties”) and with Bankruptcy Court approval, the asset purchase agreement of such Stalking Horse Bidder (the “Stalking Horse Bidder Purchase Agreement”), and made available to Potential Bidders (as defined below) as set forth herein.

These Bidding Procedures have been approved and authorized by an order of the Bankruptcy Court, dated August 22, 2019 (the “Bidding Procedures Order”), upon the motion of the Debtors dated July 30, 2019 (D.I. 16) (the “Sale Motion”), which Bidding Procedures Order, among other things, (i) approved these Bidding Procedures; (ii) approved various forms and the manner of notice of respective dates, times, and places in connection therewith; (iii) scheduled the Auction (as defined below); (iv) scheduled the Sale Hearing (as defined below) and the objection deadline to the Sale; and (v) approved procedures for the assumption and assignment of designated executory contracts, including related objection deadlines and the date for submitting a cure claims. In the event of a conflict between the terms of these Bidding Procedures and the terms of the Bidding Procedures Order, the terms of the Bidding Procedures Order shall control.

To receive copies of the (i) Sale Motion, all other exhibits to the Sale Motion, and/or a confidentiality agreement to become a Potential Bidder (as defined below), or (ii) after a confidentiality agreement has been executed and delivered to the Notice Parties (as defined below), a copy of the Form Purchase Agreement, or if a Stalking Horse Bidder is designated, the Stalking Horse Bidder Purchase Agreement, kindly submit a request in writing (email and facsimile requests are acceptable) to (a) the Debtors’ counsel: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, Attn: Derek C. Abbott and Curtis S. Miller (Telephone: (302) 658-9200; email: [dabbott@mnat.com](mailto:dabbott@mnat.com) and [cmiller@mnat.com](mailto:cmiller@mnat.com)) and/or (b) the Debtors’ investment banker: SSG Advisors, LLC, Five Tower Bridge, Suite 420 300 Barr Harbor Drive, West Conshohocken, PA 19428 Attn: J. Scott Victor and Teresa Kohl, (Telephone: (610) 940-1094; email: [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) and [tkohl@ssgca.com](mailto:tkohl@ssgca.com)). Additionally, the Sale Motion and the exhibits thereto are available at <https://dm.epiq11.com/TrueHealth>.

### **I. Due Diligence**

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<sup>1</sup> All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order and any exhibits thereto, and, if not defined therein, in the Sale Motion and any exhibits thereto.

The Debtors will afford interested parties that have or put in place an executed, unexpired confidentiality agreement in form and substance acceptable to the Debtors and, at the Debtors' request, financial information that demonstrates such party's ability to submit a bid that complies with the requirements herein and the Bidding Procedures Order (each, a "Potential Bidder"), the opportunity to conduct reasonable due diligence, subject to parameters and restrictions that the Debtors deem appropriate upon consultation with the Consultation Parties. The due diligence period shall extend through and include the Bid Deadline.

Neither the Debtors nor their advisors shall be obligated to furnish any information of any kind whatsoever relating to the Debtors' assets or liabilities, the Debtors' contracts, or the Debtors to any person or entity (i) that is not a Potential Bidder or Qualified Bidder (as defined below), (ii) that is not in compliance with the requirements set forth herein and in the Bidding Procedures Order or (iii) after the Bid Deadline (as defined below).

## **II. Bid Deadline**

All Potential Bidders must deliver bids for the Purchased Assets (each a "Bid"), so as to be received on or before 4:00 p.m. (prevailing Eastern Time), on **September 13, 2019** (the "Bid Deadline"), to the Debtors' financial advisor: the Debtors' investment banker: SSG Advisors, LLC, Five Tower Bridge, Suite 420 300 Barr Harbor Drive, West Conshohocken, PA 19428, Attn: J. Scott Victor and Teresa Kohl, (Telephone: (610) 940-1094; email: [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) and [tkohl@ssgca.com](mailto:tkohl@ssgca.com)), with copies provided contemporaneously to (i) counsel to the Debtors: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, Attn: Derek C. Abbott and Curtis S. Miller (Telephone: (302) 658-9200; email: [dabbott@mnat.com](mailto:dabbott@mnat.com) and [cmiller@mnat.com](mailto:cmiller@mnat.com)); (ii) counsel to Monroe Capital Management Advisors, LLC, in its capacity as a prepetition lender and administrative agent under the Debtors' debtor-in-possession financing facility, Proskauer Rose LLP, One International Place, Boston, MA 02110-2600, Attn: Chad Dale (Telephone: (617) 526-9600; email: [cdale@proskauer.com](mailto:cdale@proskauer.com)); and (iii) counsel to the Committee, Cooley LLP, 55 Hudson Yards, New York, NY 10001, Attn: Richard S. Kanowitz (Telephone: (212) 479-6167; email: [rkanowitz@cooley.com](mailto:rkanowitz@cooley.com)) (collectively, the "Notice Parties").

## **III. Qualified Bidder Requirement**

In order to qualify to submit a Qualified Bid (as defined below) and participate in the Auction, each Potential Bidder must: (i) deliver to the Notice Parties the most current audited (if available) and the latest unaudited financial statements and/or such other financial information evidencing the Potential Bidder's ability to (a) close the Sale within the time period prescribed in the Bidding Procedures Order and Form Purchase Agreement and (b) provide adequate assurance of future performance to counterparties to Transferred Contracts to be assumed and assigned to the Potential Bidder. In addition, if the Potential Bidder is an entity formed in whole or part for the purpose of acquiring all or part of the Purchased Assets, the Potential Bidder must deliver to the Notice Parties current audited (if available) and the latest unaudited financial statements and/or such other relevant financial information as may be requested by the Debtors of each equity holder of such Potential Bidder, *which equity holders must also guarantee the obligations of such Potential Bidder on terms reasonably acceptable to the Debtors*, evidencing the Potential Bidder's ability to (x) close the Sale within the time period prescribed in the Bidding Procedures

Order and Form Purchase Agreement (or Stalking Horse Bidder Purchase Agreement, as applicable) and (y) provide adequate assurance of future performance to counterparties to Transferred Contracts to be assumed and assigned to the Potential Bidder.

The Debtors, upon consultation with the Consultation Parties, shall determine whether a Potential Bidder has complied with the foregoing requirements and has qualified to submit a Qualified Bid and participate in the Auction (each such Potential Bidder, a "Qualified Bidder"), and the Debtors shall provide prompt written notice of such determination to any such Potential Bidder; provided, that, the Debtors may waive any of the foregoing requirements in the Debtors' reasonable discretion upon consultation with the Consultation Parties; provided, further, the Debtors shall not be required to consult with any Consultation Party during the Auction process to the extent such Consultation Party has submitted a Qualified Bid or has had a Qualified Bid submitted by one of its members, unless and until such party irrevocably revokes such bid.

The Debtors may request additional information from a Potential Bidder or Qualified Bidder at any time prior to the Sale closing in order to evaluate such bidder's ability to bid at the Auction over and above its initial offer in its Qualified Bid, consummate the Sale, and fulfill its obligations in connection therewith. Each Potential Bidder or Qualified Bidder shall be obligated to provide such additional information within two (2) Business Days of receiving such requests as a condition to participating further in the Auction and Sale processes; provided, however, that additional information requests made by the Debtors during the Auction in connection with a Qualified Bidder's ability to continue to bid at the Auction over and above its initial offer in its Qualified Bid shall, in the Debtors' reasonable discretion upon consultation with the Consultation Parties, be satisfied prior to such Qualified Bidder submitting any further bids at the Auction. The failure to comply with such requests shall disqualify such Potential Bidder or Qualified Bidder.

For purposes of these Bidding Procedures, the Stalking Horse Bid, if any, shall be deemed to constitute a Qualified Bid and the Stalking Horse Bidder, if any, shall be deemed to be a Qualified Bidder, as applicable.

#### **IV. Requirements of a Qualified Bid**

A "Qualified Bid" shall mean a bid submitted by a Qualified Bidder that:

- A. Is made in writing;
- B. Is submitted prior to the Bid Deadline;
- C. Designates which of the Purchased Assets the Qualified Bidder proposes to purchase;
- D. Designates which of the Assumed Liabilities the Qualified Bidder proposes to assume;
- E. Designates which of the Transferred Contracts the Qualified Bidder proposes to have assumed and assigned to it and which Transferred Contracts it wishes the

Debtors to reject, if it is the Successful Bidder (as defined below), or the Debtors' rights and interests therein sold and transferred, as the case may be;

- F. Includes a binding, definitive and fully executed asset purchase agreement which (a) shall be in form and substance substantially similar to the Form Purchase Agreement or Stalking Horse Bidder Purchase Agreement, as applicable, and marked to reflect only those changes required as a condition of such Qualified Bidder's to closing the Sale, (b) except for a Stalking Horse Bidder, shall not contain any provisions entitling such Qualified Bidder to any break-up fee, expense reimbursement or other bid protections of any kind (c) waives the right to pursue a substantial contribution claim under 11 U.S.C. § 503 related in any way to the submission of the bid or participation in any auction, and (d) otherwise contains terms and conditions that are more favorable to the Debtors than those set forth in the Form Purchase Agreement or Stalking Horse Bidder Purchase Agreement, as applicable. An asset purchase agreement, together with its schedules and exhibits, submitted in accordance with these Bidding Procedures, shall be referred to herein as a "Qualified Bidder Purchase Agreement".
- G. To the extent a bid is for assets that are subject to a Stalking Horse Bid, the value of the purchase price included in such bid must equal at least the value of the purchase price set forth in such Stalking Horse Bid plus the amount of the Bid Protections provided to such Stalking Horse Bidder, as set forth in the Stalking Horse Bidder Notice describing such Stalking Horse Bid, plus the Overbid Amount (as defined below);
- H. To the extent a prospective bidder is holding a perfected security interest in any of the Debtors' assets, such prospective bidder may seek to credit bid all or a portion of its claims for its respective collateral (each such bid, a "Credit Bid") in accordance with section 363(k) of title 11 of the United States Code (the "Bankruptcy Code"); provided, that, (i) a Credit Bid may only be applied to reduce the cash consideration for the Debtors' assets in which the credit bidding party holds a perfected security interest; (ii) a Credit Bid must comply with, and shall be subject to, the terms of the DIP Orders;
- I. Unless a bid includes a Credit Bid, provides that the purchase price shall be paid in full in cash and/or non-cash consideration at the closing of the Sale; provided, however, that the value for such non-cash consideration shall be determined by the Debtors upon consultation with the Consultation Parties;
- J. Provides a good faith cash deposit (the "Good Faith Deposit") equal to 10% of the value of the Qualified Bidder's total proposed purchase price. The Good Faith Deposit shall be paid by wire transfer to a segregated account with an escrow agent to be designated by the Debtors, pursuant to instructions to be provided upon request by a Qualified Bidder. The Debtors reserve the right to increase, decrease or waive the Good Faith Deposit for one or more Qualified Bidders upon consultation with the Consultation Parties. Such Qualified Bidder's Qualified Bidder Purchase Agreement shall provide that the Good Faith Deposit shall be



forfeited to the Debtors in the event of a breach thereof (after giving effect to any applicable notice and cure periods) by such Qualified Bidder;

K. Provides that such bid shall be open and irrevocable until the earlier of:

1. such bid being determined by the Debtors not to be a Qualified Bid;
2. if such bid is not chosen by the Debtors at the Auction to be the Successful Bid or Back-Up Bid (as each such term is defined below), the date of entry by the Bankruptcy Court of an order approving the Sale to another Qualified Bidder;
3. if such bid is chosen by the Debtors to be the Successful Bid, the date which is the earlier to occur of: (i) the closing of the Sale to such Successful Bidder, and (ii) two days following the date the order approving the Sale to the Successful Bidder shall have become a final, non-appealable, order ("Final Order");
4. if such bid is chosen by the Debtors to be the Back-Up Bid, the date which is the earlier to occur of: (i) the date of closing on the Sale to the Successful Bidder, and (ii) twenty-five (25) Business Days following the date the order approving the Sale to the Successful Bidder shall have become a Final Order; provided, that if the Successful Bidder shall fail to close on its purchase of the Purchased Assets during the period set forth above, (x) the Back-Up Bid shall continue to remain open and irrevocable, (y) the Back-Up Bidder shall be deemed to be the Successful Bidder, and (z) it shall close on the Sale within ten (10) Business Days of becoming the Successful Bidder;

L. (i) Includes an acknowledgement and representation that the Qualified Bidder has had an opportunity to conduct all due diligence regarding the Debtors' assets prior to submitting its bid and that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or assets in making its bid, and (ii) confirms the Qualified Bidder's completion of all due diligence required by such Qualified Bidder in connection with the Sale and does not include any due diligence contingencies;

M. Does not contain any financing contingencies or any other contingencies not set forth in the Form Purchase Agreement or Stalking Horse Bidder Purchase Agreement, as applicable;

N. Provides evidence of authorization and approval from such Qualified Bidder's board of directors (or comparable governing body) evidencing the authority of the Qualified Bidder to make a binding and irrevocable Qualified Bid and to consummate the Sale if such Qualified Bidder is the Successful Bidder or Back-Up Bidder, as such bid may be improved prior to or at the Auction;

- O. Confirms that the Sale will be completed in accordance with the timing set forth in the Bidding Procedures Order;
- P. If the Qualified Bidder was formed in whole or part for the purpose of acquiring all or part of the Purchased Assets, provides evidence which is reasonably satisfactory to the Debtors, from each of the equity holders of such Qualified Bidder demonstrating that such Qualified Bidder has, or will have access to, the financial resources needed to consummate the Sale if it becomes the Successful Bidder, and that the use of such resources to consummate the Sale has been authorized and approved by such entity's board of directors (or comparable governing body);
- Q. Certifies that the Qualified Bidder has not, and is not, engaged in any collusion with respect to its bid or the Sale; except that the Debtors may facilitate a submission of a Qualified Bid by one or more unrelated Qualified Bidders;
- R. Is not conditioned on the receipt of any third party approvals or consents (excluding required Bankruptcy Court approval and required governmental, licensing or regulatory approval or consent, if any) other than third party approvals or consents that are deemed reasonable, as determined by the Debtors upon consultation with the Consultation Parties; and
- S. Sets forth the representatives that are authorized to appear and act on behalf of such Qualified Bidder in connection with the proposed transaction and the Auction.

All Qualified Bids will be considered by the Debtors; bids other than Qualified Bids will not be considered. The Debtors may evaluate bids on numerous grounds, including, but not limited to, any delay, additional risks (including closing risks) and added costs to the Debtors. For the avoidance of doubt, the presence of any governmental, licensing, regulatory or other approvals or consents in a bid or other contingencies, and the anticipated timing or likelihood of obtaining such approvals or consents or resolving such contingencies, may be grounds for the Debtors to determine that such bid (i) is not a Qualified Bid or (ii) is not higher or otherwise better than any other Qualified Bid.

Additionally, notwithstanding the foregoing, the Debtors reserve their rights to waive any of the aforementioned requirements and consider any Potential Bidder to be a Qualified Bidder upon consultation with the Consultation Parties.

#### **V. Receipt of Qualified Bids**

If the Debtors receive only one (1) Bid that is a Qualified Bid, the Debtors, in their business judgment upon consultation with the Consultation Parties, shall (i) notify all Potential Bidders and the Bankruptcy Court in writing that (a) the Auction is cancelled and (b) such Qualified Bid is the Successful Bid, and (ii) seek authority at the Sale Hearing to consummate the Sale transactions with such Qualified Bidder contemplated by its Qualified Bidder Purchase Agreement.

If the Debtors receive two (2) or more Qualified Bids, the Debtors will conduct an auction (the "Auction").

## **VI. Stalking Horse and Bid Protections**

The Debtors are authorized, but not obligated, pursuant to the Bidding Procedures Order, to designate a Qualified Bidder as a stalking horse bidder (the "Stalking Horse Bidder") in the Debtors' business judgment (upon consultation with the Consultation Parties without the necessity of a further hearing or authorization of the Court. Any Qualified Bid submitted by a Stalking Horse Bidder, a "Stalking Horse Bid").

The Debtors, upon the designation of a Stalking Horse Bidder, shall, in the Debtors' business judgment (upon consultation with the Consultation Parties, seek Bankruptcy Court approval on an expedited basis to agree to (i) pay the Stalking Horse Bidder a percentage of the purchase price set forth in its Qualified Bidder Purchase Agreement (but not as such purchase price may be increased at the Auction) for the Purchased Assets as a break-up fee (the "Break-up Fee"); and (ii) reimburse the Stalking Horse Bidder in a certain amount for its actual and documented third-party fees and costs incurred in connection with its Qualified Bid (the "Expense Reimbursement", and together with the Break-up Fee, the "Bid Protections"), in the event the Stalking Horse Bidder is not the Successful Bidder at the Auction, if the Debtors determine in the exercise of their business judgment (upon consultation with the Consultation Parties) that granting the Bid Protections is in the best interests of the Debtors' estates and creditors. To the extent the Debtors designate a Stalking Horse Bidder in the Debtors' business judgment (upon consultation with the Consultation Parties), the Debtors shall within two (2) days thereof file a notice of such determination with the Bankruptcy Court (the "Stalking Horse Bidder Notice") and seek Bankruptcy Court approval of any Bid Protections on an expedited basis. The Stalking Horse Bidder Notice, if filed, shall also include a copy of the Stalking Horse Bidder's Qualified Bidder Purchase Agreement. Competing Qualified Bidders must then use the Stalking Horse Bidder's Qualified Bidder Purchase Agreement as the basis to submit their Qualified Bids, and shall include modifications to the bidding and auction procedures necessary to account for the Stalking Horse Bid.

## **VII. Auction Process**

**The Auction, if any, will take place at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, on September 17, 2019, commencing at 10:00 a.m. (prevailing Eastern Time).**

If the Debtors proceed with the Auction, the following rules and procedures shall apply (subject to Article XII hereof):

- A. Prior to the Auction, upon consultation with the Consultation Parties, the Debtors will select the highest Qualified Bid it has received to serve as the opening bid at the Auction, which may be a Stalking Horse Bid (the "Baseline Bid");
- B. As soon as practicable and prior to the commencement of the Auction, the Debtors will provide all Qualified Bidders (including by email or telefax) with a

written notice identifying all of the Qualified Bidders and which Qualified Bid has been chosen as the Baseline Bid;

- C. Each Qualified Bidder, and its representatives and advisors, who has submitted a Qualified Bid shall be eligible to attend and make any subsequent bids at the Auction. Each Qualified Bidder must appear in person or through a duly authorized representative who has the legal authority to bind the Qualified Bidder at the Auction (and who must provide the Debtors with written evidence of such authority prior to the Auction which is reasonably satisfactory to the Debtors), or they shall not be entitled to attend or participate at the Auction;
- D. The Consultation Parties and all creditors of the Debtors, together with their respective professional advisors and representatives, may attend the Auction. **Parties who intend to attend the Auction must provide counsel for the Debtors at least one (1) business days' written notice of their intent to attend the Auction so that the Debtors can make appropriate arrangements;**
- E. All Qualified Bids shall be placed on the record at the Auction, which shall be transcribed, videotaped or audiotaped in the reasonable discretion of the Debtors;
- F. Each Qualified Bidder will have the right to make additional modifications or improvements to its Qualified Bidder Purchase Agreement, that make its bid higher or otherwise better, at any time, prior to, or during, the Auction which are consistent with these Bidding Procedures and the Bidding Procedures Order;
- G. Bidding shall commence at the Baseline Bid. The first overbid at the Auction (the "Minimum Initial Overbid") shall be in an amount not less than (i) the amount of the Baseline Bid plus (ii) \$150,000 (the "Overbid Amount"). Thereafter, a Qualified Bidder may increase its Qualified Bid in any amount as long as each subsequent bid (each, a "Subsequent Overbid") exceeds the previous highest bid by at least \$150,000 of additional cash and/or non-cash consideration; provided, however, that the value for such non-cash consideration shall be determined by the Debtors upon consultation with the Consultation Parties.
- H. Each bid made by a Qualified Bidder at the Auction must continue to meet, satisfy or comply with the requirements of a Qualified Bid, other than those applicable to the submission of an initial Qualified Bid;
- I. The Auction will continue with each Qualified Bidder submitting additional Subsequent Overbids in each round of bidding, after being advised of the terms of the then highest bid and the identity of the Qualified Bidder who made such bid, in each round of bidding. Each Qualified Bidder must bid in each round or it shall be disqualified from further bidding at the Auction;
- J. The Auction will conclude when the Debtors determine, upon consultation with the Consultation Parties, that they have received the highest or otherwise best offer from a Qualified Bidder (the "Successful Bid"). The next highest or

otherwise best Qualified Bid submitted at the Auction, as determined by the Debtors upon consultation with the Consultation Parties, shall be the "Back-Up Bid". The Qualified Bidder submitting the Successful Bid shall be the "Successful Bidder" and the Qualified Bidder submitting the Back-Up Bid shall be the "Back-Up Bidder". In making these decisions, the Debtors will consider, without limitation, (i) the amount of the purchase price offered, (ii) the form of consideration offered, (iii) the value of Assumed Liabilities and Transferred Contracts the Qualified Bidder proposes to assume; (iv) the Qualified Bidder's ability to close the Sale at the amount of its last bid made at the Auction and the timing thereof, (v) indicia of good faith on the part of the Qualified Bidder, (vi) the terms and conditions of the Qualified Bidder Purchase Agreement, (vii) the requirements as to the assumption and assignment of executory contracts, (viii) the ability to provide adequate assurance of future performance to the counterparties to executory contracts being assumed and assigned, and (ix) the net benefit to the Debtors' estates;

- K. Prior to the conclusion of the Auction, the Debtors and the Successful Bidder shall enter into a definitive agreement based upon the Successful Bidder's Qualified Bidder Purchase Agreement previously submitted by the Successful Bidder and will make all related revisions to the proposed order approving the Sale to the Successful Bidder, in each case to reflect the results of the Auction;
- L. All Qualified Bids shall remain open and irrevocable for the time periods set forth in Article IV(I) above;
- M. Following the Auction, the Debtors will promptly file with the Bankruptcy Court a supplement (the "Supplement") that will inform the Bankruptcy Court of the results of the Auction. The Supplement will identify the Successful Bidder as the proposed purchaser of the Purchased Assets and attach (i) any revised proposed order approving the Sale to the Successful Bidder, (ii) a copy of the Qualified Bidder Purchase Agreement entered into by the Debtors and the Successful Bidder following the Auction, and (iii) any additional information or documentation relevant to the Successful Bid. The Supplement will also identify the Back-Up Bidder and the Back-Up Bid. The Debtors will file the Supplement on the docket for the Chapter 11 Cases as promptly as is reasonably practicable prior to the Sale Hearing, but will not be required to serve the same on any parties-in-interest in the Chapter 11 Cases;
- N. Following the close of the Auction, if the Successful Bidder shall fail to close the Sale because of a breach on the part of the Successful Bidder (after giving effect to any applicable cure periods or waivers), (i) the Back-Up Bidder shall automatically, and without the need for any action by the Debtors or the Bankruptcy Court, be deemed to be the Successful Bidder, (ii) the Back-Up Bid shall be deemed to be the Successful Bid, and (iii) the Debtors and Back-Up Bidder shall close the Sale within ten (10) Business Days following the date the Back-Up Bidder becomes the Successful Bidder, without the necessity of obtaining any further order of the Bankruptcy Court; and

- O. The Debtors reserve the right, in their business judgment upon consultation with the Consultation Parties, to make one or more adjournments to, or cancel, the Auction or to modify these Bidding Procedures to, among other things: (i) facilitate discussions between the Debtors, on the one hand, and one or more Qualified Bidders, on the other hand, (ii) allow the Debtors and/or Qualified Bidders to consider how they wish to proceed, (iii) give Qualified Bidders the opportunity to provide the Debtors with such additional documentation or information as the Debtors in their business judgment may require to determine such Qualified Bidder's ability to close the Sale, or (iv) facilitate higher or better bids.

### **VIII. Sale Hearing and Closing**

The hearing to approve the Sale (the "Sale Hearing") shall take place in the courtroom of the Honorable Judge John T. Dorsey in the United States Bankruptcy Court for the District of Delaware on September 20, 2019, at 1:30 p.m. (prevailing Eastern Time). Following the conclusion of the Auction, with the consent of the Successful Bidder (upon consultation with the Consultation Parties), or as otherwise directed by the Bankruptcy Court, the Sale Hearing may be adjourned or rescheduled without notice by an announcement of the adjourned date at the Sale Hearing or by filing a notice on the docket for the Chapter 11 Cases. At the Sale Hearing, the Debtors shall present the Successful Bid to the Bankruptcy Court for approval. The closing on the Sale with the Successful Bidder shall occur not later than September 30, 2019.

### **IX. Assumption and Assignment Procedures for Executory Contracts**

- A. Attached as **Exhibit 3** to the Bidding Procedures Order is the form of *Notice of (I) Debtors' Intent to Assume and Assign Designated Executory Contracts, and (II) Cure Amounts Related to Designated Executory Contracts* (the "Assignment Notice").
- B. Attached as **Exhibit A** to the Assignment Notice is a schedule of all executory contracts and unexpired leases the Debtors propose to assume and assign to the Successful Bidder listing the counterparties to such Transferred Contracts and the amount, if any, proposed to be paid to cure any defaults under such Transferred Contracts pursuant to section 365 of the Bankruptcy Code (the "Cure Amounts"). In conjunction with its Qualified Bid, each Qualified Bidder shall designate which of such contracts or leases it wishes to have the Debtors assume and assign and which it does not desire the Debtors to assume and assign (the contracts and leases which the Successful bidder designated for assumption and assignment shall be referred to as the "Transferred Contracts"). To the extent any Transferred Contract is determined not to be an executory contract under and for purposes of section 365 of the Bankruptcy Code, the Debtors shall instead assign to the Successful Bidder all of the Debtors' right, title and interest in, to and under such contracts pursuant to section 363 of the Bankruptcy Code. Prior to the effectiveness of any assignment of a Transferred Contract, the Successful Bidder shall, at its own cost, in addition to the purchase price, cure monetary defaults under such Transferred Contract, if any, which are capable of being cured unless

any counterparty agrees to a different treatment of such cure amounts. The Successful Bidder shall have no liability for any damages arising from rejection, breach or termination of any contracts or leases which it has not designated as Transferred Contracts. The Debtors will provide the adequate assurance of future performance to the relevant counterparties to Transferred Contracts to be assumed and assigned by each Qualified Bidder as soon as practicable after the Bid Deadline. The Debtors will also provide the identity of the Successful Bidder to the relevant counterparties to Transferred Contracts to be assumed and assigned by the Successful Bidder as soon as practicable after the conclusion of the Auction.

- C. Objections to the assumption and assignment or sale and transfer of the Debtors' rights and interests of and in any of the Transferred Contracts (an "Assignment Objection") must: (i) be made in writing and filed on the docket for the Chapter 11 Cases by **September 17, 2019** (the "Assignment Objection Deadline"), (ii) state the basis of such objection with specificity, including, without limitation, the Cure Amount alleged by such counterparty, and include complete contact information for such counterparty (including address, telephone number and email address), (iii) comply with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and (iv) be served on the following, so as to be actually received by them on or before 4:00 p.m. (prevailing Eastern Time) on the Assignment Objection Deadline:

- Counsel to the Debtors: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, Attn: Derek C. Abbott and Curtis S. Miller (Telephone: (302) 658-9200; email: [dabbott@mnat.com](mailto:dabbott@mnat.com) and [cmiller@mnat.com](mailto:cmiller@mnat.com));
- The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane Leamy;
- Counsel to each Qualified Bidder (contact information should be obtained from the Debtors' counsel (contact details are set forth above)); and
- Counsel to the DIP Lenders: Proskauer Rose LLP, Christian Science Center-Belvidere/Dalton, Boston, MA 02110, Attn: Chad Dale, (Telephone: (617) 526-9600; email: [cdale@proskauer.com](mailto:cdale@proskauer.com)).
- Counsel to the Committee, Cooley LLP, 55 Hudson Yards, New York, NY 10001, Attn: Richard S. Kanowitz (Telephone: (212) 479-6167; email: [rkanowitz@cooley.com](mailto:rkanowitz@cooley.com))

- D. Any counterparty to a Transferred Contract that fails to file an Assignment Objection by the Assignment Objection Deadline (i) shall be deemed to have forever waived and released any right to assert an Assignment Objection, (ii) shall have consented to the assumption and assignment of, or sale and transfer of the Debtors' right, title and interest in, to and under, their Transferred Contract, as the

case may be, without the necessity of obtaining any further order of the Bankruptcy Court, and (iii) shall be forever barred and estopped from (a) objecting to the Cure Amount set forth on the Cure Schedule with respect to the Transferred Contract, (b) seeking additional amounts arising under the Transferred Contract prior to the closing from the Debtors, the Successful Bidder or the Back-Up Bidder, as the case may be, and (c) objecting to the assumption and assignment of its Transferred Contract to the Successful Bidder.

- E. If a timely objection is filed and cannot be resolved consensually, the Bankruptcy Court shall resolve such objection at the Sale Hearing.
- F. Any Qualified Bidder may add to or remove contracts from its corresponding schedules at any time up to the conclusion of the Auction, and the Successful Bidder and Back-Up Bidder may add (but not remove) from its corresponding schedules at any time after the Auction but prior to the closing of the Sale. If the Successful Bidder and/or Back-Up Bidder shall have done so, the Debtors shall file an amended or supplemental Transferred Contract and Cure Schedule adding such contracts thereto (any such added contract, an "Additional Contract") within two (2) calendar days of being informed of such a determination and provide notice thereof (and in the case of an Additional Contract, provide the counterparty thereto with the Assignment Notice along with the amended or supplemental Transferred Contract and Cure Schedule) to each affected counterparty. To the extent an executory contract or unexpired lease is not assumed and assigned to the Successful Bidder, the Debtors will file a motion to reject such an unassigned, executory contract or unexpired lease, or sell or transfer such unassigned, executory contract or unexpired lease in its reasonable discretion to the extent permitted by applicable law.
- G. Objections from any counterparty to an Additional Contract (an "Additional Assignment Objection") must: (i) be made in writing and filed on the docket for the Chapter 11 Cases no later than ten (10) calendar days after the Debtors have sent notice to such counterparty of its intention to assume and assign such Additional Contract (as applicable, the "Additional Assignment Objection Deadline"), (ii) state the basis of such objection with specificity, including, without limitation, the Cure Amount alleged by such counterparty, and include contact information for such counterparty, (iii) comply with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and (iv) be served upon counsel to (a) the Debtors and the United States Trustee, and (b) the Successful Bidder, and the Back-Up Bidder (addresses for the foregoing may be obtained from counsel to the Debtors), so as to be actually received by them on or before 4:00 p.m. (prevailing Eastern Time) on the Additional Assignment Objection Deadline.
- H. Any counterparty to an Additional Contract that fails to file an Additional Assignment Objection by the Additional Assignment Objection Deadline (i) shall be deemed to have forever waived and released any right to assert an Additional Assignment Objection and (ii) shall have consented to the assumption and



assignment of, or sale and transfer of the Debtors' rights and interests in, as the case may be, such Additional Contract, without the necessity of obtaining any further order of the Bankruptcy Court, and (iii) shall be forever barred and estopped from (a) objecting to the Cure Amount set forth on the Cure Schedule with respect to its Additional Contract, (b) seeking additional amounts arising under its Additional Contract at any time from the Debtors, the Successful Bidder or the Back-Up Bidder, as the case may be, and (c) objecting to the assumption and assignment of its Additional Contract to the Successful Bidder or the Back-Up Bidder, as the case may be.

- I. If a timely objection is filed, and cannot be resolved consensually, the Bankruptcy Court shall resolve such objection at a hearing to be held (i) on or before five (5) calendar days from the timely filing of the Additional Assignment Objection or (ii) such other date designated by the Bankruptcy Court. Unless the Bankruptcy Court orders otherwise, contemporaneously with the resolution of any such objection, the Additional Contract underlying such objection shall be deemed to have been assumed and assigned to the Successful Bidder or the Back-Up Bidder, as the case may be, without the necessity of obtaining any further order of the Bankruptcy Court.

#### **X. Failure to Consummate Purchase**

Following the close of the Auction, if the Successful Bidder fails to consummate the Sale, and such failure is the result of a breach by the Successful Bidder of its obligations under its Qualified Bidder Purchase Agreement, the Successful Bidder's Good Faith Deposit shall be forfeited to the Debtors and the Debtors shall have the right to pursue all of their other rights and remedies against the Successful Bidder. If the Back-Up Bidder is later designated by the Debtors to be the Successful Bidder, the foregoing shall be read to apply to the Back-Up Bidder (and its guarantors, if any) in its capacity as the Successful Bidder.

#### **XI. Good Faith Deposits**

The Debtors shall return the Good Faith Deposits (with any interest accrued thereon as specified in the escrow agreement) of all Qualified Bidders, other than the Successful Bidder and the Back-Up Bidder, within five (5) Business Days following entry by the Bankruptcy Court of an order authorizing the Sale to the Successful Bidder.

Subject to Article X, the Good Faith Deposit of the Successful Bidder (with any interest accrued thereon as specified in the escrow agreement) shall be applied to, and deducted from, the Successful Bidder's obligations under the Successful Bid at the closing of the Sale.

The Good Faith Deposit of the Back-Up Bidder shall be returned to the Back-Up Bidder (with interest thereon at the rate specified, if any, in the escrow agreement) within five (5) Business Days following the date its bid is no longer required to be open and irrevocable as set forth in Article IV(I). If the Back-Up Bidder is subsequently designated by the Debtors as the Successful Bidder as a result of the failure of the Successful Bidder to close on the Sale within the time period set forth in Article IV(I), the Back-Up Bidder shall be deemed to be the

Successful Bidder and the Debtors and the Back-Up Bidder shall close the Sale within ten (10) Business Days of the Back-Up Bidder becoming the Successful Bidder. Subject to Article X, the Good Faith Deposit of the Back-Up Bidder shall be held in escrow until such closing and applied (with any interest accrued thereon as specified in the escrow agreement) to its obligations at the closing of the Sale. The Debtors reserve all of their rights regarding the return of all Good Faith Deposits, and the failure by the Debtors to timely return any deposit(s) shall not serve as a claim for breach of any bid(s) or create any default in favor of any bidder(s).

## **XII. Reservation of Rights**

The Debtors are authorized to amend and modify these Bidding Procedures, upon consultation with the Consultation Parties, to impose additional terms and conditions on the proposed Auction and Sale of the Purchased Assets and assumption of the Assumed Liabilities (including the assumption and assignment of the Transferred Contracts), to account for any designation of a Stalking Horse Bidder, or to modify or eliminate any of the terms and conditions contained herein if, (i) in the Debtors' reasonable business judgment (upon consultation with the Committee), such modifications would be in the best interest of the Debtors' estates and promote an open and fair sale Auction and Sale process including with respect to any Stalking Horse Bid and (ii) such modifications and/or additional terms and conditions are not materially inconsistent with the provisions of the Bidding Procedures Order. Notwithstanding anything herein to the contrary, the Debtors may consider and accept bids from a single Qualified Bidder or from multiple Qualified Bidders for less than all or substantially all of the Purchased Assets upon consultation with the Consultation Parties.

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## EXHIBIT 2

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re  
THG Holdings LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11  
Case No. 19-11689 (JTD)

Jointly Administered

**NOTICE OF PROPOSED SALE OF ALL OR  
SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, FREE  
AND CLEAR OF ALL ENCUMBRANCES, OTHER THAN ASSUMED  
LIABILITIES, AND SCHEDULING FINAL SALE HEARING RELATED THERETO**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On July 30, 2019, the above-captioned debtors and debtors in possession (the "Debtors") filed a motion (the "Sale Motion") with the United States Bankruptcy Court for the District of Delaware (the "Court") seeking entry of two orders, in stages: (i) first, an order (the "Bidding Procedures Order") (a) approving Bidding Procedures for the sale of all or substantially all of the Debtors' assets (the "Purchased Assets"), (b) approving procedures for the assumption and assignment of designated executory contracts and unexpired leases (collectively, the "Transferred Contracts"), and the sale and transfer of other designated contracts, (c) scheduling the Auction and Sale Hearing,<sup>2</sup> and (d) approving forms and manner of notice of respective dates, times, and places in connection therewith, and (e) granting related relief (collectively, the "Bidding Procedures Relief"), and (ii) second, an order (the "Sale Order") (a) authorizing the Sale of the Purchased Assets free and clear of all liens, claims, interests and other encumbrances (collectively, "Encumbrances"), other than Assumed Liabilities, to the Successful Bidder submitting the highest or otherwise best bid, (b) authorizing the assumption and assignment of the Transferred Contracts, and authorizing the sale and transfer of other designated contracts, and (c) granting certain related relief.

**I. Bidding Procedures; Stalking Horse Bidder**

On \_\_\_\_\_, 2019, the Bankruptcy Court entered the Bidding Procedures Order [D.I. \_\_\_\_], thereby approving the Bidding Procedures Relief and the Debtors' ability to designate a Stalking Horse Bidder in the Debtors' business judgment (upon consultation with Consultation Parties). Upon designating a Stalking Horse Bidder, the Debtors may seek expedited relief from the Bankruptcy Court to obtain approval of any Bid Protections (as defined in the Bidding

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtors' federal EIN, are as follows: THG Holdings LLC (8292); True Health Group LLC (9158); True Health Clinical LLC (5272); True Health Diagnostics LLC (9452); True Health IP LLC (5427); Outreach Management Solutions LLC d/b/a True Health Outreach (9424); Health Core Financial LLC d/b/a True Health Financial (6614). The Debtors' mailing address is 3803 Parkwood Blvd, Suite 400, Frisco, Texas 75034.

<sup>2</sup> Capitalized terms used but not defined herein shall have such meanings ascribed to them in the Sale Motion and the Bidding Procedures, as applicable.

Procedures) for the Stalking Horse Bidder. In order for a Potential Bidder's bid to be considered to participate in the Auction, **it must comply with the Bidding Procedures, including that its bid must be delivered, so as to be received on or before 4:00 p.m. (prevailing Eastern Time), on September 13, 2019 (the "Bid Deadline")**, to the Debtor's investment banker: SSG Advisors, LLC, Five Tower Bridge, Suite 420 300 Barr Harbor Drive, West Conshohocken, PA 19428 Attn: J. Scott Victor and Teresa Kohl, (Telephone: (610) 940-1094; email: [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) and [tkohl@ssgca.com](mailto:tkohl@ssgca.com)), with copies provided contemporaneously to counsel to the Debtors: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, Attn: Derek C. Abbott and Curtis S. Miller (Telephone: (302) 658-9200; email: [dabbott@mnat.com](mailto:dabbott@mnat.com) and [cmiller@mnat.com](mailto:cmiller@mnat.com)); (ii) counsel to Monroe Capital Management Advisors, LLC, in its capacity as a prepetition lender and administrative agent under the Debtors' debtor-in-possession financing facility, Proskauer Rose LLP, One International Place, Boston, MA 02110-2600, Attn: Chad Dale (Telephone: (617) 526-9600; email: [CDale@proskauer.com](mailto:CDale@proskauer.com)) and (iii) counsel to the Committee, Cooley LLP, 55 Hudson Yards, New York, NY 10001, Attn: Richard S. Kanowitz (Telephone: (212) 479-6167; email: [rkanowitz@cooley.com](mailto:rkanowitz@cooley.com)) (collectively, the "Notice Parties").

To receive copies of the (i) Sale Motion, all other exhibits to the Sale Motion, and/or a confidentiality agreement to become a Potential Bidder (as defined below), or (ii) a copy of the Form Purchase Agreement or Stalking Horse Bidder Purchase Agreement, as applicable, kindly submit a request in writing (email and facsimile requests are acceptable) to (a) the Debtors' counsel: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, Attn: Derek C. Abbott and Curtis S. Miller (Telephone: (302) 658-9200; email: [dabbott@mnat.com](mailto:dabbott@mnat.com) and [cmiller@mnat.com](mailto:cmiller@mnat.com)) and/or (b) the Debtors' investment banker: SSG Advisors, LLC, Five Tower Bridge, Suite 420 300 Barr Harbor Drive, West Conshohocken, PA 19428 Attn: J. Scott Victor and Teresa Kohl, (Telephone: (610) 940-1094; email: [jsvictor@ssgca.com](mailto:jsvictor@ssgca.com) and [tkohl@ssgca.com](mailto:tkohl@ssgca.com)). Additionally, the Sale Motion and the exhibits thereto are available at <https://dm.epiq11.com/TrueHealth> or those with PACER accounts may download copies from the Bankruptcy Court's website at <https://ecf.deb.uscourts.gov/>. In order for Potential Bidders to obtain access to the Debtors' dataroom, each Potential Bidder must first sign and deliver a confidentiality agreement to the Debtors and provide certain financial data, which must be acceptable to the Debtors. Please refer to the Bidding Procedures for further information concerning submitting a Qualified Bid to participate at the Auction.

## II. Sale Hearing and Closing

The Sale Hearing is scheduled for no later than September \_\_, 2019, at \_\_:00 \_\_.m. (prevailing Eastern Time) at the United States Bankruptcy Court for the District of Delaware, United States Courthouse, 824 Market Street North, 3<sup>rd</sup> Floor, Wilmington, DE 19801, before the Honorable John T. Dorsey, United States Bankruptcy Judge. The Sale Hearing is being held to approve the highest or otherwise best offer received for the Purchased Assets at the Auction, which, if any, will take place at the offices of Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, on September 17, 2019, commencing at 10:00 a.m. (prevailing Eastern Time). The Sale Hearing may be adjourned or rescheduled with prior notice filed on the docket of the Debtor's Chapter 11 Cases or without prior notice by an

announcement of the adjourned date at the Sale Hearing. The closing on the Sale with the Successful Bidder shall occur not later than September 30, 2019.

**THE DEADLINE TO OBJECT TO THE DEBTORS' REQUEST TO APPROVE THE SALE OF THE PURCHASED ASSETS FREE AND CLEAR OF ALL ENCUMBRANCES (OTHER THAN THE ASSUMED LIABILITIES) TO THE SUCCESSFUL BIDDER (EACH, A "SALE OBJECTION") IS SEPTEMBER 13, 2019, at 4:00 P.M. (PREVAILING EASTERN TIME) (THE "SALE OBJECTION DEADLINE").**

Any person or entity wishing to submit a Sale Objection must do so in writing and state with particularity the grounds for such objections or other statements of position. All Sale Objections shall be served so as to be actually received by no later than the Sale Objection Deadline by (i) counsel to the Debtors: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, Attn: Derek C. Abbott and Curtis S. Miller (Telephone: (302) 658-9200; email: [dabbott@mnat.com](mailto:dabbott@mnat.com) and [cmiller@mnat.com](mailto:cmiller@mnat.com)); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Jane M. Leamy Esq. (Telephone: (302) 573-6491 email: [Jane.M.Leamy@usdoj.gov](mailto:Jane.M.Leamy@usdoj.gov)); and (iii) those parties who have filed notices of appearance and/or requested service of all motions and pleadings in this Chapter 11 Cases prior to the date of service thereof.

The failure of any person or entity to file and serve a Sale Objection on or before the Sale Objection Deadline (i) shall be deemed a consent to the Sale to the Successful Bidder and the other relief requested in the Sale Motion, and (ii) shall be a bar to the assertion, at the Sale Hearing or thereafter, to the Sale Motion, the Auction, the sale of the Purchased Assets (including in any such case, without limitation, the transfer of the Purchased Assets free and clear of all Encumbrances, other than the Assumed Liabilities); provided, however, any party in interest may raise an objection at the Sale Hearing solely with respect to the outcome of the Auction.

### **III. Debtors' Contracts and Leases**

The Sale Order, if approved, shall authorize the assumption and assignment of the Transferred Contracts of the Debtors. In accordance with the Bidding Procedures Order, individual notices setting forth the specific Transferred Contracts to be assumed by the Debtors and assigned to the Successful Bidder, or sold and transferred to the Successful Bidder, and the proposed Cure Amounts for such contracts will be given to all counterparties to the Transferred Contracts. Such counterparties will be given the opportunity to object to the assumption and assignment, or sale and transfer, of a Transferred Contract and the proposed Cure Amount.

This Notice is subject to the full terms and conditions of the Bidding Procedures and the Bidding Procedures Order, which shall control in the event of any conflict. The Debtors encourage all persons to review such documents and all other Sale-related documents in their entirety and to consult an attorney if they have questions or want advice.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

13044281.2

## EXHIBIT 3

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re

THG Holdings LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11689 (JTD)

Jointly Administered

**NOTICE OF PROPOSED (I) ASSUMPTION AND ASSIGNMENT OF  
DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On July 30, 2019, the above-captioned debtors and debtors in possession (the “Debtors”) filed a motion (the “Sale Motion”) with the United States Bankruptcy Court for the District of Delaware (the “Court”) seeking entry of two orders, in stages: (i) first, an order (the “Bidding Procedures Order”) (a) approving Bidding Procedures for the sale of all or substantially all of the Debtors’ assets (the “Purchased Assets”), (b) approving procedures for the assumption and assignment or rejection of designated executory contracts and unexpired leases (collectively, the “Transferred Contracts”), and the sale and transfer of other designated contracts, (c) scheduling the Auction and Sale Hearing,<sup>2</sup> and (d) approving forms and manner of notice of respective dates, times, and places in connection therewith, and (e) granting related relief (collectively, the “Bidding Procedures Relief”), and (ii) second, an order (the “Sale Order”) (a) authorizing the Sale of the Purchased Assets free and clear of all liens, claims, interests and other encumbrances (collectively, “Encumbrances”), other than Assumed Liabilities, to the Successful Bidder submitting the highest or otherwise best bid, (b) authorizing the assumption and assignment and rejection of the Transferred Contracts, and authorizing the sale and transfer of other designated contracts, and (c) granting certain related relief. On \_\_\_\_\_, 2019, the Bankruptcy Court entered the Bidding Procedures Order [D.I. \_\_\_\_], thereby approving the Bidding Procedures Relief.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU ARE A PARTY TO ONE OR MORE OF THE CONTRACTS OR LEASES REFERRED TO HEREIN.**

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtors’ federal EIN, are as follows: THG Holdings LLC (8292); True Health Group LLC (9158); True Health Clinical LLC (5272); True Health Diagnostics LLC (9452); True Health IP LLC (5427); Outreach Management Solutions LLC d/b/a True Health Outreach (9424); Health Core Financial LLC d/b/a True Health Financial (6614). The Debtors’ mailing address is 3803 Parkwood Blvd, Suite 400, Frisco, Texas 75034.

<sup>2</sup> Capitalized terms used but not defined herein shall have such meanings ascribed to them in the Bidding Procedures and Bidding Procedures Order, as applicable.



## **TRANSFERRED CONTRACTS**

Attached as **Exhibit A** is a schedule of all executory contracts and unexpired leases (collectively, the “**Transferred Contracts**”) the Debtors propose to assume and assign to the Successful Bidder (which may be a Stalking Horse Bidder, if applicable), listing the counterparties to such contracts (the “**Contract Counterparties**”) and the amount, if any, proposed to be paid to cure any monetary defaults under the Transferred Contracts pursuant to section 365 of the Bankruptcy Code (the “**Cure Amounts**”). The Successful Bidder reserves the right to revise this schedule in accordance with its Qualified Bidder Purchase Agreement and Bidding Procedures at any time prior to the closing on the Purchased Assets.

To the extent that any Transferred Contract is determined by an order of the Bankruptcy Court, or as between the Debtors and the applicable Contract Counterparty, not to be an executory contract under and for purposes of section 365 of the Bankruptcy Code, the Debtors shall instead sell, assign and transfer to the Successful Bidder all of the Debtors’ right, title and interest in, to and under such Transferred Contracts pursuant to section 363 of the Bankruptcy Code. Prior to any such sale and transfer of a Transferred Contract, the Successful Bidder shall cure any monetary defaults or pay other amounts due under such Transferred Contract which are capable of being cured or paid as if such Transferred Contract had been subject to section 365 of the Bankruptcy Code.

IF YOU AGREE WITH THE PROPOSED CURE AMOUNTS LISTED IN **EXHIBIT A** WITH RESPECT TO YOUR TRANSFERRED CONTRACT(S), YOU ARE NOT REQUIRED TO TAKE ANY FURTHER ACTION.

IF YOU DISAGREE WITH THE PROPOSED CURE AMOUNTS LISTED IN **EXHIBIT A** WITH RESPECT TO YOUR CONTRACT(S), YOU MAY OBJECT TO THE PROPOSED CURE AMOUNTS NO LATER THAN **SEPTEMBER 17, 2019, AT 4:00 P.M. (PREVAILING EASTERN TIME)**.

Objections to the assumption and assignment of any of the Transferred Contracts (including the Cure Amounts listed on **Exhibit A**) (an “**Assignment Objection**”) must: (i) be made in writing and filed on the docket for the Case no later than **September 17, 2019, at 4:00 p.m. (prevailing Eastern Time)** (the “**Assignment Objection Deadline**”); (ii) state the basis of such objection with specificity, including, without limitation, the Cure Amount alleged to be due by such Contract Counterparty, and include complete contact information for such Contract Counterparty (including address, telephone number and email address); (iii) comply with the Bankruptcy Code, the Bankruptcy Rules and the Local Rules and (iv) be served on the following, so as to be actually received by them on or before 4:00 p.m. (prevailing Eastern Time) on the Assignment Objection Deadline:

- Counsel to the Debtors: Morris, Nichols, Arsht & Tunnell LLP, 1201 N. Market St., Suite 1600, Wilmington, Delaware 19801, Attn: Derek C. Abbott and Curtis S. Miller (Telephone: (302) 658-9200; email: dabbott@mnat.com and cmiller@mnat.com);

- The Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Jane M. Leamy Esq. (Telephone: (302) 573-6491 email: Jane.M.Leamy@usdoj.gov);
- Counsel to Monroe Capital Management Advisors, LLC, in its capacity as a prepetition lender and administrative agent under the Debtors' debtor-in-possession financing facility, Proskauer Rose LLP, One International Place, Boston, MA 02110-2600, Attn: Chad Dale (Telephone: (617) 526-9600; email: CDale@proskauer.com);
- Counsel to each Qualified Bidder (contact information should be obtained from the Debtors' counsel by contacting Daniel B. Butz and Matthew O. Talmo, at dbutz@mnat.com and mtalmo@mnat.com).
- Counsel to the Committee, Cooley LLP, 55 Hudson Yards, New York, NY 10001, Attn: Richard S. Kanowitz (Telephone: (212) 479-6167; email: rkanowitz@cooley.com)

If you file an Assignment Objection satisfying the requirements herein, the Debtors and the Successful Bidder or Stalking Horse Bidder, as applicable, will confer with you in good faith to attempt to resolve any such Assignment Objection without Bankruptcy Court intervention. If the applicable parties determine that the Assignment Objection cannot be resolved without judicial intervention in a timely manner, the Bankruptcy Court shall resolve such Assignment Objection at a hearing to be held (i) on September 20, 2019, or (ii) such other date designated by the Bankruptcy Court.

If the Successful Bidder or Back-Up Bidder, in accordance with the Bidding Procedures, identifies additional executory contracts or unexpired leases that it wishes to add to the Transferred Contracts and Cure Schedule (each an "Additional Contract") (or wishes to remove a Transferred Contract from the Transferred Contracts and Cure Schedule), the Debtors shall, within two (2) calendar days of the Successful Bidder or Back-Up Bidder making such a determination, send a supplemental Assignment Notice to the applicable Contract Counterparties to such executory contracts or unexpired leases added or removed from the Transferred Contracts and Cure Schedule. To the extent an executory contract or unexpired lease is not assumed and assigned to the Successful Bidder, the Debtors will, in their sole discretion, reject such an unassigned executory contract or unexpired lease *via* separate motion or such other action as may be permitted by law. In no event will the Successful Bidder be responsible for any unassigned executory contracts or unexpired leases.

Objections from any Contract Counterparty to an Additional Contract (an "Additional Assignment Objection") must: (i) be made in writing and filed on the docket for the Chapter 11 Cases no later than ten (10) calendar days after the Debtors have sent notice to such Contract Counterparty of its intention to assume and assign such Additional Contract (as applicable, the "Additional Assignment Objection Deadline"), (ii) state the basis of such objection with specificity, including, without limitation, the Cure Amount alleged by such Contract Counterparty, and include contact information for such Contract Counterparty, (iii)

comply with the Bankruptcy Code, the Bankruptcy Rules and the Local Bankruptcy Rules, and (iv) be served upon counsel to (a) the Debtors and the United States Trustee, and (b) the Successful Bidder, and the Back-Up Bidder (addresses for the foregoing may be obtained from counsel to the Debtors), so as to be actually received by them on or before 4:00 p.m. (prevailing Eastern Time) on the Additional Assignment Objection Deadline.

If a timely objection is filed, and cannot be resolved consensually, the Bankruptcy Court shall resolve such objection at a hearing to be held (i) on or before five (5) calendar days from the timely filing of the Additional Assignment Objection or (ii) such other date designated by the Bankruptcy Court. Unless the Bankruptcy Court orders otherwise, contemporaneously with the resolution of any such objection, the Additional Contract underlying such objection shall be deemed to have been assumed and assigned, or assigned, as the case may be, to the Successful Bidder or the Back-Up Bidder, as the case may be, without the necessity of obtaining any further order of the Bankruptcy Court.

**IF YOU FAIL TO TIMELY FILE AND PROPERLY SERVE AN ASSIGNMENT OBJECTION AS PROVIDED HEREIN, INCLUDING, WITHOUT LIMITATION, AN OBJECTION TO A CURE AMOUNT (I) YOU WILL BE DEEMED TO HAVE FOREVER WAIVED AND RELEASED ANY RIGHT TO ASSERT AN ASSIGNMENT OBJECTION OR ADDITIONAL ASSIGNMENT OBJECTION, AS APPLICABLE, AND TO HAVE OTHERWISE CONSENTED TO THE ASSUMPTION AND ASSIGNMENT, OR SALE AND TRANSFER, OF THE DEBTOR'S RIGHT, TITLE AND INTEREST IN, TO AND UNDER, SUCH TRANSFERRED CONTRACT ON THE TERMS SET FORTH IN THIS ASSIGNMENT NOTICE AND THE FORM PURCHASE AGREEMENT TO BE ENTERED INTO WITH THE SUCCESSFUL BIDDER (II) YOU WILL HAVE CONSENTED TO THE ASSUMPTION AND ASSIGNMENT OF, OR SALE AND TRANSFER OF THE DEBTORS' RIGHT, TITLE AND INTEREST IN, TO AND UNDER, THEIR TRANSFERRED CONTRACT, AS THE CASE MAY BE, WITHOUT THE NECESSITY OF OBTAINING ANY FURTHER ORDER OF THE BANKRUPTCY COURT AND (III) YOU WILL BE BARRED AND ESTOPPED FOREVER FROM ASSERTING OR CLAIMING AGAINST THE DEBTORS, THE SUCCESSFUL BIDDER OR THE BACK-UP BIDDER THAT ANY ADDITIONAL CURE AMOUNTS ARE DUE OR DEFAULTS EXIST, OR CONDITIONS TO ASSUMPTION AND ASSIGNMENT, OR SALE AND TRANSFER, MUST BE SATISFIED, UNDER SUCH TRANSFERRED CONTRACT.**

The Debtors' assumption and assignment, or sale and transfer, of a Transferred Contract is subject to approval by the Bankruptcy Court, and consummation of the closing of the Sale. If there is no closing, the Transferred Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtors.

The inclusion of any document on the list of Transferred Contracts shall not constitute or be deemed to be a determination or admission by the Debtors or the Successful Bidder that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are expressly reserved.

Any Assignment Objection shall not constitute an objection to any of the other relief requested in the Sale Motion to be approved by the Sale Order (e.g., the sale of the Purchased Assets by the Debtors to the Successful Bidder free and clear of all Encumbrances other than Assumed Liabilities). Parties wishing to object to the other relief requested in the Sale Motion (excluding the Bidding Procedures) must timely file and serve a separate objection, stating with particularity such party's grounds for objection, in accordance with the objection procedures approved and set forth in the Bidding Procedures Order.

The dates set forth in this notice are subject to change, and further notice of such changes may not be provided except through announcements in open court and/or the filing of notices and/or amended agendas and/or in accordance with the Bidding Procedures Order. Parties in interest are encouraged to monitor the electronic court docket.

This Notice is subject to the full terms and conditions of the Bidding Procedures and Bidding Procedures Order, which shall control in the event of any conflict. The Debtors encourage parties in interest to review such documents in their entirety and consult an attorney if they have questions or want advice.

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

13044316.2

Exhibit A  
(to Assignment Notice)

Transferred Contracts

| No. | Contract/Lease Party | Contract Counterparty | Contract/Lease Title | Date of Entry | Cure Amount |
|-----|----------------------|-----------------------|----------------------|---------------|-------------|
| 1   | [X]                  | [X]                   | [X]                  | [X]           | \$(X)       |

**SCHEDULES**

**to**

**ASSET PURCHASE AGREEMENT**

**by and among**

**THG HOLDINGS LLC, TRUE HEALTH GROUP LLC, TRUE HEALTH CLINICAL  
LLC, TRUE HEALTH DIAGNOSTICS LLC, TRUE HEALTH IP LLC, OUTREACH  
MANAGEMENT SOLUTIONS LLC AND HEALTH CORE FINANCIAL LLC**

**and**

**CLEVELAND HEARTLAB, INC.**

**Dated as of September 18, 2019**

## **SCHEDULES**

These schedules (the “Schedules”) are being furnished by THG Holdings LLC, True Health Group LLC, True Health Clinical LLC, True Health Diagnostics LLC, True Health IP LLC, Outreach Management Solutions LLC and Health Core Financial LLC (each individually, a “Seller”, and collectively, “Sellers”), to Cleveland Heartlab, Inc. (“Purchaser”), in connection with the execution and delivery of that certain Asset Purchase Agreement dated as of September 18, 2019 by and between Sellers and Purchaser (the “Agreement”). All capitalized terms used in these Schedules without definition shall have the respective meanings assigned to them in the Agreement. Any matter disclosed in any Schedule shall be deemed to have also been disclosed in each other Schedule to which the applicability of such disclosure is reasonably apparent on its face. The headings herein are for reference purposes only and shall not in any way affect the meaning or interpretation of the Agreement.



**SCHEDULE 1.1**

**Assigned Contracts**

None.

**SCHEDULE 2.1(a)**

**Acquired Personal Property**

*Attached.*

**Project Troy**

Schedule 2.1(a): Acquired Personal Property

| ID # | Asset Type                         | Description (Model)   | Location ID  | Serial Number (for Richmond) or Asset ID (for Riverside) | New Asset Tag (Richmond Only) | Comments | Lab Name          | Quest Interest |
|------|------------------------------------|---|--------------|--|-------------------------------|----------|-------------------|----------------|
| 1    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB23181111   | 21547                         |          | John Quincy Adams | Yes            |
| 2    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB23651202   | 21546                         |          | Martha            | Yes            |
| 3    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB23201111   | 21549                         |          | Andrew Jackson    | Yes            |
| 4    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB21551011   | 21548                         |          | Adams             | Yes            |

| ID # | Asset Type                         | Description (Model)   | Location ID  | Serial Number (for Richmond) or Asset ID (for Riverside) | New Asset Tag (Richmond Only) | Comments | Lab Name         | Quest Interest |
|------|------------------------------------|---|--------------|--|-------------------------------|----------|------------------|----------------|
| 5    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB24571208   | 21545                         |          | Taylor           | Yes            |
| 6    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB24361207   | 21541                         |          | Martin Van Buren | Yes            |
| 7    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB22401106   | 21540                         |          | Monroe           | Yes            |
| 8    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB22411106   | 21544                         |          | Jefferson        | Yes            |
| 9    | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB22431106   | 21542                         |          | Madison          | Yes            |

| ID # | Asset Type                         | Description (Model)   | Location ID  | Serial Number (for Richmond) or Asset ID (for Riverside) | New Asset Tag (Richmond Only) | Comments | Lab Name | Quest Interest |
|------|------------------------------------|---|--------------|--|-------------------------------|----------|----------|----------------|
| 10   | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB24471207   | 21617                         |          | Polk     | Yes            |
| 11   | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB25181302   | 21618                         |          | Johnson  | Yes            |
| 12   | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB25111302   | 21621                         |          | Lincoln  | Yes            |
| 13   | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 WITH, (1) SHIMADZU DGU-20A5, (5)LC- 20AD XR PUMPS- PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR,                 | RICHMOND, VA | BB24961301   | 21619                         |          | Pierce   | Yes            |
| 14   | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB24851212   | 21620                         |          | Fillmore | Yes            |

| ID # | Asset Type                         | Description (Model)   | Location ID  | Serial Number (for Richmond) or Asset ID (for Riverside) | New Asset Tag (Richmond Only) | Comments |
|------|------------------------------------|---|--------------|--|-------------------------------|----------|
| 15   | Triple Quad 5500 Mass Spectrometer | ABSCIEX TRIPLE QUAD 5500 MASS SPECTROMETER WITH, (1) SHIMADZU DGU-20A5, (5)LC-20AD XR PUMPS-PER UNIT,BENCH, (1) MS 40+ ENGINE/TURBO, (1) LEAP TECHNOLOGIES HTS-XT AUTOSAMPLER, (1) COMPUTER, SECURITY PLUS SURGE PROTECTOR, | RICHMOND, VA | BB24491207   | 21539                         |          |
| 16   | NMR Spectrometer                   | BRUKER SAMPLE JET ASCEND 600 WITH AVANCE III HDM WITH (2) BCU I -40/50 , HPPR II, (2) HP Z420 COMPUTERS AND SAMSUNG HD MONITOR  | RICHMOND, VA | 10094897   | 21643                         |          |
| 17   | NMR Spectrometer                   | BRUKER SAMPLE JET ASCEND 600 WITH AVANCE III HDM WITH (2) BCU I -40/50 , HPPR II, (2) HP Z420 COMPUTERS AND SAMSUNG HD MONITOR  | RICHMOND, VA | 10094902   | 21644                         |          |
| 18   | Lab Equipment                      | Elga Water System   | Riverside    | 1  | N/A                           |          |
| 19   | Computer Equip                     | HP ProLiant ML350 Server  | Riverside    | 7  | N/A                           |          |
| 20   | Lab Equipment                      | Alcor - iSed Analyzer   | Riverside    | 00841  | N/A                           |          |
| 21   | Lab Equipment                      | Alcor - iSed Analyzer   | Riverside    | 00875  | N/A                           |          |
| 22   | Computer Equip                     | Cloud Managed Switch  | Riverside    | 9  | N/A                           |          |
| 23   | Lab Equipment                      | Siemens - Clinitek Status +   | Riverside    | 275331   | N/A                           |          |
| 24   | Lab Equipment                      | Siemens - Clinitek Status +   | Riverside    | 272221   | N/A                           |          |
| 25   | Computer Equip                     | Clinitek Connectivity Base  | Riverside    | 11   | N/A                           |          |
| 26   | Lab Equipment                      | Clinitek Analyzer   | Riverside    | 14   | N/A                           |          |
| 27   | Lab Equipment                      | Clinitek Analyzer   | Riverside    | 15   | N/A                           |          |
| 28   | Furn & Fixtures                    | Centrifuge carts(2) Workstations(2) Desk  | Riverside    | 86   | N/A                           |          |
| 29   | Computer Equip                     | Cloud Managed Switch  | Riverside    | 23   | N/A                           |          |
| 30   | Computer Equip                     | Clinitek Upgrade Kit  | Riverside    | 24   | N/A                           |          |
| 31   | Lab Equipment                      | McKesson Hematek Slide Stainer  | Riverside    | 38   | N/A                           |          |
| 32   | Computer Equip                     | Clinitek Upgrade Kit  | Riverside    | 56   | N/A                           |          |
| 33   | Furn & Fixtures                    | Workstation, benches, centrifuge cart   | Riverside    | 88   | N/A                           |          |
| 34   | Furn & Fixtures                    | Workstations (2) with open hutch  | Riverside    | 61   | N/A                           |          |
| 35   | Furn & Fixtures                    | 3 workstations  | Riverside    | 62   | N/A                           |          |
| 36   | Lab Equipment                      | 2 Grand 2 Door Refrigerators  | Riverside    | 63   | N/A                           |          |
| 37   | Lab Equipment                      | Double Door Fridge, Freezer   | Riverside    | 65   | N/A                           |          |
| 38   | Lab Equipment                      | Curvette Holder, AU680  | Riverside    | 66   | N/A                           |          |
| 39   | Computer Equip                     | Rack Enclosure Mount Cabinetq   | Riverside    | 74   | N/A                           |          |
| 40   | Lab Equipment                      | Elga Water System   | Riverside    | 89   | N/A                           |          |
| 41   | Computer Equip                     | PC Rack, M541- OPD10  | Riverside    | 90   | N/A                           |          |
| 42   | LHI                                | Ceiling Tiles   | Riverside    | 91   | N/A                           |          |
| 43   | Lab Equipment                      | DM1000 Digital Scope  | Riverside    | 92   | N/A                           |          |
| 44   | Lab Equipment                      | (3) Refrigerator Grand 2Door  | Riverside    | 94   | N/A                           |          |
| 45   | Lab Equipment                      | Incubators Chamber  | Riverside    | 93   | N/A                           |          |
| 46   | Lab Equipment                      | Venta Kuube Airwasher Humidifier (2)  | Riverside    | 95   | N/A                           |          |

| Lab Name         | Quest Interest |
|------------------|----------------|
| William Harrison | Yes            |
| Ivan (NMR 9)     | Yes            |
| Gustav (NMR 10)  | Yes            |

| ID # | Asset Type                                   | Description (Model)                      | Location ID | Serial Number (for Richmond) or Asset ID (for Riverside) | New Asset Tag (Richmond Only) | Comments    |
|------|--|--|-------------|--|-------------------------------|-------------|
| 47   | Lab Equipment                                | NUAIRE HEPA LAB FUME HOOD (2)            | Riverside   | 96   | N/A                           |             |
| 48   | Other Equipment Owned - Riverside Laboratory | Refrigerator, glass double door          | Riverside   | N/A  | N/A                           | Quantity 7  |
| 49   | Other Equipment Owned - Riverside Laboratory | Freezer, Larger                          | Riverside   | N/A  | N/A                           | Quantity 2  |
| 50   | Other Equipment Owned - Riverside Laboratory | Freezer, small                           | Riverside   | N/A  | N/A                           | Quantity 2  |
| 51   | Other Equipment Owned - Riverside Laboratory | Refrigerator, small                      | Riverside   | N/A  | N/A                           | Quantity 3  |
| 52   | Other Equipment Owned - Riverside Laboratory | Lab chairs                               | Riverside   | N/A  | N/A                           | Quantity 31 |
| 53   | Other Equipment Owned - Riverside Laboratory | Locker units                             | Riverside   | N/A  | N/A                           | Quantity 8  |
| 54   | Other Equipment Owned - Riverside Laboratory | Amcase 5-6' Lab benches w/ storage       | Riverside   | N/A  | N/A                           | Quantity 7  |
| 55   | Other Equipment Owned - Riverside Laboratory | Amcase Accessioning hutches              | Riverside   | N/A  | N/A                           | Quantity 8  |
| 56   | Other Equipment Owned - Riverside Laboratory | Amcase microscope tables                 | Riverside   | N/A  | N/A                           | Quantity 3  |
| 57   | Other Equipment Owned - Riverside Laboratory | Amcase centrifuge cart                   | Riverside   | N/A  | N/A                           | Quantity 1  |
| 58   | Other Equipment Owned - Riverside Laboratory | Stainless Steel benches, no storage      | Riverside   | N/A  | N/A                           | Quantity 11 |
| 59   | Other Equipment Owned - Riverside Laboratory | Ised Sed rate analyzers                  | Riverside   | N/A  | N/A                           | Quantity 2  |
| 60   | Other Equipment Owned - Riverside Laboratory | Large Lab centrifuge                     | Riverside   | N/A  | N/A                           | Quantity 2  |
| 61   | Other Equipment Owned - Riverside Laboratory | Hematocrit Centrifuge                    | Riverside   | N/A  | N/A                           | Quantity 1  |
| 62   | Other Equipment Owned - Riverside Laboratory | Small Accessioning Centrifuges           | Riverside   | N/A  | N/A                           | Quantity 2  |
| 63   | Other Equipment Owned - Riverside Laboratory | Microscopes                              | Riverside   | N/A  | N/A                           | Quantity 2  |
| 64   | Other Equipment Owned - Riverside Laboratory | Acid and base cabinets                   | Riverside   | N/A  | N/A                           | Quantity 4  |
| 65   | Other Equipment Owned - Riverside Laboratory | General Lab supplies in boxes * estimate | Riverside   | N/A  | N/A                           | Quantity 75 |
| 66   | Other Equipment Owned - Riverside Laboratory | File cabinets                            | Riverside   | N/A  | N/A                           | Quantity 4  |
| 67   | Other Equipment Owned - Riverside Laboratory | Bakers racks                             | Riverside   | N/A  | N/A                           | Quantity 4  |
| 68   | Other Equipment Owned - Riverside Laboratory | Steel shelving                           | Riverside   | N/A  | N/A                           | Quantity 3  |

| Lab Name                     | Quest Interest |
|------------------------------|----------------|
| <u>Item</u>                  | <u>Volume</u>  |
| Refrigerator, glass double c | 7              |
| Freezer, Larger              | 2              |
| Freezer, small               | 2              |
| Refrigerator, small          | 3              |
| Lab chairs                   | 31             |
| Locker units                 | 8              |
| Amcase 5-6' Lab benches w.   | 7              |
| Amcase Accessioning hutch    | 8              |
| Amcase microscope tables     | 3              |
| Amcase centrifuge cart       | 1              |
| Stainless Steel benches, no  | 11             |
| Ised Sed rate analyzers      | 2              |
| Large Lab centrifuge         | 2              |
| Hematocrit Centrifuge        | 1              |
| Small Accessioning Centrifu  | 2              |
| Microscopes                  | 2              |
| Acid and base cabinets       | 4              |
| General Lab supplies in box  | 75             |
| File cabinets                | 4              |
| Bakers racks                 | 4              |
| Steel shelving               | 3              |

**SCHEDULE 2.1(d)**

**Acquired Intellectual Property**

**Domain Names**

truehealthdiag.com  
true-health.com  
continuumdiag.com  
continuumdiag.info  
continuumdiag.net  
continuumdiag.org  
continuumdiag.us  
continuumdiagnostics.com  
continuumlaboratories.com  
continuumtesting.com  
hdlabinc.com  
my-thd.com  
mytruecme.com  
mytruehealthcme.com  
nherit.com  
thd.health  
true-health.co  
true-health.info  
truehealthclinical.com  
truehealthcme.com  
truehealthdiag.net  
truehealthfinancial.com  
truehealthoms.com  
truehealthoutreach.com



### Entity Names

THG Holdings LLC  
 True Health Group LLC  
 True Health Diagnostics LLC  
 Outreach Management Solutions  
 LLC  
 True Health Clinical LC  
 Health Core Financial LLC  
 True Health IP LLC

| Software Type | Description of Software (Model)          | Location ID | Serial Number (for Richmond) or Asset ID (for Riverside) | New Asset Tag (Richmond Only) |
|---------------|--|-------------|--|-------------------------------|
| Lab Software  | Unity Connector Software                 | Riverside   | 5  | N/A                           |
| Software      | Orchard Harvest Software                 | Riverside   | 26   | N/A                           |
| Software      | Cloud Lincense, Port, Security Appliance | Riverside   | 87   | N/A                           |
| Lab Software  | Utility Connector kits                   | Riverside   | 45   | N/A                           |
| Software      | Harvest Client Licenses                  | Riverside   | 57   | N/A                           |
| Software      | Harvest Licenses                         | Riverside   | 42   | N/A                           |
| Software      | Harvest Licenses                         | Riverside   | 43   | N/A                           |
| Lab Software  | Bi-directional Analyzer Interface        | Riverside   | 81   | N/A                           |

**SCHEDULE 2.1(f)****List of Telephone and Facsimile Numbers****eFax Numbers**

| Fax Number     | Vendor | Corp Acct# | Group              | User Name      | Comments   |
|----------------|--------|------------|--------------------|----------------|--|
| 1-800-381-2046 | eFax   | 58075      | Patient Scheduling | THD Blood Draw | Used to schedule phlebotomy draws (requisitions are faxed to this # by clients/patients) |

**Telephone Numbers**

877-443-5227 (toll-free)

804-343-2718 (Richmond)

These telephone numbers are collectively referred to as the “AR Telephone Numbers”.

**SCHEDULE 4.11**

**Material Customers**

Redacted.

**SCHEDULE 4.12**

**Financial Advisors**

1. SSG Advisors, LLC has been retained as the investment banker of Sellers.

**EXHIBIT B**

Proposed Sale Order

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re

THG Holdings LLC, *et al.*,

Debtors.<sup>1</sup>

Chapter 11

Case No. 19-11689 (JTD)

Jointly Administered

Re: D.I. 16, 175

**ORDER (I) APPROVING PURCHASE AGREEMENT  
AMONG DEBTORS AND PURCHASER, (II) AUTHORIZING SALE  
OF CERTAIN OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS, CLAIMS,  
INTERESTS, AND ENCUMBRANCES, (III) AUTHORIZING  
ASSUMPTION AND ASSIGNMENT OF CERTAIN EXECUTORY CONTRACTS  
IN CONNECTION THEREWITH, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “**Sale Motion**”),<sup>2</sup> dated July 30, 2019 [Docket No. 16], of the above-captioned debtors and debtors in possession (the “**Debtors**”), pursuant to sections 105, 363, and 365 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), for an order authorizing and approving the sale of the Acquired Assets and the assumption and assignment of certain executory contracts of the Debtors in connection therewith; and the Court having taken into consideration this Court’s prior order, dated August 22, 2019 [Docket No. 175] (the “**Bidding Procedures Order**”), approving bidding procedures for the sale of the Acquired Assets

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<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtors’ federal EIN, are as follows: THG Holdings LLC (8292); True Health Group LLC (9158); True Health Clinical LLC (5272); True Health Diagnostics LLC (9452); True Health IP LLC (5427); Outreach Management Solutions LLC d/b/a True Health Outreach (9424); Health Core Financial LLC d/b/a True Health Financial (6614). The Debtors’ mailing address is 3803 Parkwood Blvd., Suite 400, Frisco, Texas 75034.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Purchase Agreement (as defined below) or, if not defined in the Purchase Agreement, the meanings given to them in the Sale Motion.

(the “**Bidding Procedures**”) and granting certain related relief; and Cleveland Heartlab, Inc., a Delaware corporation (the “**Purchaser**”), a wholly-owned subsidiary of Quest Diagnostics Incorporated, having submitted the highest and best bid for the Acquired Assets and having thus been designated the Successful Bidder (as defined in the Bidding Procedures) for the Acquired Assets; and this Court having conducted a hearing to consider the Sale Transaction (as defined below) on September 20, 2019 (the “**Sale Hearing**”), during which time all interested parties were offered an opportunity to be heard with respect to the Sale Transaction; and this Court having reviewed and considered (i) the Sale Motion and the exhibits thereto, (ii) the *Asset Purchase Agreement*, dated as of September 18, 2019 (together with exhibits and schedules thereto, as may be further amended, modified, supplemented and/or restated as provided therein) (the “**Purchase Agreement**”) by and between the Debtors and Purchaser, a copy of which is attached hereto as **Exhibit A**, whereby the Debtors have agreed, among other things, to sell the Acquired Assets to Purchaser, on the terms and conditions set forth in the Purchase Agreement (the “**Sale Transaction**”), (iii) the *Declaration of Clifford A. Zucker in Support of First Day Relief* [Docket No. 5] (the “**First Day Declaration**”) and the Declaration of [●] *in Support of the Sale Transaction* [Docket No. [●]], (the “[●] **Declaration**” and, collectively with the First Day Declaration, the “**Sale Declarations**”), and (iv) the arguments of counsel made, and the evidence proffered and adduced, at the Sale Hearing; and due notice of the Sale Motion and the form of this Order (the “**Proposed Sale Order**”) having been provided; and all objections to the Sale Transaction and the Proposed Sale Order having been withdrawn, resolved, or overruled; and it appearing that the relief granted herein is in the best interests of the Debtors, their estates, creditors, and all parties in interest in these chapter 11 cases; and upon the record of the Sale

Hearing and these chapter 11 cases; and after due deliberation and sufficient cause appearing therefor, it is hereby:

**FOUND AND DETERMINED THAT:**

A. **Fed. R. Bankr. P. 7052.** The findings and conclusions set forth herein constitute this 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 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. **Jurisdiction and Venue.** This Court has jurisdiction to decide the Sale Motion and over the Sale Transaction 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 as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue of these chapter 11 cases and the Sale Motion in this District is proper under 28 U.S.C. §§ 1408 and 1409.

C. **Statutory and Rule Predicates.** The statutory and other legal predicates for the relief granted herein are sections 105(a), 363, 365, and 541 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, and 9014, and Local Rules 2002-1 and 6004-1.

D. **Opportunity to Object.** A fair and reasonable opportunity to object to, and be heard with respect to, the Sale Motion and the Sale Transaction has been given to all Persons entitled to notice pursuant to the Bidding Procedures Order, including, but not limited to, the following: (i) all entities known or reasonably believed to have asserted any lien, claim, encumbrance, or other interest in the Acquired Assets; (ii) all affected federal, state and local regulatory and taxing authorities; (iii) all parties known or reasonably believed to have expressed



interest in the Acquired Assets; (iv) all parties to the Assigned Contracts, and (v) all of the Debtors' known creditors (for whom identifying information and addresses are available to, or reasonably attainable by, the Debtors); and (v) all parties that have requested notice in these chapter 11 cases pursuant to Bankruptcy Rule 2002.

E. **Final Order**. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a).

F. **Sound Business Purpose**. The Debtors have demonstrated good, sufficient, and sound business purposes and justifications for approval of and entry into the Purchase Agreement, and the other agreements, documents, and instruments deliverable thereunder, and approval of the Sale Transaction. The Debtors' entry into and performance under the Purchase Agreement (i) constitute a sound and reasonable exercise of the Debtors' business judgment consistent with their fiduciary duties, (ii) provide value to and are beneficial to the Debtors' estates, and are in the best interests of the Debtors and their stakeholders, and (iii) are reasonable and appropriate under the circumstances. Business justifications for the Sale Transaction include, but are not limited to, the following: (i) the Purchase Price set forth in the Purchase Agreement constitutes the highest or best offer received for the Acquired Assets; (ii) the Purchase Agreement presents the best opportunity to maximize the value of the Acquired Assets; and (iii) the value of the Debtors' estates will be maximized through the sale of the Acquired Assets pursuant to the Purchase Agreement.

G. **Compliance with Bidding Procedures Order**. The Debtors and Purchaser complied with the Bidding Procedures Order and the Bidding Procedures in all respects. Purchaser subjected its bid to the competitive Bidding Procedures approved by this Court and was designated the Successful Bidder for the Acquired Assets in accordance with the Bidding

Procedures Order and Bidding Procedures. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Acquired Assets.

H. **Marketing Process.** (i) The Debtors and their advisors, including investment banker SSG Advisors, LLC, engaged in a robust and extensive marketing and sale process pursuant to the Bidding Procedures Order and Bidding Procedures, (ii) the Debtors conducted a fair and open sale process, (iii) the sale process and the Bidding Procedures were non-collusive, duly noticed, and provided a full, fair, and reasonable opportunity for any entity to make an offer to purchase the Acquired Assets, and (iv) the process conducted by the Debtors pursuant to the Bidding Procedures Order and the Bidding Procedures obtained the highest or best value for the Acquired Assets, and any other transaction would not have yielded as favorable an economic result for the Debtors and their estates with respect to the Acquired Assets.

I. **Fair Consideration; Highest or Best Value.** The consideration to be provided by Purchaser under the Purchase Agreement is fair and reasonable and constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession or the District of Columbia. Such consideration constitutes the highest and best bid for the Acquired Assets. No other person or entity, or group of persons or entities, has offered to purchase the Acquired Assets for an amount that would provide greater value to the Debtors than Purchaser, including through the reduction of claims against the Debtors' estates.

J. **No Successor or Other Derivative Liability.** (i) Purchaser is not, and the consummation of the Sale Transaction will not render Purchaser, a mere continuation, and Purchaser is not holding itself out as a mere continuation, of any of the Debtors or their respective estates, enterprise, or operations, and there is no continuity or common identity between Purchaser and the Debtors; (ii) the Sale Transaction does not amount to a consolidation, merger, or *de facto* merger of Purchaser with or into any of the Debtors or their estates; and (iii) Purchaser is not, and shall not be deemed to be, a successor to any of the Debtors or their estates as a result of the consummation of the Sale Transaction.

K. **Good Faith.** The Purchase Agreement and the Sale Transaction were negotiated, proposed, and entered into by the Debtors and Purchaser in good faith, without collusion, and from arm's-length bargaining positions. Purchaser is a "good faith purchaser" within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to all the protections afforded thereby. Effective upon the Closing, it shall be judicially determined that neither the Debtors nor Purchaser have engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Effective upon the Closing, it shall be judicially determined that neither Purchaser nor any of its members, partners, officers, directors, principals, or shareholders is an "insider" of any of the Debtors, as that term is defined in section 101 of the Bankruptcy Code and no common identity of incorporators, directors, or controlling stockholders exists between Purchaser and the Debtors. The Purchase Agreement and any agreements, documents or other instruments entered into pursuant thereto or in connection therewith (collectively, the "**Transaction Documents**") were not entered into and the Sale Transaction is not being consummated for the purpose of hindering, delaying, or defrauding present or future creditors of

the Debtors. All payments to be made by Purchaser in connection with the Sale Transaction have been disclosed. Neither the Debtors nor Purchaser is entering into the Transaction Documents, or proposing to consummate the Sale Transaction, fraudulently, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof, or the District of Colombia.

L. **Notice.** As evidenced by the certificates of service filed with this Court: (i) proper, timely, adequate, and sufficient notice of the Sale Motion, the bidding process (including the deadline for submitting bids and the Auction), the Sale Hearing, the Sale Transaction, and the Proposed Sale Order was provided by the Debtors; (ii) such notice was good, sufficient, and appropriate under the particular circumstances and complied with the Bidding Procedures Order; and (iii) no other or further notice of the Sale Motion, the Sale Transaction, the Bidding Procedures, the Sale Hearing, or the Proposed Sale Order is required.

M. **Cure Notice.** As evidenced by the certificates of service filed with this Court, and in accordance with the provisions of the Bidding Procedures Order, the Debtors have served notice of the Debtors' intent to assume and assign the Assigned Contracts and of the related proposed cure amounts (the "**Cure Costs**") upon each non-Debtor party to the Assigned Contracts (the "**Cure Notice**"). The service of the Cure Notice was timely, good, sufficient, and appropriate under the circumstances and no further notice need be given with respect to the Cure Costs for the assumption and assignment of the Assigned Contracts. All non-Debtor parties to the Assigned Contracts have had a reasonable opportunity to object both to the Cure Costs listed on the Cure Notice and to the assumption and assignment of the Assigned Contracts to Purchaser. No defaults exist in the Debtors' performance under the Assigned Contracts as of the

date of this Order other than the failure to pay the Cure Costs, as may be required, or such defaults that are not required to be cured.

N. **Satisfaction of Section 363(f) Standards.** The Debtors are authorized to sell the Acquired Assets to Purchaser free and clear of all liens, claims (including those that constitute a “claim” as defined in section 101(5) of the Bankruptcy Code), property interests, rights, liabilities, encumbrances, and other interests of any kind or nature whatsoever against the Debtors or the Acquired Assets, including, without limitation, any debts, claims, rights, causes of action, and/or suits arising under or out of, in connection with, or in any way relating to, any acts, omissions, obligations, demands, guaranties, rights, contractual commitments, restrictions, product liability claims, environmental liabilities, and/or claims for taxes of or against the Debtors and/or the Acquired Assets, and any derivative, vicarious, transferee, or successor liability claims, rights, or causes of action (whether in law or in equity, under any law, statute, rule, or regulation of the United States, any state, territory, or possession thereof or the District of Columbia), whether arising prior or subsequent to the commencement of these chapter 11 cases, whether secured or unsecured, senior or subordinated, matured or unmatured, known or unknown, whether fixed or contingent, whether anticipated or unanticipated, whether yet accrued or not, and whether imposed by agreement, understanding, law, equity or otherwise arising under or out of, in connection with, or in any way related to the Debtors, the Debtors’ interests in the Acquired Assets, the operation of the Debtors’ business before the Closing, or the transfer of the Debtors’ interests in the Acquired Assets to Purchaser, all Excluded Assets, and all Excluded Liabilities (collectively, excluding any Assumed Liabilities, the “**Claims**”), because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Claims who did not object (or who ultimately withdrew their

objections, if any) to the Sale Transaction or the Sale Motion are deemed to have consented to the Debtors' entry into the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object that have an interest in the Acquired Assets fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are therefore adequately protected by having their Claims that constitute interests in the Acquired Assets attach solely to the proceeds of the Sale Transaction ultimately attributable to the property in which they have an interest, in the same order of priority and with the same extent, validity, force, and effect that such holders had prior to the Sale Transaction, subject to any defenses of the Debtors. All Persons having Claims of any kind or nature whatsoever against the Debtors or the Acquired Assets shall be forever barred, estopped, and permanently enjoined from pursuing or asserting such Claims against Purchaser, its Affiliates, successors, assigns, assets (including Acquired Assets), and/or properties.

O. Each of the lenders and agent under (a) that certain Secured Superpriority Debtor-In-Possession Credit Agreement, dated [●], by and among the Debtors and the lenders thereunder (as such agreement may be amended, restated, amended and restated, supplemented or otherwise modified from time to time), (b) that certain Credit Agreement, dated January 27, 2019, by and among the Debtors and the Prepetition Secured Parties<sup>3</sup> (as such agreement may have been amended, restated, amended and restated, supplemented or otherwise modified from time to time), and (c) that certain Amended and Restated Second Lien Promissory Note, dated November 21, 2018, by and among the Debtors and the Prepetition Second Lien Lenders and the

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<sup>3</sup>As such term is defined in the *Final Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing Pursuant to 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(3), 364(d)(1), and 364€ and (B) Use Cash Collateral Pursuant to 11 U.S.C. § 363, and (II) Granting Adequate Protection Pursuant to 11 U.S.C. §§ 361, 362, 363, and 364*, entered on September 10, 2019, [Docket No. 233].

Prepetition Second Lien Administrative Agent, has consented to the sale of the Acquired Assets to Purchaser pursuant to the Transaction Documents free and clear of any Claims of such Secured Lender against the Acquired Assets.

P. Purchaser would not have entered into the Purchase Agreement and would not consummate the Sale Transactions, thus adversely affecting the Debtors and their estates and their creditors, if the sale of the Acquired Assets was not free and clear of all Claims, or if Purchaser would, or in the future could, be liable for any such Claims. A sale of the Acquired Assets, other than one free and clear of all Claims, would yield substantially less value for the Debtors' estates.

Q. The total consideration to be provided under the Purchase Agreement reflects Purchaser's reliance on this Order to provide Purchaser, pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, with title to and possession of the Acquired Assets free and clear of all Claims.

R. **Assumption and Assignment of Assigned Contracts.** The assumption and assignment of the Assigned Contracts are integral to the Purchase Agreement, are in the best interests of the Debtors and their estates, and represent the valid and reasonable exercise of the Debtors' sound business judgment. Specifically, the assumption and assignment of the Assigned Contracts (i) is necessary to sell the Acquired Assets to Purchaser, (ii) limit the losses suffered by non-Debtor parties to the Assigned Contracts, and (iii) maximize the recoveries to other creditors of the Debtors by limiting the amount of claims against the Debtors' estates by avoiding the rejection of the Assigned Contracts.

S. With respect to each of the Assigned Contracts, the Debtors have met all requirements of section 365(b) of the Bankruptcy Code. Further, Purchaser has cured or will

cure on or before the Closing any monetary default required to be cured with respect to the Assigned Contracts under section 365(b)(1) of the Bankruptcy Code and has provided adequate assurance of future performance under the Assigned Contracts in satisfaction of sections 365(b) and 365(f) of the Bankruptcy Code to the extent that any such assurance is required and not waived by the non-Debtor parties to such Assigned Contracts. Accordingly, the Assigned Contracts may be assumed by the Debtors and assigned to Purchaser as provided for in the Purchase Agreement and herein.

T. **Validity of Transfer.** As of the Closing, the transfer of the Acquired Assets to Purchaser will be a legal, valid, and effective transfer of the Acquired Assets, will vest Purchaser with all right, title, and interest of the Debtors in and to the Acquired Assets, free and clear of all Claims. The consummation of the Sale Transaction is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b), and 365(f) of the Bankruptcy Code, and all of the applicable requirements of such sections have been complied with in respect of the Sale Transaction.

U. The Debtors (i) have full corporate power and authority to execute the Purchase Agreement and all other documents contemplated thereby, and the Sale Transaction has been duly and validly authorized by all necessary action of the Debtors, (ii) have all of the power and authority necessary to consummate the Sale Transaction, and (iii) upon entry of this Order, other than any consents identified in the Purchase Agreement (including with respect to antitrust matters), need no consent or approval from any other Person to consummate the Sale Transaction.



V. The Acquired Assets constitute property of the Debtors' estates and good title to the Acquired Assets is vested in the Debtors' estates within the meaning of section 541(a) of the Bankruptcy Code.

W. The Purchase Agreement is a valid and binding contract between the Debtors and Purchaser and shall be enforceable pursuant to its terms. The Purchase Agreement was not entered into for the purpose of hindering, delaying, or defrauding creditors under the Bankruptcy Code or under laws of the United States, any state, territory, possession, or the District of Columbia. The Sale Transaction, and the consummation thereof, shall be specifically enforceable against and binding upon (without posting any bond) the Debtors, and any chapter 7 or chapter 11 trustee appointed in these chapter 11 cases, and shall not be subject to rejection or avoidance by the foregoing parties or any other Person.

X. **Waiver of Bankruptcy Rules 6004(h) and 6006(d).** The sale of the Acquired Assets must be approved and consummated promptly in order to preserve the value of the Acquired Assets. Therefore, time is of the essence in consummating the Sale Transaction, and the Debtors and Purchaser intend to close the Sale Transaction as soon as reasonably practicable. The Debtors have demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the Sale Transaction as contemplated by the Purchase Agreement. Accordingly, there is sufficient cause to lift the stay contemplated by Bankruptcy Rules 6004(h) and 6006(d) with regard to the transactions contemplated by this Order.

Y. **Legal and Factual Bases.** The legal and factual bases set forth in the Sale Motion, the Sale Declarations, and at the Sale Hearing establish just cause for the relief granted herein.

**NOW THEREFORE, IT IS ORDERED THAT:**

1. **Motion is Granted.** The Sale Motion and the relief requested therein is granted and approved as set forth herein.
2. **Objections Overruled.** All objections, if any, and any and all joinders thereto, to the Sale Motion or the relief requested therein that have not been withdrawn with prejudice, waived, or settled as announced to this Court at the Sale Hearing, by stipulation filed with this Court, or as provided in this Order, and all reservations of rights included therein, are hereby overruled on the merits and with prejudice.
3. **Notice.** Notice of the Sale Hearing was fair and equitable under the circumstances and complied in all respects with section 102(1) of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, and 6006.
4. **Fair Purchase Price.** The consideration provided by Purchaser under the Purchase Agreement is fair and reasonable and constitutes (i) reasonably equivalent value under the Bankruptcy Code and the Uniform Fraudulent Transfer Act, (ii) fair consideration under the Uniform Fraudulent Conveyance Act, and (iii) reasonably equivalent value, fair consideration and fair value under any other applicable laws of the United States, any state, territory or possession or the District of Columbia.
5. **Approval of Purchase Agreement.** The Transaction Documents, and the Sale Transaction, and all of the terms and conditions thereof, are hereby approved in their entirety. The failure specifically to include any particular provision of the Transaction Documents in this Order shall not diminish or impair the effectiveness of such provision, it being the intent of this Court that the Transaction Documents, and the Debtors' entry therein, be authorized and approved in their entirety.

6. **Consummation of Sale Transaction.** Pursuant to sections 105, 363, and 365 of the Bankruptcy Code, the Debtors, as well as their officers, employees, and agents, are authorized to execute, deliver, and perform their obligations under and comply with the terms of the Transaction Documents and to consummate the Sale Transaction, including by taking any and all actions as may be reasonably necessary or desirable to implement the Sale Transaction and each of the transactions contemplated thereby pursuant to and in accordance with the terms and conditions of the Transaction Documents and this Order. For the avoidance of doubt, all persons and entities are prohibited and enjoined from taking any action to adversely affect or interfere with the ability of the Debtors to transfer the Acquired Assets to the Purchaser in accordance with the Transaction Documents and this Order.

7. The Debtors, their Affiliates, and their respective officers, employees, and agents, are authorized to execute and deliver, and authorized to perform under, consummate, and implement all additional instruments and documents that may be reasonably necessary or desirable to implement the Purchase Agreement, including the transfer and, as applicable, the assignment of all the Acquired Assets, and the assumption and assignment of the Assigned Contracts, and to take all further actions as may be (i) reasonably requested by Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to Purchaser, or reducing to Purchaser's possession, the Acquired Assets and/or (ii) necessary or appropriate to the performance of the obligations contemplated by the Transaction Documents, all without further order of this Court.

8. All Persons that are currently in possession of some or all of the Acquired Assets are hereby directed to surrender possession of such Acquired Assets to Purchaser as of the Closing.

9. Each and every federal, state, local, or foreign government or governmental or regulatory authority, agency, board, bureau, commission, court, department, or other governmental entity is hereby directed to accept any and all documents and instruments necessary and appropriate to consummate the Sale Transaction.

10. **Transfer of Assets Free and Clear.** Pursuant to sections 105(a), 363(b), 363(f), and 365 of the Bankruptcy Code, the Debtors are authorized, empowered, and directed to transfer the Acquired Assets in accordance with the terms of the Purchase Agreement and the terms of this Order. The Acquired Assets shall be transferred to Purchaser and, upon the Closing, such transfer shall: (i) be valid, legal, binding, and effective; (ii) vest Purchaser with all right, title, and interest of the Debtors in the Acquired Assets; and (iii) be free and clear of all Claims in accordance with section 363(f) of the Bankruptcy Code, with any and all Claims that represent interests in property to attach to the net proceeds of the Sale Transaction, in the same amount and order of their priority, with the same extent, validity, force and effect which they have against the Acquired Assets, and subject to any claims and defenses the Debtors may possess with respect thereto, in each case immediately before the Closing.

11. Except as otherwise provided in the Purchase Agreement, all Persons (and their respective successors and assigns) including, without limitation, the Debtors, the Debtors' estates, all debt security holders, equity security holders, governmental tax and regulatory authorities, lenders, customers, vendors, employees, former employees, litigation claimants, trustees, trade creditors, and any other creditors who may or do hold Claims against the Debtors, the Acquired Assets, and/or the Debtors' business, are hereby forever barred, estopped, and permanently enjoined from asserting or pursuing such Claims against Purchaser, its Affiliates, successors, assigns, assets (including the Acquired Assets), and/or properties, including, without

limitation, taking any of the following actions with respect to any Claims: (i) commencing or continuing in any manner any action, whether at law or in equity, in any judicial, administrative, arbitral, or any other proceeding, against Purchaser, its Affiliates, successors, assigns, assets (including the Acquired Assets), and/or properties; (ii) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against Purchaser, its Affiliates, successors, assigns, assets (including the Acquired Assets), and/or properties; (iii) creating, perfecting, or enforcing any Claim against Purchaser, its Affiliates, successors, assigns, assets (including the Acquired Assets), and/or properties; (iv) asserting a Claim as a setoff, right of subrogation, or recoupment of any kind against any obligation due Purchaser or its successors or assigns; or (v) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order or the agreements or actions contemplated or taken in respect thereof. No such Person shall assert or pursue against the Purchaser, its Affiliates, successors, assigns, assets (including the Acquired Assets), and/or properties any such Claim.

12. This Order (i) shall be effective as a determination that all Claims, have been unconditionally released, discharged and terminated as to the Purchaser and the Acquired Assets, and that the conveyances and transfers described herein have been effected, and (ii) is and shall be binding upon and govern the acts of all Persons, including all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, administrative agencies, governmental departments, secretaries of state, federal, state, county and local officials and all other Persons who may be required by operation of law, the duties of their office, or contract, to accept, file, register or otherwise record or release any documents or instruments that reflect that the Purchaser is the assignee and owner of the Acquired Assets free

and clear of all Claims, or who may be required to report or insure any title or state of title in or to any lease (all such entities being referred to as “**Recording Officers**”). All Recording Officers are authorized to strike recorded encumbrances, claims, liens and other interests against the Acquired Assets recorded prior to the date of this Order. A certified copy of this Order may be filed with the appropriate Recording Officers to evidence cancellation of any recorded encumbrances, claims, liens and other interests against the Acquired Assets recorded prior to the date of this Order. All Recording Officers are hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Sale Transaction.

13. Following the Closing, no holder of any Claim shall interfere with Purchaser’s title to or use or enjoyment of the Acquired Assets based on or related to any Claim or based on any actions or omissions by the Debtors, including any actions or omissions the Debtors may take in these chapter 11 cases.

14. Except as expressly set forth in the Purchase Agreement, Purchaser and each of its Affiliates, successors, assigns, members, partners, officers, directors, principals, and shareholders shall have no liability whatsoever for any Claims, whether known or unknown as of the Closing, now existing or hereafter arising, whether fixed or contingent, whether liquidated or unliquidated, whether asserted derivatively or vicariously, whether asserted based on Purchaser’s status as a transferee, successor, or otherwise, of any kind, nature, or character whatsoever, including Claims based on, relating to, and/or arising under, without limitation: (i) the Debtors’ business operations or the cessation thereof; (ii) any litigation involving one or more of the Debtors; (iii) any antitrust laws; (iv) any product liability or similar laws, whether state, federal, or otherwise; (v) any bulk sales or similar laws; (vi) any federal, state, or local tax statutes, rules,

regulations, or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; and (vii) any common law doctrine of *de facto* merger, successor, transferee, or vicarious liability, substantial continuity liability, successor-in-interest liability theory, and/or any other theory of or related to successor liability.

15. If any Person that has filed financing statements, mortgages, mechanic's liens, *lis pendens*, or other documents or agreements evidencing Claims against the Debtors or the Acquired Assets shall not have delivered to the Debtors prior to the Closing, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, or releases of all interests which the Person has with respect to the Debtors or the Acquired Assets, then with regard to the Acquired Assets that are purchased by Purchaser pursuant to the Purchase Agreement and this Order (i) the Debtors are hereby authorized to execute and file such statements, instruments, or releases on behalf of the Person with respect to the Acquired Assets and (ii) Purchaser is hereby authorized to file, register, or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Claims against the Acquired Assets; *provided that*, notwithstanding anything in this Order to the contrary, the provisions of this Order shall be self-executing, and neither the Sellers nor Purchaser shall be required to execute or file releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Order, other than as required by the Purchase Agreement. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department, or office.

16. On the Closing Date, this Order shall be considered and constitute for any and all purposes a full and complete general assignment, conveyance and transfer of the Acquired

Assets acquired under the Purchase Agreement or a bill of sale or assignment transferring good and marketable, indefeasible title and interest in all of the Acquired Assets to the Purchaser.

17. To the maximum extent available under applicable law and to the extent provided for under the Purchase Agreement, Purchaser shall be authorized, as of the Closing, to operate under any license, permit, registration, and governmental authorization or approval of the Debtors with respect to the Acquired Assets and, to the maximum extent available under applicable law and to the extent provided for under the Purchase Agreement, all such licenses, permits, registrations, and governmental authorizations and approvals are deemed to have been transferred to Purchaser as of the Closing. All existing licenses or permits applicable to the business shall remain in place for the Purchaser's benefit until either new licenses and permits are obtained or existing licenses and permits are transferred in accordance with applicable administrative procedures.

18. **No Successor or Other Derivative Liability.** By virtue of the Sale Transaction, neither Purchaser nor any of its Affiliates shall be deemed to: (i) be a legal successor, or otherwise deemed to be a successor, to any of the Debtors under any theory of law or equity; (ii) have, *de facto* or otherwise, merged with or into any or all Debtors or their estates; (iii) have a common identity or a continuity of enterprise with the Debtors; or (iv) be a mere continuation or substantial continuation, or be holding itself out as a mere continuation, of the Debtors or any business, enterprise, or operation of the Debtors. Upon the Closing, to the maximum extent available under applicable law, Purchaser's acquisition of the Acquired Assets shall be free and clear of any "successor liability" claims of any nature whatsoever, whether known or unknown and whether asserted or unasserted at the time of the Closing and the Acquired Assets shall not be subject to any Claims arising under or in connection with any Excluded Asset or Excluded



Liability. The operations of Purchaser and its Affiliates shall not be deemed a continuation of the Debtors' business as a result of the acquisition of the Acquired Assets.

19. **Assumption and Assignment of Assigned Contracts.** The Debtors are hereby authorized in accordance with sections 105(a) and 365 of the Bankruptcy Code to assume and assign the Assigned Contracts to Purchaser free and clear of all Claims, and to execute and deliver to Purchaser such documents or other instruments as may be necessary to assign and transfer the Assigned Contracts to Purchaser as provided in the Purchase Agreement. Upon the Closing, Purchaser shall be fully and irrevocably vested with all right, title, and interest of the Debtors in, to, and under the Assigned Contracts and, pursuant to section 365(k) of the Bankruptcy Code, the Debtors shall be relieved from any further liability with respect to the Assigned Contracts. Purchaser acknowledges and agrees that, from and after the Closing, it shall comply with the terms of each assumed and assigned contract in its entirety, including any indemnification obligations expressly contained in such Assigned Contract that could arise as a result of events or omissions that occur from and after the Closing.

20. All Cure Costs that have not been waived shall be determined in accordance with the Bidding Procedures Order or other applicable order of this Court and paid by Purchaser in accordance with the terms of the Purchase Agreement. Payment of the Cure Costs shall be in full satisfaction and cure of any and all defaults under the Assigned Contracts and is deemed to fully satisfy the Debtors' obligations under sections 365(b) and 365(f) of the Bankruptcy Code. Each non-Debtor party to the Assigned Contracts is forever barred, estopped, and permanently enjoined from asserting against the Debtors or against Purchaser, its Affiliates, successors, assigns, assets (including the Acquired Assets), and/or properties, any default existing as of the date of the Sale Hearing if such default was not raised or asserted prior to or at the Sale Hearing.

Purchaser has provided adequate assurance of future performance under the Assigned Contracts within the meaning of sections 365(b)(1)(c) and 365(f)(2)(B) of the Bankruptcy Code. Accordingly, all of the requirements of sections 365(b) and 365(f) of the Bankruptcy Code have been satisfied for the assumption by the Debtors, and the assignment by the Debtors to Purchaser, of each of the Assigned Contracts.

21. To the extent a non-Debtor party to the Assigned Contracts fails to timely object to a Cure Cost, such Cure Cost has been and shall be deemed to be finally determined and any such non-Debtor party shall be prohibited from challenging, objecting to, or denying the validity and finality of the Cure Cost at any time. Consistent with the Bidding Procedures Order, the non-Debtor party to an Assigned Contract is forever bound by the applicable Cure Cost and, upon payment of such Cure Cost as provided herein and in the Purchase Agreement, is hereby enjoined from taking any action against Purchaser with respect to any claim for cure under the Assigned Contract. To the extent no timely objections to adequate assurance or the cure amounts have been filed and served with respect to an Assigned Contract, the non-Debtor party to such Assigned Contract is deemed to have consented to the assumption and assignment of the Assigned Contract to Purchaser.

22. **Ipsa Facto Clauses.** Except as otherwise specifically provided for by order of this Court, the Assigned Contracts shall be transferred to, and remain in full force and effect for the benefit of, Purchaser in accordance with their respective terms, including all rights of Purchaser as the assignee of the Assigned Contracts, notwithstanding any provision in any such Assigned Contract (including, without limitation, those of the type described in sections 365(e)(1) and (f) of the Bankruptcy Code) that prohibits, restricts, or conditions such assignment or transfer. There shall be no, and all non-Debtor parties to any Assigned Contract are forever

barred and permanently enjoined from raising or asserting against the Debtors or Purchaser any defaults, breach, claim, pecuniary loss, rent accelerations, escalations, assignment fees, increases, or any other fees charged to Purchaser or the Debtors as a result of the assumption or assignment of the Assigned Contracts.

23. Except as otherwise specifically provided for by order of this Court, upon the Debtors' assignment of the Assigned Contracts to Purchaser, no default shall exist under any Assigned Contracts, and no non-Debtor party to any Assigned Contracts shall be permitted to declare a default by any Debtor or Purchaser, or otherwise take action against Purchaser, as a result of any Debtor's financial condition, bankruptcy, or failure to perform any of its obligations under the relevant Assigned Contracts. Any provision in an Assigned Contract that prohibits or conditions the assignment or sublease of such Assigned Contract (including without limitation, the granting of a lien therein) or allows the non-Debtor party thereto to terminate, recapture, impose any penalty, condition on renewal or extension, or modify any term or condition upon such assignment or sublease, constitutes an unenforceable anti-assignment provision that is void and of no force and effect. The failure of the Debtors or Purchaser to enforce at any time one or more terms or conditions of any of the Assigned Contracts shall not be a waiver of such terms or conditions, or of the Debtors' and Purchaser's rights to enforce every term and condition of the Assigned Contracts.

24. **Statutory Mootness.** The Sale Transaction is undertaken by Purchaser in good faith, as that term is used in section 363(m) of the Bankruptcy Code and, accordingly, the reversal or modification on appeal of the authorization provided herein of the Sale Transaction shall neither affect the validity of the Sale Transaction nor the transfer of the Acquired Assets to

Purchaser free and clear of Claims, unless such authorization is duly stayed before the Closing pending such appeal.

25. **No Avoidance of Purchase Agreement.** Neither the Debtors nor Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement to be avoided or costs and damages to be imposed under section 363(n) of the Bankruptcy Code. Accordingly, the Transaction Documents and the Sale Transaction shall not be avoidable under section 363(n) of the Bankruptcy Code, and no party shall be entitled to any damages or other recovery pursuant to section 363(n) of the Bankruptcy Code in respect of the Transaction Documents or the Sale Transaction.

26. **Waiver of Bankruptcy Rules 6004(h) and 6006(d).** Notwithstanding the provisions of Bankruptcy Rules 6004(h) and 6006(d) or any applicable provisions of the Local Rules, this Order shall not be stayed after the entry hereof, but shall be effective and enforceable immediately upon entry, and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply. Time is of the essence in closing the Sale Transaction and the Debtors and Purchaser intend to close the Sale Transaction as soon as practicable. Any party objecting to this Order must exercise due diligence in filing an appeal and pursuing a stay within the time prescribed by law and prior to the Closing, or risk its appeal being foreclosed as moot.

27. **Allowance of Claims Affecting Purchaser.** The Debtors shall not consent or agree to the allowance of any claim to the extent that it would constitute an Assumed Liability without the prior written consent of Purchaser. Purchaser shall have standing in these chapter 11 cases to object to the validity, amount, or priority of any claim against the Debtors to the extent it would otherwise constitute an Assumed Liability, and this Court will retain the right to hear and

determine such objections. Purchaser shall pay or otherwise satisfy the Assumed Liabilities on or before the later of: (i) the date on which such liability becomes due and owing to the holder of same in the ordinary course of business; and (ii) the date on which the Purchaser and the holder agree such liability is to be satisfied.

28. **Exculpation and Release of Purchaser.** Except with respect to Purchaser's obligations under this Order or the Transaction Documents, effective upon the Closing, and to the maximum extent available under applicable law, neither Purchaser nor any of its Affiliates, successors, assigns, members, partners, officers, directors, principals, shareholders, advisors, or representatives shall have or incur any liability to, or be subject to any action by, the Debtors, their estates, or any of their predecessors, successors or assigns, arising from, based on, or related in any way to the negotiation, documentation, or due diligence in respect of, performance, or consummation of the Transaction Documents, the Debtors, their estates, and the conduct of their business prior to closing, and the entry into and consummation of the Sale Transaction.

29. **Binding Effect of this Order.** The terms and provisions of the Purchase Agreement and this Order shall be binding in all respects upon, or shall inure to the benefit of, the Debtors, their estates and their creditors, Purchaser and its Affiliates, successors, and assigns, and any affected third parties, including all Persons asserting Claims, notwithstanding any subsequent appointment of any trustee, examiner, or receiver under any chapter of the Bankruptcy Code or any other law, and all such provisions and terms shall likewise be binding on such trustee, examiner, or receiver and shall not be subject to rejection or avoidance by the Debtors, their estates, their creditors or any trustee, examiner, or receiver. Any trustee appointed for the Debtors under any provision of the Bankruptcy Code, whether the Debtors are proceeding under chapter 7 or chapter 11 of the Bankruptcy Code, shall be authorized and directed to

(i) operate the business of the Debtors to the fullest extent necessary to permit compliance with the terms of the Transaction Documents and (ii) perform under the Transaction Documents without the need for further order of this Court.

30. **Conflicts; Precedence.** In the event that there is a direct conflict between the terms of this Order and the terms of (i) the Purchase Agreement or (ii) any other order of this Court, the terms of this Order shall control. Nothing contained in any chapter 11 plan hereinafter confirmed in these chapter 11 cases, or any order confirming such plan, shall conflict with or derogate from the provisions of the Purchase Agreement or the terms of this Order, and, to the extent that there is any conflict among them, the terms of the Purchase Agreement and/or this Order, as applicable, shall control.

31. **Modification of Purchase Agreement.** Subject to the terms therein, the Transaction Documents may be modified, amended, or supplemented by the parties thereto, in a writing signed by the party against whom enforcement of any such modification, amendment, or supplement is sought, and in accordance with the terms thereof, without further order of this Court; *provided* that notwithstanding any such modification, amendment, or supplement, the sale of the Acquired Assets to Purchaser will still comply with the requirements of section 363 of the Bankruptcy Code.

32. **Bulk Sales.** No bulk sales law, bulk transfer law, or similar law of any state or other jurisdiction shall apply in any way to the Sale Transaction.

33. **Automatic Stay.** Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code to enforce any of its remedies under the Transaction Documents or any other sale-related document. The automatic stay imposed by

section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the provisions of this Order.

34. **Provisions Non-Severable.** The provisions of this Order are nonseverable and mutually dependent.

35. **Retention of Jurisdiction.** This Court shall retain exclusive jurisdiction to, among other things, (i) interpret, enforce, and implement the terms and provisions of this Order and the Purchase Agreement (including all amendments thereto, any waivers and consents thereunder, and of each of the agreements executed in connection therewith) and (ii) adjudicate disputes related to this Order and the Transaction Documents (including all amendments thereto, and any waivers and consents thereunder).

Dated: \_\_\_\_\_, 2019  
Wilmington, Delaware

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THE HONORABLE JOHN T. DORSEY  
UNITED STATES BANKRUPTCY JUDGE