

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

	X	
In re	:	
	:	Chapter 11
HOSPITAL FOR SPECIAL SURGERY, LLC	:	
<i>Db</i> a ONECORE HEALTH,	:	Case No. 24-12862-JDL
	:	
Debtor.	:	
	X	

**DEBTOR’S EMERGENCY MOTION FOR ENTRY OF INTERIM AND FINAL  
ORDERS (I) AUTHORIZING THE PAYMENT OF PREPETITION CLAIMS OF  
CRITICAL VENDORS AND (II) GRANTING RELATED RELIEF  
WITH BRIEF IN SUPPORT AND NOTICE OF OPPORTUNITY FOR HEARING**

**NOTICE OF OPPORTUNITY FOR HEARING**

**Your rights may be affected. You should read this Document carefully and consult your attorney about your rights and the effect of this Document.** If you do not want the Court to grant the motion, or you wish to have your views considered, you must file a written response to the motion with the Clerk of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102 **no later than 12:00 p.m. (CDT) on October 9, 2024.** You should also serve a file-stamped copy of the response to the undersigned [and others who are required to be served] and file a certificate or affidavit of service with the Court.

**NOTICE OF HEARING  
(TO BE HELD IF A RESPONSE IS FILED)**

**Notice is hereby given that if a response to the Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Prepetition Claims of Critical Vendors and (II) Authorizing the Payment of Outstanding Orders is filed, the hearing on the matter will be held on October 10, 2024, at 10:00 a.m. (CDT) in the 2<sup>nd</sup> floor courtroom of the United States Bankruptcy Court for the Western District of Oklahoma, 215 Dean A. McGee Avenue, Oklahoma City, OK 73102. If no response is timely filed and the court grants the requested relief prior to the above-referenced hearing date, the hearing will be stricken from the docket of the Court.**

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Hospital for Special Surgery, LLC *dba* OneCore Health ( “OneCore” or “Debtor”) hereby submits this motion (the “Motion”) for entry of an interim order, substantially in the form attached hereto as Exhibit 1 (the “Proposed Interim Order”), and a final order (the “Proposed Final Order”<sup>1</sup>), pursuant to sections 105(a), 363, 365, and 1107(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), rules 6003, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1 of the Local Bankruptcy Rules for the Western District of Oklahoma, (i) authorizing, but not directing, Debtor to pay in the ordinary course of business certain prepetition Critical Vendor Claims (as defined below) subject to the respective caps set forth in the proposed Interim Order and the Final Order and (ii) granting related relief, including (a) authorizing, but not directing, Debtor to pay undisputed claims of vendors and suppliers arising from postpetition delivery of goods and provision of services that were ordered prepetition, and (b) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers. In addition, Debtor requests a final hearing be scheduled by the Bankruptcy Court within approximately 25 days of the Petition Date to consider approval of this Motion on a final basis. In support of this Motion, Debtor relies on the *Declaration of Carrie McEntire in Support of Debtor’s First Day Pleadings* (the “McEntire Declaration”) filed contemporaneously herewith and incorporated herein by reference, and respectfully states as follows:

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<sup>1</sup> The Proposed Final Order will follow the form of the Proposed Interim Order. Debtor will provide notice of the Proposed Final Order to parties in interest via electronic filing following entry of an Interim Order.

## Background

1. OneCore is a duly licensed hospital that has been specializing in orthopedic and specialty surgeries in the community of central Oklahoma for more than a decade. In late 2021, OneCore completed the construction of its present leased facility in northeast Oklahoma City and has been operating at such location since January 2022.

2. OneCore has focused on a culture of excellence in the delivery of surgical and other health care services such as radiology and orthopedic care with the goal of being one of the top performing surgical hospitals in Oklahoma. In the past four (4) years, OneCore has received many accolades for its excellence and patient care, including the following:

- Healthgrades: Knee Replacement 5-star recipient, 2023 and 2024;
- Healthgrades: Spinal Fusion Surgery 5-star recipient 2021 – 2024;
- Healthgrades: Outstanding Patient Experience 2024; and
- Press Ganey: Guardian of Excellence Award for Outstanding Patient Experience.<sup>2</sup>

3. Despite the new hospital and recognition as an esteemed hospital for patient care and focus, difficulties ensued in June of 2022, initially due to the Covid pandemic, with the implementation of a new billing system as the legacy system was sunset by the software provider. This difficult conversion caused disruptions to operations for almost two years as OneCore struggled with calibrating the software, creating appropriate interfaces and then billing/collecting claims. This created several million dollars in lost revenue and difficulty tracking patient claims and accounts receivable during the transition. Due to implementation issues, the hospital could not

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<sup>2</sup> The Press Ganey Guardian of Excellence Award® honors organizations that perform in the top 5% of healthcare providers and health plans for patient experience, employee engagement, physician experience, clinical quality performance or consumer experience in one year. Only 501 hospitals and health systems achieved this recognition out of over 10,000.

effectively create patient statements to collect good patient accounts receivable, rendering many of these accounts uncollectible.

4. OneCore continued to fight to resolve billing system issues, and with the help of its management company, began to regain control over the revenue cycle in early 2024. From January through August 2024, the hospital produced break-even results and was beginning to turn the corner toward a pathway to profitability with new physician recruitment.

5. In early September 2024, a former patient obtained a significant jury verdict against the hospital relating to care provided by a physician in 2021. OneCore maintains that the evidence shows that the patient's ongoing injuries were unrelated to the accident. Notwithstanding this evidence, the former patient obtained a judgment in the amount of 15 million dollars, which exceeds the estimated enterprise value of the hospital. OneCore timely has appealed the judgment but was required to initiate this Chapter 11 Case to continue to operate its business, continue to employ its approximately 100 employees, and to maintain the enterprise value of Debtor's assets until a sale pursuant to section 363 of the Bankruptcy Code can be conducted.

6. As of the Petition Date, OneCore employs approximately 60 full-time and 40 contract, or part-time employees.

7. Debtor continues to operate its business and manage its properties as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

8. Additional factual background relating to Debtor's business and the commencement of this Chapter 11 Case is set forth in detail in the McEntire Declaration.

### **Facts Specific to the Relief Requested**

#### **A. Factual Overview.**

9. Debtor operates in highly specialized, highly regulated, and highly competitive industries. The uniqueness and competitiveness of the hospital industry, including, without limitation, its component care specializations which Debtor offers, such as orthopedic surgery and radiology, leaves companies, such as OneCore, which provide services therein, with few alternatives with respect to certain vendors and service providers. If a vendor increases its prices or refuses to do business, OneCore may be unable to switch to a different vendor quickly and efficiently. Moreover, some vital products important to patients' health, safety and welfare are custom-made or supplied by sole-source or limited-source vendors who cannot be replaced without extraordinary expense or delay.

10. OneCore must ensure that it can deliver critical supplies to its patients when the need arises. Any material disruption to OneCore's substantial vendor relationships could have a catastrophic impact on its reputation among its patients, its market share, and ultimately, OneCore's ability to successfully emerge from this Chapter 11 Case as a going concern.

11. To achieve uninterrupted and timely service to its patients, Debtor relies on continuing access to, and relationships with, certain vendors (the "Critical Vendors"). Without uninterrupted access to these goods and services, and the smooth transition into its restructuring, OneCore's operations would be severely impaired, and its patients impacted to the detriment of all.

12. For this reason, Debtor requests authorization to pay certain outstanding prepetition claims of the Critical Vendors (the "Critical Vendor Claims"), subject to the limitations set forth in the proposed Interim and Final Orders. Given the size, number and scale of Debtor's operations, Debtor intends to use its discretion to pay only those Critical Vendor Claims that are critical to maintaining Debtor's supply chain and provide Debtor with favorable postpetition terms.

The following table summarizes the estimated amount of outstanding Critical Vendor Claims that Debtor requests authority to pay:

<b>Category</b>	<b>Estimated Amount Due to be Paid Within 25 Days (Interim Order)</b>	<b>Estimated Amount to be Paid after 25 Days (Final Order)</b>
Critical Vendor Claims – General	\$1,000,000	\$1,000,000
Critical Vendor Claims – Contracted Services	\$200,000	\$200,000

13. Debtor has historically enjoyed favorable trade terms with certain of its Critical Vendors and believes that it would likely need to forego these favorable terms if it is forced to seek out new suppliers who may demand cash in advance or cash on delivery. Less favorable trade terms would negatively impact the value of Debtor's estate.

14. To identify Critical Vendors and estimate prepetition amounts outstanding, Debtor, in conjunction with its advisors, closely reviewed its accounts payable and prepetition vendor lists and segregated the Critical Vendors into two categories: General and Contracted Services. The criteria considered in evaluating critical vendor status included whether: (a) a particular vendor is a sole- or limited-source provider; (b) quality control or other contractual requirements preventing Debtor from replacing the vendor; (c) the vendor supplies highly specialized goods that require lead time to develop, produce and/or source and deliver; (d) Debtor receives advantageous pricing or other terms from the vendor; (e) the vendor might face its own liquidity problems if Debtor does not promptly pay its prepetition claim; and (f) Debtor lacked a long-term supply contract with the vendor, through which Debtor could compel performance.

15. Included among Debtor's Critical Vendors is OneCore Health. As further described herein, doctors performing procedures on behalf of Debtor are contractually affiliated with OneCore Health.

16. OneCore Health contracts with over 28 individual doctors and/or entities to provide professional medical services including medical directorships and/or ordinary course medical services. These doctors and/or entities have been paid approximately \$1,300,000 in the last 12 months and have approximately \$400,000 outstanding in pre-petition claims. These pre-petition claims are comprised of outstanding checks and/or current accounts payable for recently rendered services. We estimate that the monthly amount payable to these individuals and/or entities over the next 13 weeks will be approximately \$100,000 per month for ordinary course post-petition services.

17. Debtor believes that jeopardizing its relationships with any of the entities identified as Critical Vendors would impose a severe strain on its business operations, would unfairly harm its patients, and would likely result in significant revenue loss. Even a temporary interruption of the provision of the Critical Vendors' goods and services would impede Debtor's operations, and the cumulative impact of such interruptions could have a catastrophic adverse effect on Debtor's business and its ability to restructure as a going concern. Such harm would likely far outweigh the aggregate amount of the Critical Vendor Claims, which is modest in comparison to the overall value of Debtor's enterprise and the amount of its secured and unsecured debt.

18. For the avoidance of doubt, Debtor and its advisors have not determined the complete list of individual Critical Vendors and will, in their sole discretion, make such determinations on a case-by-case basis. If the amount of claims proposed to be paid must be

amended, Debtor will file a notice of the proposed coverage and provide an opportunity for objections thereto. For the avoidance of doubt, Debtor intends to pay only those Critical Vendor Claims where it believes, in its business judgment, that the benefits to making such payments will exceed the costs.

19. For the twelve months before the Petition Date, on average, Debtor paid the currently identified Critical Vendors - General approximately \$19,000,000. Debtor estimates that, as of the Petition Date, the outstanding amount of Critical Vendor Claims (that are not addressed by other First-Day Motions) may be as much as approximately \$2,000,000. Of these, approximately \$1,000,000 may come due during the first 25 days of these chapter 11 cases.

B. Customary Trade Terms Condition.

20. In return for the payment of the Critical Vendor Claims, Debtor proposes (unless otherwise waived by Debtor in its discretion) that the Critical Vendors be required to continue providing goods and services to Debtor on the most favorable terms (including credit limits, pricing, timing of payments, availability, and other terms) in effect between such Critical Vendor and Debtor in the 24-month period preceding the Petition Date or on such other terms as Debtor and the Critical Vendor may otherwise agree (the “Customary Trade Terms”). A sample agreement setting forth Customary Trade Terms and certain remedies, which Debtor requests be incorporated into the Interim Order, is annexed hereto as Exhibit 2. Debtor proposes that the Customary Trade Terms apply for the balance of the term of each Critical Vendor’s agreement with Debtor, so long as Debtor makes payments in accordance with that agreement.

21. If any Critical Vendor Claim is paid and thereafter the applicable Critical Vendor does not continue to provide goods or services to Debtor on the Customary Trade Terms, any payments made will be deemed avoidable postpetition transfers under section 549 of the



Bankruptcy Code and will be recoverable by Debtor in cash upon written request; *provided* that, if there exists an outstanding postpetition balance due from Debtors to such Critical Vendor, Debtor may elect to recharacterize and apply any such payment to such outstanding postpetition balance and such Critical Vendor shall be required to repay Debtor such amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise. Upon recovery or recharacterization and reapplication of any payment, the applicable Critical Vendor Claim will be reinstated as a prepetition claim in the amount recovered or recharacterized and reapplied and the relevant Critical Vendor shall be entitled to file a proof of claim on account of such claim by the later of (a) 30 days following notice of reinstatement or (b) the general bar date established by order of the Bankruptcy Court.

C. Payment of Outstanding Orders.

22. Before the Petition Date and in the ordinary course of business, Debtor may have ordered goods that will not be delivered until after the Petition Date (collectively, the “Outstanding Orders”). To avoid the risk of becoming unsecured creditors with respect to such goods, certain suppliers may refuse to ship or transport goods subject to the Outstanding Orders (or may recall shipments) unless Debtor issues substitute postpetition purchase orders. To avoid this disruption to its business, and because goods delivered after the Petition Date and accepted by Debtor will likely be entitled to administrative expense priority under section 503(b) of the Bankruptcy Code, Debtor seeks an order authorizing it, in its discretion, to satisfy any Outstanding Orders.

**Jurisdiction**

23. The United States Bankruptcy Court for the Western District of Oklahoma has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and rule 81.4(a) of

the Local Civil Rules of the United States District Court for the Western District of Oklahoma. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in the Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are sections 105(a), 363, 365, and 1107(a) of the Bankruptcy Code, Bankruptcy Rules 6003, 6004, and 6006 and Local Rule 9013-1.

### **Relief Requested**

24. By this Motion, Debtor seeks entry of the proposed Interim Order and the proposed Final Order(i) authorizing, but not directing, Debtor to pay in the ordinary course of business certain prepetition Critical Vendor Claims (as defined below) subject to the respective caps set forth in the proposed Interim Order and the Final Order and (ii) granting related relief, including (a) authorizing, but not directing, Debtor to pay undisputed claims of vendors and suppliers arising from postpetition delivery of goods and provision of services that were ordered prepetition, and (b) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers. The proposed form of the Interim Order is attached to this Motion as Exhibit 1.

25. Debtor intends to condition its payment of Critical Vendor Claims upon their holders agreeing to provide their respective goods and/or services during this Chapter 11 Case on customary terms.

### **Basis for Relief**

26. To maintain its operations on an uninterrupted basis; ensure the health, safety and welfare of its patients; and preserve the value of its estate, Debtor must have the ability to pay the Critical Vendor Claims.

#### **I. Authority to Pay Critical Vendor Claims Is Warranted and Should Be Granted.**

27. Because the ability to pay Critical Vendors is critical to Debtor's continued operations, Debtor submits that the requested relief may be granted under sections 363, 105(a) and 1107(a) of the Bankruptcy Code, as well as the doctrine of necessity. Courts in this and other districts have granted similar relief in similar cases. *See, e.g., In re White Star Petroleum Holdings, LLC*, No. 19-12521 (Bankr. W.D. Okla., May 29, 2019) (Doc. 33); *In re Central Oklahoma United Methodist Retirement Facility, Inc.*, Case No. 23-12607 (Bankr. W.D. Okla., Nov. 6, 2023) (Doc. 191); *In re Osage Expl. and Dev., Inc.*, Case No. 16-10308 (Bankr. W.D. Okla, Feb. 26, 2016) (Doc. 135) (authorizing Debtor to pay prepetition oilfield services vendors); *In re Central Oklahoma United Methodist Retirement Facility, Inc.*, Case No. 14-12995 (Bankr. W.D. Okla., July 22, 2014) (Doc. 77); *In re GMX Resources, Inc.*, Case No. 13-11456 (Bankr. W.D. Okla., April 3, 2013) (Doc. 78); *In re Envision Healthcare Corp.*, Case No. 23-90342 (CML) (Bankr. S.D. Tex. May 15, 2023) (Doc. 112) (interim relief); *In re Party City Holdco Inc.*, No. 23-90005 (DRJ) (Bankr. S.D. Tex. Feb. 14, 2023) (Doc. 440); *In re Talen Energy Supply, LLC*, No. 22-90054 (MI) (Bankr. S.D. Tex. June 8, 2022) (Doc. 464); *In re Tabula Rasa Partners, LLC*, Case No. 21-33859 (CML) (Bankr. S.D. Tex. Feb. 1, 2022) (Doc. 69); *In re Basic Energy Servs., Inc.*, Case No. 21-90002 (DRJ) (Bankr. S.D. Tex. Jan. 6, 2022) (Doc. 938); *In re Brazos Elec. Power Coop., Inc.*, No. 21-30725 (DRJ) (Bankr. S.D. Tex. Mar. 17, 2021) (Doc. 236); *In re Pac. Drilling S.A.*, Case No. 20-35212 (DRJ) (Bankr. S.D. Tex. Nov. 3, 2020) (Doc. 76); *In re SAExploration Holdings, Inc.*, Case No. 20-34306 (MI) (Bankr. S.D. Tex. Sept. 17, 2020) (Doc. 153); *In re Tailored Brands, Inc.*, Case No. 20-33900 (MI) (Bankr. S.D. Tex. Aug. 26, 2020) (Doc. 427); *In re CEC Ent., Inc.*, No. 20-33163 (MI) (Bankr. S.D. Tex. July 23, 2020) (Doc. 408); *In re Seadrill Ltd.*, No. 17-60079 (DRJ) (Bankr. S.D. Tex. Oct. 10, 2017) (Doc. 260). Similar relief is also appropriate here.

28. Section 363(b) of the Bankruptcy Code permits Debtor to pay Critical Vendors. Debtor believes that the Court can and should authorize the payment of these Critical Vendor Claims, especially since many would have prepetition 503(b)(9) Claims and Lien Claims under section 363(b)(1) of the Bankruptcy Code, which provides, in relevant part, that “[t]he trustee, after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate . . . .” Thus, where Debtor can “articulate some business justification, other than the mere appeasement of major creditors,” courts have authorized debtors to make payments on account of prepetition obligations under section 363(b) of the Bankruptcy Code. *Black v. Shor (In re BNP Petroleum Corp.)*, 642 F. App'x 429, 435 (5th Cir. 2016); *see also ASARCO, Inc. v. Elliott Mgmt. (In re ASARCO L.L.C.)*, 650 F.3d 593, 601 (5th Cir. 2011) (“Section 363 of the Bankruptcy Code addresses the debtor's use of property of the estate and incorporates a business judgment standard. The business judgment standard in section 363 is flexible and encourages discretion.”). Once the debtor articulates a reasonable business basis for its decision, “courts will generally not entertain objections to the debtor's conduct.” *Comm. of Asbestos Related Litigants v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986). There is a presumption that “in making a business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” *Off. Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1992) (quoting *Smith v. Van Gorkom*, 488 A.2d 858, 872 (Del. 1985)).

29. As discussed above, uninterrupted receipt of goods and services is essential to the health, safety and welfare of patients; Debtor’s continued operation; preservation of the value of the estate’s assets; and Debtor’s prospects for successfully maximizing its value for the

benefit of its creditors by selling a going concern. To ensure that Debtor continues to maintain its historically excellent operational standards, it is imperative that Debtor have the authority to pay the Critical Vendor Claims if determined necessary to preserve Debtor's operations, reputation, and the go-forward success of Debtor's businesses. The relief requested is necessary to avoid immediate and irreparable harm to Debtor's estate, and therefore represents a sound exercise of Debtor's business judgment and is authorized under section 363 of the Bankruptcy Code.

**A. The Court Can Authorize Requested Relief Under Section 105(a) and the Doctrine of Necessity.**

30. Section 105(a) of the Bankruptcy Code authorizes the Court to issue “any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a). This provision provides a statutory basis for a debtor in possession to pay prepetition claims. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (noting that “it is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate”); *see also In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999); *In re Scotia Dev.*, 2007 WL 2788840, at \*1–2, 2007, Bankr. LEXIS 3262, at \*7–8 (Bankr. S.D. Tex. Sept. 21, 2007); *In re CEI Roofing, Inc.*, 315 B.R. 50, 56 (Bankr. N.D. Tex. 2004); *In re Mirant Corp.*, 296 B.R. 427, 429–30 (Bankr. N.D. Tex. 2003).

31. In addition, the equitable “doctrine of necessity” or the “necessity of payment” doctrine provide further authority for the Court to exercise its equitable powers to allow payment of critical prepetition claims that are not explicitly authorized by the Bankruptcy Code. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“Cases cited by Debtors that refer to necessity of payment to preserve going concern value imply such a rule, and this Court is prepared to apply the Doctrine of Necessity to authorize payment of prepetition claims in appropriate cases.”); *In re Equalnet Commc'ns Corp.*, 258 B.R. 368, 369–70 (Bankr. S.D. Tex. 2000) (noting that the payment of prepetition claims is permissible when the transactions are critical to the survival of the business of the debtor); *In re Gulf Air, Inc.*, 112 B.R. 152, 153 (Bankr.

W.D. La. 1989) (“While pre-petition claims are normally disposed of in a plan of reorganization . . . there are well-established ‘necessity of payment’ and similar exceptions.”); *see also In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court may authorize payment of prepetition claims if such payment is essential to continued operation of debtor); *Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding that court was not “helpless” to apply this doctrine where alternative was cessation of operations).

32. Preservation of the estate is often most critical and extremely difficult early in reorganization cases. This is especially the case involving a life plan community serving patients whose needs often are time sensitive. For that reason, where failure to make payments of certain essential prepetition claims threatens to disrupt a debtor's efforts to reorganize, bankruptcy courts routinely invoke their equitable powers to authorize a debtor to pay such claims under the doctrine of necessity, in light of the paramount goal of chapter 11: “facilitating the continued operation and rehabilitation of the debtor” *In re Ionosphere Clubs*, 98 B.R. 174, 176 (Bankr. S.D.N.Y. 1989); *see also In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (authorizing payment of prepetition claims as “necessary to avert a serious threat to the [c]hapter 11 process”).

33. Debtor’s ability to pay the Critical Vendor Claims is crucial to the preservation of its estate and its successful reorganization. The satisfaction of these claims will contribute significantly to Debtor’s immediate business viability and future revenue-generating capability by preserving the confidence and goodwill of their customers and suppliers, both foreign and domestic.

34. Allowing Debtor to pay the Critical Vendor Claims is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code: preserving going concern value for Debtor’s business and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Ass’n v. 203 N. LaSalle St. P’ship*, 526 U.S. 434, 435 (1999).

**B. Debtor’s Fiduciary Duties Justify Payment of the Critical Vendor Claims.**

35. Additionally, under section 1107(a) of the Bankruptcy Code, a debtor has,

among other things, the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. at 59 (quoting *In re CoServ, L.L.C.*, 273 B.R. at 497). Bankruptcy courts have noted that, in certain circumstances, the pre-plan satisfaction of prepetition claims may be the only way to fulfill this duty. *See Institutional Creditors of Cont’l Air Lines, Inc. v. Cont’l Air Lines, Inc. (In re Cont’l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”); *In re CoServ, L.L.C.*, 273 B.R. at 497 (accepting the debtor’s argument that its fiduciary duties may require pre-plan payments to unsecured creditors). In *CoServ*, the Court noted that the debtor’s fiduciary duty may come into effect where pre-plan payment “is the only means to effect a substantial enhancement of the estate,” and also when the payment was to the “sole suppliers of a given product.” *Id.* at 497–98.

36. *CoServ* establishes a three-part test to determine whether key prepetition claims may be paid by a debtor outside of the chapter 11 plan process on a postpetition basis. *See, e.g., In re Scotia Dev., LLC*, 2007 WL 2788840, at \*1–2, 2007 Bankr. LEXIS 3262, at \*7–8. First, it must be critical that the debtor deal with the claimant; second, unless it deals with the claimant, the debtor risks the probability of harm or, alternatively, loss of economic advantage to the estate or the debtor’s going concern value, which is disproportionate to the amount of the claimant’s prepetition claim; and third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim. *In re CoServ, L.L.C.*, 273 B.R. at 498; *see also Mirant Corp.*, 296 B.R. at 429–430. Accordingly, the Bankruptcy Code authorizes the payment of prepetition claims where, as here, such payments are critical to preserving the going-concern value of a debtor’s estate. *Co-Serv* has been cited with approval within the Tenth Circuit within the analogous context of analyzing whether to approve payment of prepetition employee wage and benefit claims. *In re Escalera Rscs. Co.*, 2015 WL 7351396, \*3 (Bankr. D. Colo. Nov. 9, 2015).

35. For the foregoing reasons, satisfying the Critical Vendor Claims is necessary, appropriate, and in the best interests of Debtor, its estate, and other parties in interest in

this Chapter 11 Case. Therefore, Debtor respectfully submits that enabling it to fulfill its fiduciary duty is further ground for the Bankruptcy Court to authorize Debtor to pay the Critical Vendor Claims.

## **II. The Court Should Authorize the Payment of Outstanding Orders.**

37. Before the Petition Date and in the ordinary course of business, Debtor may have placed certain Outstanding Orders for various goods that will not be delivered until after the Petition Date. To avoid the risk of becoming general unsecured creditors with respect to such goods, some suppliers may refuse to deliver goods subject to the Outstanding Orders unless Debtor issues substitute postpetition purchase orders. Without authorization to satisfy the Outstanding Orders as they come due in the ordinary course, Debtor may be required to expend substantial time and effort reissuing the Outstanding Orders to provide suppliers with assurance of administrative priority status of their claims, or to litigate numerous motions for adequate assurance, or for assumption of contracts. The disruption to the continuous and timely flow of critical goods and inventory to Debtor could force Debtor to potentially halt certain operations, and at the least would complicate commercial relationships and distract officers and employees from running the business, which would damage Debtor's business reputation, delay deliveries, potentially jeopardize the health, safety and welfare of patients, increase administrative costs for professionals, and ultimately lead to a loss of revenue, all to the detriment of the estate.

38. Moreover, claims on account of the Outstanding Orders, to the extent the underlying goods are accepted by Debtor, will likely in any event be entitled to administrative expense priority under section 503(b) of the Bankruptcy Code. Accordingly, granting the relief sought herein with respect to the Outstanding Orders will not give the claims of the affected vendors any greater priority than they otherwise would have and will not prejudice any other party in interest. On the other hand, such relief will alleviate the concerns of Debtor's suppliers. Thus, the Court should authorize Debtor to satisfy the Outstanding Orders as they come due in the ordinary course.



**III. The Court Should Direct Financial Institutions to Honor Authorized Payments.**

39. To facilitate implementation of the above-requested relief, Debtor further requests that the Court authorize and direct all applicable banks and financial institutions to receive, process, honor, and pay any and all checks drawn or electronic fund transfers from its accounts, whether such checks were presented prior to or after the Petition Date, to the extent such checks or electronic fund transfers are identified by Debtor as relating directly to the authorized payments on the Critical Vendor obligations. Debtor also seeks authority to issue new postpetition checks, or effect new electronic fund transfers, on account of such claims to replace any prepetition checks or other transfer requests that may be dishonored or rejected as a result of the commencement of the chapter 11 case.

40. Debtor believes that it has sufficient availability of funds to pay the amounts described herein in the ordinary course of business by virtue of cash reserves, expected cash flows from business operations and from the anticipated authorization to borrow post-petition financing and to use cash collateral. Through Debtor's existing cash management system, Debtor believes that checks or other transfer requests can be readily identified as an authorized payment on the Critical Vendor obligations, and Debtor is prepared to assist its banks by confirming whether particular transfers are authorized by an order granting this Motion. Accordingly, Debtor believe that checks or wire transfer requests, other than those relating to authorized payments, will not be honored inadvertently and that all applicable financial institutions should be authorized, when requested by Debtor, to receive, process, honor and pay any and all checks or wire transfer requests in respect of the Critical Vendor obligations.

**The Requirements of Bankruptcy Rule 6003(b) Are Satisfied**

41. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the Petition Date "to the extent that relief is necessary to avoid immediate and irreparable harm." Fed. R. Bankr. P. 6003. As set forth in this Motion, Debtor believes an immediate and orderly transition into chapter 11 is critical to the viability of its operations and that any delay in

granting the relief requested could hinder Debtor's operations and cause irreparable harm. Furthermore, the failure to receive the requested relief during the first 21 days of this Chapter 11 Case would severely disrupt Debtor's operations at this critical juncture and imperil Debtor's restructuring. Accordingly, Debtor submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the relief requested herein.

42. As described above and in the McEntire Declaration, payment to the Critical Vendors is critical and necessary to maintain Debtor's operations and promote the health, safety and welfare of Debtor's patients. Accordingly, Debtor submits that it has satisfied the "immediate and irreparable harm" standard of Bankruptcy Rule 6003 to support granting the interim relief requested in this Motion on an emergency basis.

#### **Waiver of Bankruptcy Rule 6004(a) and 6004(h)**

43. To successfully implement the foregoing, Debtor requests that the Bankruptcy Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that Debtor has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

#### **Reservation of Rights**

44. Nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an admission as to the validity of any particular claim against Debtor, (b) a waiver of Debtor's rights to dispute any particular claim on any grounds, (c) a promise or requirement to pay any particular claim, (d) an implication or admission that any particular claim is of a type specified or defined in this Motion or any order granting the relief requested by this Motion, (e) a request or authorization to assume any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code, (f) a waiver or limitation of Debtor's rights under the Bankruptcy Code or any other applicable law, or (g) a concession by Debtor that any liens (contractual, common law, statutory, or otherwise) satisfied

pursuant to this Motion are valid, and Debtor expressly reserves its rights to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Bankruptcy Court grants the relief sought herein, any payment made pursuant to the Bankruptcy Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of Debtor's rights to subsequently dispute such claim.

#### **Notice**

45. No creditors' committee, trustee, or examiner has been appointed in this Chapter 11 Case. Notice of this Motion has been provided to: (a) the United States Trustee for the Western District of Oklahoma (the "U.S. Trustee"); (b) the United States Attorney's Office for the Western District of Oklahoma; (c) the Internal Revenue Service; (d) BOKF, N.A.; (g) the parties identified on Debtor's list of 20 largest unsecured creditors; (g) each of Debtor's depositories and their counsel, if known; (h) Critical Vendors identified to date; and (h) any other party that has requested notice pursuant to Bankruptcy Rule 2002. Debtor submits that, considering the nature of the relief requested, no other or further notice need be provided.

#### **Conclusion**

WHEREFORE, for the reasons set forth herein, Debtor respectfully requests that the Bankruptcy Court (a) enter the Interim Order, substantially in the form attached hereto as Exhibit 1, granting this Motion on an interim basis, (b) schedule the Final Hearing, (c) at the Final Hearing, enter the Final Order granting this Motion on a final basis, and (d) grant such other and further relief as the Bankruptcy Court deems appropriate under the circumstances.

Dated: October 7, 2024

Respectfully submitted,

**ONECORE**

*/s/ Craig M. Regens*

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William H. Hoch, OBA #15788

Craig M. Regens, OBA #22894

Mark A. Craige, OBA #1992

Kaleigh M. Ewing, OBA #35598

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***Proposed Counsel to Debtor***

**Exhibit 1**

**Proposed Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE WESTERN DISTRICT OF OKLAHOMA**

<hr/>		X
In re	:	
	:	Chapter 11
HOSPITAL FOR SPECIAL SURGERY, LLC	:	
<i>Db</i> a ONECORE HEALTH,	:	Case No. 24-12862-JDL
	:	
Debtor.	:	
<hr/>		X

**INTERIM ORDER GRANTING DEBTOR’S EMERGENCY MOTION FOR ENTRY OF  
INTERIM AND FINAL ORDERS (I) AUTHORIZING THE PAYMENT OF  
PREPETITION CLAIMS OF CRITICAL VENDORS AND  
(II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>3</sup> of Hospital for Special Surgery, LLC *dba* OneCore Health ( “OneCore” or “Debtor”) for entry of an interim order (this “Interim Order”) and a final order pursuant to sections 105(a), 363, 365, and 1107(a) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”), rules 6003, 6004, and 6006 of the

<sup>3</sup> Capitalized terms not otherwise defined herein are to be given the meanings ascribed to them in the Motion.

Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and rule 9013-1 of the Local Bankruptcy Rules for the Western District of Oklahoma, (i) authorizing, but not directing, Debtor to pay in the ordinary course of business certain prepetition Critical Vendor Claims (as defined below) subject to the respective caps set forth in the proposed Interim Order and the Final Order and (ii) granting related relief, including (a) authorizing, but not directing, Debtor to pay undisputed claims of vendors and suppliers arising from postpetition delivery of goods and provision of services that were ordered prepetition, and (b) authorizing and directing all financial institutions to honor, to the extent of available funds, all authorized checks and other fund transfers; and this Court having jurisdiction to consider the Motion pursuant to 28 U.S.C. §§ 157 and 1334 and rule 81.4 of the Local Civil Rules of the United States District Court for the Western District of Oklahoma; and venue of this chapter 11 case and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this matter being a core proceeding pursuant to 28 U.S.C. § 157(b); and this Court having found that the Motion was filed on October 7, 2024, and served on or before October 7, 2024 and that the interim response deadline to the Motion expired on October 9, 2024; and objections (if any) to the Motion having been withdrawn, resolved or overruled on the merits; and this Court having found that proper and adequate notice of the Motion and the relief requested therein has been provided in accordance with the Bankruptcy Rules and the Local Bankruptcy Rules of the United States Bankruptcy Court for the Western District of Oklahoma, and that, except as otherwise ordered herein, no other or further notice is necessary; and a hearing having been held to consider the relief requested in the Motion and upon the record of the hearing and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtor, its estate, its creditors and all other parties-in-interest; and that the legal and factual bases set forth in the Motion

establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein on an interim basis.
2. Debtor is authorized, but not directed, in its sole discretion and in the reasonable exercise of its sound business judgment, to pay certain prepetition Critical Vendor Claims, in an amount not to exceed \$1,000,000.00, without further Court order.
3. Payment made to applicable Critical Vendors shall be applied, in the first instance, against claims held by such Critical Vendors which arise under section 503(b)(9) of the Bankruptcy Code, to the extent that Critical Vendors hold such claims, in whole or in part, as applicable.
4. Debtor shall undertake all appropriate efforts in the exercise of its sound business judgment to enter into an agreement with Debtor (such agreement, a "Trade Agreement") to (a) continue – or recommence – providing goods and services to Debtor in accordance with trade terms (including credit terms, pricing, timing of payments, availability, and other terms) at least as favorable to Debtor as those in place during the 12 months prior to the Petition Date, or as otherwise agreed by Debtor in its reasonable business judgment (the "Customary Trade Terms"), and (b) agree that such Critical Vendor shall not cancel any contract or agreement pursuant to which they provide goods or services to Debtor. Debtor reserves the right to require additional favorable trade terms with any Critical Vendor as a condition to payment of any Critical Vendor Claim. Any party that accepts payment from Debtor on account of a Critical Vendor Claim shall be provided with a copy of this Interim Order and is deemed to have agreed to the terms and provisions of this Interim Order.



5. Debtor is authorized, but not directed, to pay Critical Vendor Claims, in the event that no Trade Agreement has been executed, if the Debtor determines, in its business judgment, that a formal Trade Agreement is unnecessary or cannot be reached to ensure a Critical Vendor's continued performance on Customary Trade Terms and such vendor acknowledges (in writing, which may be email) that it will continue providing services as agreed with Debtor or otherwise be subject to the provisions of the Interim Order with respect to such payment.

6. Debtor may also, in its sole discretion, declare a Trade Agreement with an individual Critical Vendor to have terminated, together with the other benefits to the Critical Vendor as contained in this Interim Order, on the date Debtor delivers notice to the Critical Vendor that the Critical Vendor has breached the terms and provisions of the Trade Agreement.

7. If any Critical Vendor accepts payment on account of a Critical Vendor Claim pursuant to the terms and conditions of a Trade Agreement and thereafter a Trade Agreement is terminated as set forth above, any such payment shall be deemed an unauthorized postpetition transfer under section 549 and shall be recoverable by Debtor in cash or goods, or at Debtor's option, may be applied as a credit against any outstanding postpetition claims held by such Critical Vendor. A Critical Vendor shall then immediately repay to Debtor any payments made to it on account of its Critical Vendor Claim to the extent such payments exceed the postpetition amounts then owing to such Critical Vendor, without the right of setoff or reclamation. Upon recovery of a payment made in respect of a Critical Vendor Claim, such claim shall be reinstated as a prepetition claim in the amount so recovered, less Debtor's reasonable costs of recovery, including attorneys' fees. It being the express intention of this Court to return the parties to the *status quo* in effect as of the date of entry of this Interim order with respect to all prepetition claims if a Trade Agreement is terminated.

8. The execution of a Trade Agreement by Debtor shall not be declared a waiver of any other cause of action, including any avoidance action, that may be held by Debtor.

9. The Banks shall be, and hereby are authorized, when requested by Debtor in its sole discretion, to process, honor, and pay any and all checks or electronic funds transfers drawn on Debtor's bank accounts to pay the Critical Vendor Claims, whenever issued or made, provided that sufficient funds are available in the applicable accounts to make the payments.

10. Nothing in the Motion or this Interim Order shall prejudice Debtor's right to request further authority from this Court, after notice and opportunity for a hearing, to pay any Critical Vendor Payments in excess of the cap set forth in paragraph 2 hereof.

11. Nothing in the Motion or this Interim Order, or Debtor's payment of any claims pursuant to this Interim Order, shall be deemed or construed: (a) as an admission as to the validity of any claim, lien, or trust against Debtor or its estate; (b) as a waiver of Debtor's right to dispute any claim, lien or trust; (c) as approval or assumption of any agreement, contract or lease pursuant to section 365 of the Bankruptcy Code; (d) as an admission of the priority status of any claim, whether under section 503(b)(9) of the Bankruptcy Code or otherwise; or (e) to prejudice any of Debtor's rights to seek relief under any section of the Bankruptcy Code on account of any amounts owed or paid to any Critical Vendor.

12. Notwithstanding anything to the contrary in this Interim order or the Motion, the priority status of a creditor's claims, including that of claims arising under section 503(b)(9) of the Bankruptcy Code, shall not be affected by whether such creditor executes a Trade Agreement, or provides services or goods to Debtor under Customary Trade Terms, or otherwise.

13. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2024, at \_\_:\_\_.m., prevailing Central Time. Any objections or responses to entry

of a final order on the Motion shall be filed on or before \_\_: \_\_ .m., prevailing Central Time on October \_\_, 2024. Objections must be filed and served on: (i) proposed counsel to Debtor, Crowe & Dunlevy, Braniff Building, 324 N. Robinson Ave., Suite 100, Oklahoma City, OK 73102, Attn: William H. Hoch (will.hoch@crowedunlevy.com) and Craig M. Regens (craig.regens@crowedunlevy.com); (ii) the Office of the United States Trustee for the Western District of Oklahoma, 215 Dean A. McGee Ave., Room 408, Oklahoma City, OK 73102, Attn: Marjorie Creasey (Marjorie.Creasey@usdoj.gov) and Jeff Tate (Jeff.Tate@usdoj.gov); (iii) counsel to BOKF, Frederic Dorwart, Lawyers PLLC, 124 E. 4<sup>th</sup> St., Tulsa, OK 74103, Attn: Samuel S. Ory (Sory@fdlaw.com); and (iv) counsel to any statutory committee appointed in this Chapter 11 Case. If no objections are filed to the Motion, the Court may enter a Final Order without further notice or a hearing.

14. Notwithstanding the relief granted in this Interim Order, any payment made or to be made by Debtor pursuant to the authority granted herein shall be subject to and in compliance with the Approved Budget and in accordance with the Interim Cash Collateral Order.

15. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief request set forth in this Interim Order is necessary to avoid immediate and irreparable harm to the estate.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim order are immediately effective upon its entry.

17. Debtor is authorized to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

18. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

19. Findings of fact are based on representations of counsel.

20. Debtor shall serve this Order on parties in interest appearing on the Distribution Service List in accordance with, and as such term is defined in, the *Order Authorizing Limited Notice and Establishing Notice Procedures* [Dkt. No. 9].

IT IS SO ORDERED.

###

Approved for Entry:

**ONECORE**

/s/Craig M. Regens

William H. Hoch, OBA #15788

Craig M. Regens, OBA #22894

Mark A. Craige, OBA #1992

Kaleigh Ewing, OBA #35598

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***Proposed Counsel to Debtor***

**Exhibit 2**

**Vendor Payment Agreement**

## VENDOR PAYMENT AGREEMENT

WHEREAS, on October 7, 2024 Hospital for Special Surgery, LLC *dba* OneCore Health ( "OneCore Health" or the "Debtor") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the Western District of Oklahoma (the "Bankruptcy Court"), administered under the caption *In re Hospital for Special Surgery, LLC dba OneCore Health*, Case No. 24-12862;

WHEREAS, the Bankruptcy Court has entered certain final and/or interim orders (the "Orders") authorizing (but not directing) the Debtor to make payments to select trade counterparties on account of prepetition debt;

WHEREAS, pursuant to the Orders, the Debtor may condition such payment on the applicable counterparty's agreement to, among other things, maintain the provision of goods or services to the Debtor on ordinary prepetition terms, including under the terms of any applicable prepetition agreement;

WHEREAS, [•] (the "Counterparty") has sought payment pursuant to the Orders, and the Debtor desires to confirm that the Counterparty will continue to provide goods and/or services to the Debtor and their non-Debtor affiliates (together, the "Debtor Parties" and, together with the Counterparty, the "Parties") on ordinary terms and, if applicable, pursuant to the Parties' prepetition arrangements;

IT IS HEREBY AGREED BETWEEN THE PARTIES (this "Agreement"):

1. The Debtor Parties shall pay the Counterparty the sum of [•] [USD] in satisfaction of the prepetition invoices set forth on Schedule 1 to this Agreement (the "Payment"). The Payment shall be applied on a "last in first out" basis to those invoices unless otherwise specified in writing by the Debtor Parties in their sole discretion, and shall be paid either (a) within 10 business days of execution of this Agreement or (b) as the underlying invoices would come due in the ordinary course of business, whichever is later, unless otherwise agreed in writing by the Parties.

2. Nothing in this Agreement is intended or should be construed as an implication, admission, or concession as to the validity, amount or priority of, or basis for any claim that

has been or may be asserted by the Counterparty against the Debtor Parties or vice versa. The Parties expressly reserve all of their respective rights and defenses with respect to any claims.

3. As a condition to receiving any Payment, the Counterparty shall continue to provide goods and/or services to the Debtor Parties on the most favorable terms (including, but not limited to, credit limits, pricing, timing of payments, availability, and other terms) that the Counterparty offered to the Debtor Parties during the 24-month period immediately prior to the commencement of the Chapter 11 Case, whether or not pursuant to a written contract, set forth on Schedule 2 to this Agreement (the “Customary Trade Terms”), and shall not refuse to provide goods or services, delay delivery of goods or services, refuse to accept purchase orders, terminate any contract, or decline to renew any contract except for the Debtor Parties’ failure to make the Payment or to pay for postpetition goods and services in accordance with the Customary Trade Terms.

4. If the Counterparty receives the Payment and thereafter fails to provide goods or services to the Debtor on the Customary Trade Terms, the Payment shall be deemed an avoidable postpetition transfer under section 549 of the Bankruptcy Code and shall be recoverable by the Debtor in cash upon written request. If there exists an outstanding postpetition balance due from the Debtor to the Counterparty, the Debtor may elect to recharacterize and apply any such payment to such outstanding postpetition balance and the Counterparty shall be required to repay the Debtor such amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims or otherwise. Upon recovery or recharacterization and reapplication of any Payment by the Debtor, any such Payment will be reinstated as a prepetition claim in the amount recovered or recharacterized and reapplied, and the Counterparty shall be entitled to file a proof of claim on account of its alleged prepetition claim by the later of (a) 30 days following notice of reinstatement or (b) the general bar date established by order of the Bankruptcy Court.

5. The Counterparty shall not file or otherwise assert against the Debtor Parties, their assets, or any other person or entity or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to the Counterparty by the Debtor arising from prepetition agreements or transactions. If the Counterparty has taken steps to file, assert, or perfect such a lien prior to entering into this Agreement, the Counterparty agrees to promptly take all necessary actions to release such lien and hereby authorizes the Debtor to take any such action on its behalf.

6. The Counterparty shall not require a lump-sum payment on the effective date of a plan in the Chapter 11 Case on account of any then-outstanding administrative expenses arising from the delivery of postpetition goods or services, if such a payment is not then due under the Customary Trade Terms. Instead, the Counterparty agrees that any such administrative expenses will be paid in the ordinary course of business.

7. This Agreement shall be governed by and construed in all respects in accordance with the laws of the State of Oklahoma without regard to its conflict of laws principles, and will be subject to the exclusive jurisdiction of the Bankruptcy Court, to whose jurisdiction the Counterparty hereby irrevocably agrees to submit itself for all purposes, including in respect

of any and all claims or disputes arising from or relating to this Agreement.

For the Debtor

For the Counterparty

\_\_\_\_\_

\_\_\_\_\_

Name: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



**SCHEDULE 1 TO VENDOR PAYMENT AGREEMENT**

**INVOICES SUBJECT TO  
VENDOR PAYMENT AGREEMENT**

**[OMITTED]**

**SCHEDULE 2 TO VENDOR PAYMENT AGREEMENT**

**DOCUMENTED TRADE TERMS**

**[OMITTED]**