IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested)

MOTION OF DEBTORS FOR ENTRY OF AN ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLY ALL OF THE DEBTORS' ASSETS, (II) AUTHORIZING THE DEBTORS TO ENTER INTO A STALKING HORSE AGREEMENT AND PROVIDE BID PROTECTIONS, (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (IV) SCHEDULING AN AUCTION AND SALE HEARING, (V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS, (VI) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR, AND (VII) GRANTING RELATED RELIEF

The above-captioned debtors and debtors in possession (collectively, the "Debtors" and, each, a "Debtor") state as follows in support of this motion:[2]

Preliminary Statement

1. As described in the First Day Declaration, the Debtors commenced these chapter 11 cases to address their balance sheet and liquidity challenges. To explore market interest in the company, in April 2024, the Debtors, with the assistance of their proposed investment banker PJT

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

[2] A detailed description of the Debtors and their business, including the facts and circumstances giving rise to the Debtors' chapter 11 cases, is set forth in the *Declaration of John Bibb, Group Chief Executive Officer of Vyaire Medical, Inc., in Support of Chapter 11 Filing and First Day Motions* (the "First Day Declaration"), filed contemporaneously herewith and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Partners LP ("PJT") launched a third-party marketing process (the "Marketing Process") to solicit proposals for one or more potential sales of all, substantially all, or any portion of the Debtors' assets (the "Assets") free and clear of all liens, claims, rights, interests, pledges, obligations, restrictions, limitations, charges, encumbrances, and other interests (collectively, the "Encumbrances" and, any such sales, the "Sale Transaction(s)"), including bids exclusively for all assets of the Debtors' ventilation business (the "Ventilation Assets"), exclusively for all assets of the Debtors' respiratory diagnostics business (the "Respiratory Diagnostics Assets"), and bids on any combination thereof, up to all of the Debtors' assets (the "Entire Business Assets").

2. At the outset of the process, the Debtors, with PJT's assistance, prepared teaser marketing materials and, in parallel, compiled a list of 111 potentially interested parties, comprised of 47 potential strategic and 64 potential financial partners. On May 3, 2024, PJT commenced market outreach and provided the teaser materials to potentially interested parties. Additionally, the Debtors, with PJT's assistance, prepared detailed confidential information memoranda (each, a "CIM") for the Ventilation Assets and separately for the Respiratory Diagnostic Assets, and populated a virtual data room (the "VDR") containing significant company materials and financial models to facilitate parties' diligence. The initial outreach to 111 potentially interested parties resulted in 33 parties receiving access to the CIM and VDR after signing a non-disclosure agreement with the Company (an "NDA"). PJT began distributing a formal process letter on May 13, 2024 to the interested parties that signed an NDA to inform them that the submission deadline for indications of interest was May 31, 2024, with fulsome proposals due no later than June 10, 2024. To date, PJT also facilitated 6 calls between Company management and interested parties. On May 13, 2024, the Debtors added a form of asset purchase agreement to the VDR to facilitate markups thereof by interested parties as part of their proposal submissions. The Debtors

have yet to select a stalking horse bidder for any of their Assets but commence these chapter 11 cases with multiple proposals in hand that the Debtors are actively progressing. The Debtors seek relief to designate one or more stalking horse bidders and offer certain protections in furtherance of facilitating a competitive sale process.

3. As further described in the First Day Declaration, the prepetition Marketing Process ran in parallel with the Company's efforts to negotiate a comprehensive strategy for these chapter 11 cases as memorialized in the RSA and to secure debtor-in-possession financing (the "DIP Facility") to support the continuation of the prepetition Marketing Process on a postpetition basis, which the Debtors believe is the most value-maximizing path forward. The proposed Sale Transaction(s) timeline is expedited, but thorough, to allow the Debtors to administer these chapter 11 cases quickly and efficiently, avoid the value-destructive consequences of a protracted stay in chapter 11, and comply with the Debtors' requirements to maintain access to the DIP Facility and the terms of the restructuring support agreement (the "RSA").

4. Pursuant to the terms of the DIP Facility, the Debtors must satisfy certain milestones (the "DIP Milestones") for the sale of their Assets, including:

(a) Within 24 hours of June 9, 2024 (the "Petition Date"), the Debtors shall file a motion for the sale of assets pursuant to Section 363 and the bid procedures;

(b) Within 29 calendar days of the Petition Date, the Bankruptcy Court shall have entered an order approving the bid procedures;

(c) The deadline for submission of binding bids for the sale of Assets shall be within 43 calendar days of the Petition Date, and July 22, 2024 is the proposed Bid Deadline;

(d) Within 45 calendar days of the Petition Date, the Debtors shall commence an auction (if any) of the Debtors' assets, solely to the extent the Debtors receive competing Qualified Bids, and July 24, 2024 is the proposed date of the Auction;

(e) Within 50 calendar days of the Petition Date, the Bankruptcy Court shall have entered one or more orders approving the sale(s), and July 29, 2024 is the proposed date of the Sale Hearing; and

(f) Within 75 calendar days of the Petition Date, (*i.e.*, August 19, 2024) the Sale Transaction(s) shall be consummated.

5. Conducting a thorough marketing and bidding process and consummating a Sale Transaction(s) on the timeline contemplated herein is vitally important to the Debtors' efforts to maximize value. Such Sale Transaction(s) would benefit not only the Debtors, but their vendors, dedicated employees, lenders, and other key stakeholders as well.

6. To preserve the value of the Debtors' estates—and to offer the Debtors a chance to increase the ultimate value provided by the monetization and disposition of their assets—the Debtors propose the bidding procedures attached as Exhibit 1 to the Bidding Procedures Order (the "Bidding Procedures"). The Bidding Procedures provide substantial flexibility with respect to the structure of any Sale Transaction(s). Furthermore, while the Debtors have not yet selected a stalking horse (if any) to serve as a committed buyer of some or all of the Assets (the "Stalking Horse Bidder"), the Bidding Procedures provide the Debtors with flexibility to select a Stalking Horse Bidder and grant Bid Protections prior to the Sale Hearing, after notice and an opportunity to object. The Debtors will consider all viable options in accordance with the Bidding Procedures before determining if selling Assets will, in their business judgment, maximize value for the estate. However, if the Bidding Procedures are not approved or there is any material delay to the sale timeline, the Debtors' access to the proposed DIP Facility would be jeopardized to the detriment of the value of the estates. Accordingly, the proposed Bidding Procedures should be approved.

7. As set forth in further detail below, the Debtors submit that the Bidding Procedures, and the related relief requested in this motion, are in the best interests of the Debtors' estates and their stakeholders. Accordingly, the Debtors respectfully request that the Court grant this motion.

Relief Requested

8. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Bidding Procedures Order"):[3,4]

(a) approving the Bidding Procedure by which the Debtors will solicit and select the highest or otherwise best offer(s) for the sale or sales of all, substantially all, or any portion of the Assets;

(b) approving the Debtors' ability to designate one or more Stalking Horse Bidder and offer Bid Protections relating thereto;

(c) approving the manner of the notice of the Auction (as defined below), if any, and Sale Transaction (the "Sale Notice") attached to the Bidding Procedures Order as Exhibit 2;

(d) establishing certain dates and deadlines, including the deadline for when the Debtors must ***actually receive*** binding bids from parties (the "Bid Deadline") and Auction Date (as defined below);

(e) approving procedures (the "Assumption and Assignment Procedures") for the assumption and assignment of executory contracts and leases (the "Assigned Contracts"), including notice of proposed cure amounts (the "Potentially Assumed and Assigned Contract Notice"), attached as Exhibit 3 to the Bidding Procedures Order; and

(f) approving the form of the notice of successful bidder (the "Successful Bidder Notice") attached to the Bidding Procedures Order as Exhibit 4; and

(g) granting related relief.

9. Additionally, the Debtors will seek entry of one or more orders (the "Sale Order") at the proposed hearing on July 29, 2024, or as soon thereafter as the Debtors may be heard (subject to court availability) (the "Sale Hearing"), (a) authorizing and approving the Sale Transaction(s) with the Successful Bidder(s) on the terms substantially set forth in the Successful

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[3] For the avoidance of doubt, the Debtors will file any proposed sale order in advance of any Sale Hearing.

[4] This summary is qualified in its entirety by the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. All capitalized terms that are used in this summary but not otherwise defined herein shall have the meanings given to such terms in the Bidding Procedures. To the extent there are any conflicts between this summary and the Bidding Procedures, the terms of the Bidding Procedures shall govern.

Bid(s); (b) authorizing and approving the sale of the Debtors' Assets free and clear of Encumbrances to the extent set forth in an asset purchase agreement with any Successful Bidder(s); and (c) authorizing the assumption and assignment of Executory Contracts and Unexpired Leases as set forth in an asset purchase agreement with any Successful Bidder(s).

Jurisdiction and Venue

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

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

12. The statutory bases for the relief requested herein are sections 105, 345, 363, 364, and 503 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code"), rules 2002, 6003, and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Local Rules 2002-1, 2015-2, and 9013-1.

Background

13. Vyaire Medical, Inc., together with its direct and indirect subsidiaries (collectively, "Vyaire" or the "Company"), is the only global company focused exclusively on respiratory solutions, offering capital and consumable products, and related services, for the diagnosis,

treatment, and monitoring of various breathing conditions. Vyaire, building on over seventy years of legacy product offerings, has streamlined its corporate structure around two operationally lean ventilation and respiratory diagnostics business units to support its state-of-the-art product line and services. Headquartered in Mettawa, Illinois, Vyaire operates in more than 24 offices, three manufacturing facilities, and employs over 955 individuals in 18 countries. The Company has a global customer base, generating 40% of its sales internationally. Its customers are typically the hospitals, health centers, and private practices delivering life-enhancing products and services to their patients.

14. On the Petition Date, Vyaire Medical, Inc. and certain of its subsidiaries filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their business and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. Concurrently with the filing of this motion, the Debtors filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no official committees have been appointed or designated.

Proposed Sale Process

I. The Bidding Procedures.

15. The Debtors seek approval of the Bidding Procedures to establish an open process for the solicitation, receipt, and evaluation of bids in a fair, accessible, and expeditious manner. The Bidding Procedures facilitate the continuation of the prepetition Marketing Process to solicit interest in a sale of the Assets, which is a process the Debtors have been diligently progressing through with the assistance of PJT.

16. The timeline set forth in the Bidding Procedures is calculated to balance the need to provide adequate notice to parties in interest and any person or entity interested in purchasing the Assets (a "Potential Bidder") with the need to run an efficient sale process. The Bidding Procedures are designed to generate the highest or otherwise best available recoveries to the Debtors' stakeholders by encouraging prospective bidders to submit competitive, value-maximizing bids. The Debtors believe that the Bidding Procedures and the timeline set forth therein are in the best interests of the Debtors' estates, will establish the extent of the market for the Debtors' Assets, and provide interested parties with sufficient opportunity to participate. Because the Bidding Procedures are attached as Exhibit 1 to the Bidding Procedures Order, they are not restated in their entirety herein, however, a summary of the Bidding Procedures is provided below.

17. Importantly, the Bidding Procedures recognize the Debtors' fiduciary obligations to maximize value and preserve the Debtors' right to modify the Bidding Procedures in accordance with its terms as necessary or appropriate to maximize value for their estates.

II. The Proposed Schedule.

18. Below is a summary of the proposed key dates and deadlines showing an illustrative timeline, assuming a Bidding Procedures Hearing is held on July 1, 2024.[5]

Event	Date	Description
IOI Deadline	July 1, 2024, at 4:00 p.m., prevailing Eastern Time	Deadline for submitting a non-binding Indication of Interest.
Stalking Horse Bidder Designation	July 1, 2024	Deadline by which the Debtors must designate one or more Stalking Horse Bidder (if the Debtors so choose to designate a Stalking Horse Bidder).

[5] This timeline is illustrative and subject in all respects to the Court's availability.

Event	Date	Description
Bidding Procedures Hearing	July 1, 2024 (subject to the Court's availability)	Deadline for the Court to enter the Bidding Procedures Order.
Stalking Horse Objection Deadline	No later than four (4) days after the filing of the Stalking Horse Notice (as defined below), at 4:00 p.m., prevailing Eastern Time	If any Stalking Horse Bidder is designated, deadline by which objections to the bid protections set forth in the Stalking Horse Notice or the form of Stalking Horse Order must be filed with the Court and served so as to be actually received by the appropriate notice parties.
Deadline to Serve the Sale Notice	July 3, 2024 (or as soon as reasonably practicable thereafter)	Deadline by which the Debtors shall serve the Sale Notice by first-class mail upon the parties specified in this Motion
Deadline to Serve the Potentially Assumed and Assigned Contract Notice	July 3, 2024 (or as soon as reasonably practicable thereafter)	Deadline by which the Debtors shall file and serve the Potentially Assumed and Assigned Contract Notice
Assumption and Assignment Objection Deadline	Fourteen (14) days following service of any notice of proposed assumption and assignment.	Deadline by which objections to any proposed assumption and assignment related to the sale must be filed with the Court and served so as to be ***actually received*** by the appropriate notice parties.
Deadline to Publish the Publication Notice	July 5, 2024 (or as soon as reasonably practicable thereafter)	Deadline by which the Debtors shall cause the Publication Note to be published in *The New York Times* (national edition).
Sale Transaction Objection Deadline	July 22, 2024, at 4:00 p.m., prevailing Eastern Time	Deadline by which general objections to the sale must be filed with the Court and served so as to be ***actually received*** by the appropriate notice parties (the "Sale Transaction Objection Deadline").
Bid Deadline	July 22, 2024, at 5:00 p.m., prevailing Eastern Time	Deadline for when the Debtors must ***actually receive*** binding bids from parties.
Auction (if any)	July 24, 2024, at 10:00 a.m., prevailing Eastern Time	Date for when an Auction for the Assets will be conducted, if necessary. The Auction will be conducted at the office of Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, IL 60654 or via remote video at the Debtors' election.
Deadline to file Successful Bidder Notice	July 24, 2024 (or as soon as reasonably practicable after the close of the Auction)	Deadline by which the Debtors will file with the Court the Successful Bidder Notice.
Post-Auction Objection Deadline	July 25, 2024, at 4:00 p.m., prevailing Eastern Time	Deadline by which any objections to the conduct of the Auction or the Successful Bidder, if any, must be made.

Event	Date	Description
Sale Transaction Reply Deadline	July 26, 2024, at 4:00 p.m., prevailing Eastern Time	Deadline for the Debtors and any other parties supporting the Sale Transaction to file replies to Sale Transaction Objections or statements in support of the Sale Transaction.
Sale Hearing	July 29, 2024, at 10:00 a.m., prevailing Eastern Time (subject to the Court's availability)	Date for a hearing at which the Court will consider approving the sale of the Assets to one or more prospective purchasers, pursuant to a sale order.
Sale Closing	August 19, 2024	Deadline to consummate Sale Transaction

19. The Debtors believe that this timeline, as required to maintain liquidity through the cases, provides them with an opportunity to continue to conduct a thorough marketing process for the assets. In light of the Company's prepetition efforts to date—reaching out to more than 100 parties; preparing a process letter and multiple detailed CIMs, populating a VDR with extensive information, and providing access to such materials to potentially interested parties that signed nondisclosure agreements; facilitating management calls, responding to further diligence requests, and answering other questions from potentially interested parties; and reviewing and revaluating the terms of the multiple IOIs received—the Debtors have determined that the proposed schedule is in the best interests of the Debtors' estates, will assist in establishing whether and to what extent a market exists for the assets, and provide interested parties with sufficient opportunity to participate in any sale transaction and ultimately, will result in the highest and best bid for the underlying assets under the circumstances.

III. The Bidding Procedures.

20. To optimally and expeditiously solicit, receive, and evaluate bids in a fair and accessible manner, the Debtors have developed and proposed the Bidding Procedures, attached as Exhibit 1 to the Bidding Procedures Order. The proposed Bidding Procedures are designed to

permit a fair, efficient, competitive, and value-maximizing auction process for the Debtors' assets, consistent with the timeline of these chapter 11 cases.

21. The following describes the salient components of the Bidding Procedures and discloses certain information required pursuant to Local Rule 6004-1:[6]

(a) **Indication of Interest Deadline**. In order to be eligible to submit a Bid, Acceptable Bidders will first be required to submit a non-binding Indication of Interest on or before **July 1, 2024, at 4:00 p.m., (prevailing Eastern Time)** (as may be extended in accordance with the terms of the Bidding Procedures Order and these Bidding Procedures, the "IOI Deadline"), to the Debtors and their proposed investment banker, PJT Partners LP, 280 Park Avenue, New York, New York 10017, Attn: Michael Schlappig (schlappig@pjtpartners.com), Jaimie Baird (baird@pjtpartners.com), and Dylan Friesner (friesner@pjtpartners.com); *provided*, that, with the consent of the Required DIP Lenders (as defined in the DIP Order), the Debtors may extend the IOI Deadline or waive the requirement of an Indication of Interest for one or more Acceptable Bidders upon request, without further order of the Court; *provided* that the Debtors shall file a notice with the Court if the Debtors decide, subject to the consent of the Required DIP Lenders, to extend the deadline by which IOIs for a Sale Transaction must be submitted for all parties; *provided further* that if the Debtors do not receive any indications of interests by the IOI deadline that (individually or in the aggregate), in the good faith estimate of the Debtors and their advisors, and with the consent of the Required DIP Lenders, are reasonably likely to lead to Bids that (individually or in the aggregate) satisfies the Minimum Bid Requirement, then the Debtors shall terminate the sale process and cancel the Auction. If the Debtors extend the IOI Deadline as to all parties, the Debtors will promptly notify all Acceptable Bidders and file a notice of such extension on the Court's docket. The Debtors will then notify each Acceptable Bidder whether its Indication of Interest satisfies the requirements set forth in the Motion and that such bidder is qualified to submit a Bid that reflects such Indication of Interest.

(i) Unless otherwise determined by the Debtors, each Indication of Interest must include:

(A) a letter outlining the Acceptable Bidder's offer, form(s) of consideration, and any conditions precedent (other than the sufficiency of financing) and stating that the Acceptable

[6] The following summary is provided for convenience purposes only. To the extent any of the terms described below are inconsistent with the Bidding Procedures, the Bidding Procedures control in all respects. Capitalized terms used in this summary but not defined herein shall have the meanings ascribed to them in the Bidding Procedures.

Bidder is prepared to work in good faith to finalize a binding proposal by the Bid Deadline;

(B) written evidence acceptable to the Debtors demonstrating financial wherewithal and a description of any corporate or governmental authorizations necessary to consummate the proposed Transaction;

(C) the identification of the ultimate beneficial owners of the Acceptable Bidder;

(D) a description of all remaining due diligence requirements and any material conditions to be satisfied prior to submission of a Bid;

(E) the identification of any person or entity who may provide debt or equity financing for the purchase and any material conditions to be satisfied in connection with such financing;

(F) to the extent known at the time of the Indication of Interest, any obligations related to employees of the Debtors the Acceptable Bidder may assume; and

(G) confirmation that the Acceptable Bidder consents to the jurisdiction of the Court and agrees to be bound by the Bidding Procedures.

(b) **Bid Requirements (Local Bankr. R. 6004-1(c)(i)(A), (B)).** Any bid by Potential Bidders that have delivered executed confidentiality agreements (each, an "Acceptable Bidder") must be submitted in writing and satisfy the following requirements, in each case, to the satisfaction of the Debtors:

(i) ***Purpose.*** All of the Debtors' right, title, and interest in and to the assets (whether some or all of the Ventilation Assets, the Respiratory Diagnostics Assets, or the Entire Business Assets), subject thereto shall be sold free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon (collectively, the "Interests"), subject only to the Assumed Liabilities and Permitted Encumbrances (each as defined in the Modified APA (as defined below) of the applicable Successful Bidder), to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale(s) of the assets with the same validity, force, effect, and priority as such Interests applied against the assets as of the Petition Date, subject to any rights, claims, and defenses of the Debtors.

(ii) ***Executed Agreement.*** Each Bid must include (a) an offer letter, signed by an authorized representative of the Bidder, pursuant to which the Bidder offers to consummate the Sale Transaction contemplated by such Bid on the terms set forth in the Modified APA together with (b) an asset purchase agreement, which must be based on the Form APA supplied by the Debtors in a designated data room, or, if applicable, the Stalking Horse APA (as defined below), signed by an authorized representative of the Bidder, pursuant to which the Bidder agrees to consummate such Transaction for the assets referenced therein (together with all ancillary documents and schedules contemplated thereby, a "Modified APA"). A Bid must also include a redline of the Modified APA marked against the Form APA (and all applicable ancillary documents and schedules contemplated thereby) to show all changes requested by the Bidder with respect to the Form APA. Each Modified APA must provide a commitment to close the Sale Transaction contemplated by such Modified APA within a time frame acceptable to the Debtors after all closing conditions set forth in such Modified APA are met (other than those which are to be satisfied at the closing of the transactions contemplated by such Modified APA).

(iii) ***Good Faith Deposit.*** Each Bid must be accompanied by a cash deposit in the amount of ten percent (10%) of the cash purchase price contained in the Modified APA, before any adjustments to the purchase price, to an escrow account to be identified and established by the Debtors (the "Good Faith Deposit"). To the extent a Qualified Bid is modified before, during, or after the Auction in any manner that increases the cash purchase price contemplated by such Qualified Bid, the Debtors reserve the right to require that such Qualified Bidder increase its Good Faith Deposit so that it equals ten percent (10%) of the increased purchase price.

(iv) ***Good Faith Offer.*** Each Bid must represent an irrevocable, binding, good faith, and *bona fide* offer to purchase some or all of the assets identified in such Bid if such Bid is selected as the Successful Bid or the Back-Up Bid (each as defined herein).

(v) ***Minimum Bid Requirement.*** Each Bid for all or substantially all of the Debtors' Assets must consist of consideration to be paid at the closing of the transactions contemplated by the Modified APA in an amount equal to at least an amount that would satisfy the minimum bid requirement; *provided*, *however*, that any Bid for less than substantially all of the Debtors' Assets will not be subject to any minimum bid amount threshold. Each Bid must set forth the total purchase price for such Bid.

Notwithstanding the foregoing, if the aggregate cash consideration for the Debtors' Assets, whether consisting of one Bid or a series of Bids for either some, all, or substantially all of the Debtors' Assets that would be payable to the DIP Lenders does not meet or exceed $140,000,000 (the "Minimum Bid Requirement"), then the Debtors shall terminate the sale process and cancel the Auction.

(vi) ***Joint Bids.*** The Debtors, with the consent of the Required DIP Lenders, will be authorized to approve joint Bids in their reasonable discretion on a case-by-case basis.

(vii) ***Purchased Assets and Assumed Liabilities.*** Each Bid must clearly provide which of the assets the Bidder seeks to acquire (whether some or all of the Ventilation Assets, the Respiratory Diagnostics Assets, or the Entire Business Assets), and which of the Assumed Liabilities the Bidder agrees to assume. With respect to any bids for less than all or substantially all of the Debtors' assets, the Debtors reserve the right to request an allocation of the purchase price among the assets the Bidder seeks to acquire and the Assumed Liabilities the Bidder agrees to assume.

(viii) ***Designation of Assigned Contracts and Leases.*** Subject to the terms of the Modified APA, each Bid must identify any and all executory contracts and unexpired leases of the Debtors that the Bidder wishes to be assumed and assigned to the Bidder at the closing of the Sale Transaction contemplated by such Bid.

(ix) ***Corporate Authority.*** Each Bid must include written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate or similar governance authorization of the Bidder to consummate the proposed Sale Transaction; *provided* that, if the Bidder is an entity specially formed for the purpose of effectuating the Sale Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the Sale Transaction by the equity holder(s) of such Bidder and any other governing body of the Bidder that is required to approve the Sale Transaction.

(x) ***Disclosure of Identity of Bidder.*** Each Bid must fully disclose the identity of each entity (including any equity owners, sponsors, or co-investors) that will be bidding for or purchasing the assets or otherwise directly or indirectly participating in connection with such Bid.

(xi) ***Proof of Financial Ability to Perform.*** Each Bid must include written evidence that the Debtors conclude demonstrates that the Bidder has the necessary financial ability to (i) timely close the Sale Transaction contemplated by such Bid within a time frame acceptable to the Debtors after all closing conditions set forth in the Modified APA are met and (ii) provide adequate assurance of future performance under all contracts to be assumed and assigned in such Sale Transaction. Such information must include, *inter alia*, the following:

(A) Contact names and numbers for verification of financing sources, if any;

(B) Written evidence of the Bidder's internal financial resources and ability to finance its Bid with cash on hand, available lines of credit, uncalled capital commitments or otherwise available funds (including through the posting of an irrevocable letter of credit or customary debt or equity financing commitment letters that comply with the requirements of this sub-paragraph 21(a)(xi)(B) or sub-paragraph 21(a)(xi)(C) below, as applicable, in each case, from reputable financial institutions) in an aggregate amount sufficient to pay the cash purchase price contemplated by such Bid, to pay for cure costs for contracts to be assumed and assigned in the Sale Transaction, and to satisfy all other obligations of the Bidder pursuant to the Modified APA ("Bidder's Obligations"); *provided* that, if the Bidder is an entity that is specially formed for the purpose of effectuating the Sale Transaction or if the Bidder intends to raise any equity financing to fund any portion of Bidder's Obligations, then the Bidder must furnish to the Debtors a fully executed and effective equity commitment letter or guarantee ("Bidder Support") (which Bidder Support shall remain outstanding until at least sixty (60) days after the date of entry of the Sale Order (or the "outside date" in the Modified APA, if later), subject to a potential further extension as set forth herein or therein) from its equity holders or other affiliated entities with respect to the portion of Bidder's Obligations that are not to be paid with cash on hand (which Bidder Support may not be subject to any conditions other than the satisfaction of the conditions set forth in the Modified APA and shall include third party beneficiary language in favor of the Debtors entitling the Debtors to enforce such Bidder Support directly against the counterparties) and provide written evidence that its equity holders or other affiliated entities providing the Bidder Support have the resources and ability to finance such portion of the Bidder's Obligations;

(C) Without limiting the requirements of sub-paragraph 21(a)(xi)(B) above, if the Bidder intends to raise any debt financing to fund any portion of the Bidder's Obligations, the Bid must include fully executed and effective debt financing commitment letter(s), which letter(s) shall (i) not be subject to any internal approvals, credit committee approvals or diligence conditions, (ii) be in customary form, and (iii) remain outstanding until sixty (60) days after the date of entry of the Sale Order (subject to a potential further extension as set forth herein); and

(D) Any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors demonstrating that such Bidder (or, if the Bidder is an entity formed for the purpose of making a Bid, its Bidder Support) has the ability to close the Sale Transaction on the terms set forth in the Modified APA.

(xii) ***Adherence to Bidding Procedures.*** By submitting its Bid, each Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.

(xiii) ***Regulatory and Third-Party Approvals.*** Each Bid must set forth each government, licensing, regulatory, and other third-party approval or filing required to be obtained or made by the Bidder or its Bidder Support, and each waiting period required to have expired or terminated, for the Bidder to consummate the Sale Transaction, and the time period within which the Bidder expects to receive such approvals, to make such filings or such waiting periods to expire or terminate (and in the case that receipt of any such approval, the making of any such filing, or the expiration or termination of any such waiting period is expected to take more than thirty (30) days following execution and delivery of the Modified APA, those actions the Bidder will take to ensure receipt of such approval(s), the making of such filing(s) or the expiration or termination of such waiting period(s) as promptly as possible).

(xiv) ***Contact Information and Affiliates.*** Each Bid must provide the contact information for the Bidder and full disclosure of any affiliates of the Bidder.

(xv) ***Contingencies and Other Provisions.*** Each Bid shall not contain any escrow arrangements, indemnities, or adjustments to the purchase price. Without limiting the immediately preceding sentence, each Bid shall not include any conditions or contingencies relating to financing (including, for the avoidance of doubt, any conditionality, or limitations on specific performance, relating to any financing contemplated by sub-paragraph 21(a)(xi)(C) above), internal approvals, or the absence of any material adverse effect.

(xvi) ***Contingencies Regarding Due Diligence.*** Each Bid shall not include any conditions or contingencies relating to Due Diligence.

(xvii) ***Acknowledgement of Independent Review.*** Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence prior to making its Bid; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties, express, implied, statutory or otherwise, regarding the assets, the financial performance of the assets or the physical condition of the assets, or the accuracy or completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or the Modified APA.

(xviii) ***Irrevocable.*** Each Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Bidder is not selected as the Back-Up Bidder;[7] *provided* that if a Bid is accepted as the Successful Bid[8] or the Back-Up Bid,[9] such Bid shall continue to remain irrevocable, subject to the terms and conditions of these Bidding Procedures.

(xix) ***Back-Up Bid.*** Each Bid shall provide that the Bidder will serve as back-up bidder if the Bidder's Bid is selected as the next highest and best bid after the Successful Bid (as defined below) and will remain irrevocable in accordance with the terms and conditions of these Bidding Procedures (the "Back-Up Bid").

(xx) ***Consent to Jurisdiction.*** Each Bidder and its Bidder Support (if applicable) must (i) consent to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, these Chapter 11 Cases, the Bidding Procedures, the Auction, any Sale Transaction, any Modified APA, or the construction and enforcement of documents relating to any Sale Transaction, (ii) waive any right to a jury trial in connection with any disputes relating to the Debtors, these Chapter 11 Cases, the Bidding Procedures, the Auction, any Sale

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[7] "Back-Up Bidder" means the Qualified Bidder(s) with the next highest and otherwise best Bid to the Successful Bid(s) at the Auction for the applicable assets, as determined by the Debtors, in the exercise of their reasonable business judgment will be designated as a back-up bidder.

[8] "Successful Bid" means the bid the Debtors shall select that is the best Qualified Bid.

[9] "Back-Up Bid" means the Back-Up Bidder(s) initial Qualified Bid(s) (or if a Back-Up Bidder submitted one or more Overbids at the Auction, such Back-Up Bidder's final Overbid).

Transaction, any Modified APA, or the construction and enforcement of documents relating to any Sale Transaction, and (iii) consent to the entry of a final order or judgment in any way related to the Debtors, these Chapter 11 Cases, the Bidding Procedures, the Auction, any Modified APA, any Sale Transaction, or the construction and enforcement of documents relating to any Sale Transaction if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

(xxi) ***Disclaimer of Break-Up Fees and Expense Reimbursement.*** Except as otherwise provided below with respect to a potential Stalking Horse Bidder (as defined below), each Bid must not, and must acknowledge that such Bid shall not, entitle the Bidder to any break-up fee, termination fee or similar type of payment, compensation or expense reimbursement (including legal fees) and, by submitting the Bid, the Bidder waives the right to pursue any administrative expense claim (including under a theory of substantial contribution) under 11 U.S.C. § 503 related in any way to the submission of its Bid or participation in any Auction.

(xxii) ***Acknowledgement of Remedies.*** Each Bid shall include a written acknowledgement from the Bidder that, in the event of the Bidders' breach of, or failure to perform under, the Modified APA, the Debtors and their estates shall be entitled to retain the Good Faith Deposit as part of the damages resulting to the Debtors and their estates for such breach or failure to perform, and pursue all other available legal and equitable remedies.

(xxiii) ***Acknowledgement of No Collusion.*** Each Bid shall include a written acknowledgement from the Bidder that it has not (i) engaged in any collusion with respect to the bidding or sale of any of the assets described herein or (ii) taken any other action to prevent a transparent and competitive auction process.

(c) **<u>The Auction (Local Bankr. R. 6004-1(c)(ii))</u>.** If one or more Qualified Bids that, individually or in the aggregate, satisfy the Minimum Bid Requirement are received by the Bid Deadline, the Debtors will conduct an auction (the "<u>Auction</u>") to determine, with the consent of the Required DIP Lenders, the highest and best Qualified Bid. The Auction, if any, will commence on or before **July 24, 2024, at 10:00 a.m., (prevailing Eastern Time)** via remote video at the Debtors' election (the "<u>Auction Date</u>"). If held, the Auction proceedings will be transcribed.

(d) **<u>Bidding Increments (Local Bankr. R. 6004-1(c)(i)(C))</u>.** Any Overbid for all or substantially all of the Debtors' Assets after and above the Auction Baseline Bid shall be made in increments valued at not less than $1,000,000.

The Debtors shall determine, with the consent of the Required DIP Lenders, the minimum bid increments for any particular Asset or subset of Assets if applicable. Any credit bid of a DIP Lender, DIP Agent, or Prepetition Agent shall be treated as the same as cash (such that each dollar of such obligations that is credit bid shall be treated the same as a dollar of cash).

(e) **Back-Up Bidder (Local Bankr. R. 6004-1(c)(i)(E)).** If a Successful Bid is terminated for any reason prior to consummation of the Sale Transaction contemplated thereby (a "Successful Bid Failure"), the Debtors will be authorized, without further order of the Bankruptcy Court, subject to the consent of the Required DIP Lenders, to consummate the Sale Transaction contemplated by the applicable Back-Up Bid with the applicable Back-Up Bidder; *provided* that the Debtors shall provide prompt notice of such Successful Bid Failure and the Debtors shall post a notice on the docket of the Chapter 11 Cases regarding the Successful Bid Failure and the consummation of such Sale Transaction with the applicable Back-Up Bidder. In the case of a Successful Bid Failure, the Successful Bidder's deposit shall be forfeited to the Debtors or returned to the applicable Successful Bidder in accordance with the terms of the terminated Modified APA. The Debtors, on their behalf and on behalf of each of their respective estates, specifically reserve the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Back-Up Bidder following a Successful Bid Failure) in accordance with the terms of the Bidding Procedures, the Bidding Procedures Order, or the Modified APA, as applicable.

(f) **Highest or Otherwise Best Bid.** The determination of the highest and best Qualified Bid shall take into account any factors the Debtors, with the consent of the Required DIP Lenders, and in their reasonable business judgment deem relevant to the value and certainty of the Qualified Bid to the Debtors' estates and may include, but are not limited to, the following: (i) the amount and nature of the consideration; (ii) the number, type, and nature of any changes to the Form APA requested by each Bidder, including the assets acquired; (iii) the extent to which such modifications are likely to delay closing of the Sale Transaction contemplated by such Qualified Bid and the cost to the Debtors of such modifications or delay; (iv) the total consideration to be received by the Debtors; (v) any contingencies or conditions to closing the Sale Transaction contemplated by such Qualified Bid; (vi) the likelihood of the Bidder's ability to close the Sale Transaction contemplated by such Qualified Bid and the timing thereof; (vii) the tax consequences of such Qualified Bid; and (viii) any other qualitative or quantitative factor that the Debtors deem reasonably appropriate under the circumstances (collectively, the "Bid Assessment Criteria").

(g) **Reservation of Rights (Local Bankr. R. 6004-1(c)(i)(D)).** Except as otherwise provided in the Bidding Procedures Order, the Debtors further reserve the right as the Debtors may reasonably determine to be in the best interest of the Debtors' estates, subject to the consent of the Required DIP Lenders, to: (i) determine which Bidders are Qualified Bidders; (ii) determine which Bids are Qualified Bids; *provided* that, for the avoidance of doubt, a Bid or series of Bids shall not constitute a "Qualified Bid" unless such Bid(s) (a) satisfies the Minimum Bid Requirement and (b) contemplates that the aggregate cash sale proceeds of such Bid(s) shall be indefeasibly paid to the DIP Lenders immediately upon the closing of the Sale Transaction(s) subject to deductions for wind-down costs and expenses required to be paid pursuant to the DIP Orders and the RSA (which such deducted amounts shall be paid to the Debtors) (iii) determine which Qualified Bid (or Qualified Bids) is the highest and best bid and which is the next highest and best bid; (iv) reject any Bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (c) contrary to the best interests of the Debtors and their estates; (v) impose additional terms and conditions with respect to all potential bidders; (vii) make non-material modifications to the Bidding Procedures; and (viii) implement additional procedural rules with respect to the conduct of the Auction that the Debtors determine (together with the Bidding Procedures, the "Auction Rules"), in their reasonable business judgment, will better promote the goals of the bidding process and are not inconsistent with any Bankruptcy Court order, the Bankruptcy Code, or any rights of the Prepetition Agents under the Bidding Procedures; *provided* that nothing herein shall limit any party in interest's right to file an objection with the Bankruptcy Court with respect to any Auction Rules (other than the Bidding Procedures).

(h) **Potential Stalking Horse (Local Bankr. R. 6004-1(c)(i)(C).** The Debtors may, pursuant to these Bidding Procedures and subject to the consent of the Required DIP Lenders, (i) designate one or more Qualified Bidders that submit a Qualified Bid for all or any portion of the Assets a stalking horse bidder (the "Stalking Horse Bidder"), whose Qualified Bid shall serve as the stalking horse bid (the "Stalking Horse Bid"), and (ii) execute, subject to higher or otherwise better offers consistent with these Bidding Procedures, one or more purchase agreements memorializing the proposed transaction set forth in the Stalking Horse Bid (a "Stalking Horse APA"), which may include a break-up fee of or no more than 3.0% of the total cash consideration payable under such Stalking Horse APA, inclusive of any expense reimbursement (the "Bid Protections") **on or before July 1, 2024** (the "Stalking Horse Bidder Designation"). To the extent the Debtors, subject to the consent of the Required DIP Lenders, designate more than one Stalking Horse Bidder pursuant to the Bidding Procedures, no two Stalking Horse Bidders will be designated with respect to any of the same Assets. The Debtors shall not pay Bid Protections to any Stalking Horse Bidder on account of the portion of the purchase price of such Bid that is a credit bid, assumption of liabilities, or other non-cash (or cash-equivalent) consideration, nor provide any Bid Protections to an insider or affiliate of the Debtors.

(i) To the extent the Debtors, consistent with these Bidding Procedures, determine, subject to the consent of the Required DIP Lenders, to offer Bid Protections to any Stalking Horse Bidder, the Debtors shall disclose such Bid Protections in a corresponding notice designation such Stalking Horse Bidder (the "Stalking Horse Notice"). A Stalking Horse Notice, if filed, shall also include (a) the identity of the Stalking Horse Bidder; (b) the amount of the Stalking Horse Bid; (c) a copy of the Stalking Horse APA; (d) the proposed Bid Protections to be provided to the Stalking Horse Bidder; and (e) a declaration in support of the proposed Bid Protections, which includes whether the Stalking Horse Bidder has any connection with the Debtors other than that which arises from the Stalking Horse Bid. Any objection to (i) the Bid Protections set forth in the Stalking Horse Notice or (ii) the designation of the Stalking Horse Bidder (a "Stalking Horse Objection"), shall be filed **no later than four (4) days after the filing of the Stalking Horse Notice at 4:00 p.m. (prevailing Eastern Time)**. If a timely Stalking Horse Objection is filed, the Debtors are authorized to seek an expedited hearing with respect to the Stalking Horse Objection on not less than three (3) calendar days' notice. Absent any timeline Stalking Horse Objection, the Court may approve the Bid Protections set forth in the Stalking Horse Notice and the designation of the Stalking Horse Bidder without further hearing.

If the designation of a Stalking Horse Bidder is approved, any Modified APA may be based on the Stalking Horse APA.

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

IV. Form and Manner of Sale Notice.

23. Upon entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will cause the Sale Notice, substantially in the form attached as Exhibit 2 to the Bidding Procedures Order, to be served on the following parties or their respective counsel, if known: (a) the U.S. Trustee; (b) counterparties to the executory contracts and unexpired leases of nonresidential property (the "Contract Counterparties"), if known; (c) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or

interest in the assets; (d) the Internal Revenue Service; (e) all applicable state and local taxing authorities; (f) all the Debtors' other creditors; (g) all of the Debtors' equity holders; (h) each governmental agency that is an interested party with respect to the proposed Sale Transaction; and (i) all parties that have requested or that are required to receive notice of the proposed Sale Transaction pursuant to Bankruptcy Rule 2002.

24. Within four (4) business days after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will provide notice of the Sale Hearing through publication of the Sale Notice on their restructuring website, https://omniagentsolutions.com/Vyaire (the "Case Website") and will also publish the Sale Notice, with any modifications necessary for ease of publication (the "Publication Notice"), once in *The New York Times* (national edition), to provide notice to any other potential interested parties.

25. The Debtors respectfully submit that the Sale Notice and Publication Notice are reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale Transaction, including: (a) the date, time, and place of the Auction; (b) the Bidding Procedures; (c) the deadline for filing objections to the Sale Transaction and entry of the Sale Order, and the date, time, and place of the Sale Hearing; (d) a description of the Sale Transaction as being free and clear of liens, claims, interests, and other encumbrances, with all such liens, claims, interests, and other encumbrances attaching with the same validity and priority to the Sale Transaction proceeds; and (f) notice of the proposed assumption and assignment of the Contracts to the Successful Bidder arising from the Auction, if any.

26. The Debtors further submit that notice of this motion and the related hearing to consider entry of the Bidding Procedures Order, coupled with service of the Sale Notice and the Cure Notice substantially in the form attached as Exhibit 3 to the Bidding Procedures Order (where

applicable), as provided for herein, constitutes good and adequate notice of the Sale Transaction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002. The Debtors propose that no other or further notice of the Sale Transaction shall be required. Accordingly, the Debtors request that this Court approve the form and manner of the Sale Notice.

V. Form and Manner of the Successful Bidder Notice.

27. The Debtors are seeking approval of the form of the Successful Bidder Notice, as attached to the Bidding Procedures Order as Exhibit 4, to be filed and served by **July 24, 2024**, or as soon as reasonably practicable after the close of the Auction. The Debtors respectfully submit that the Successful Bidder Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale Transaction, including: (a) the identity of the Successful Bidder and any Back-Up Bidder; and (b) the amount of the Successful Bid and any Back-Up Bids. The Debtors will also publish the Successful Bidder Notice on the Case Website.

VI. Summary of the Assumption and Assignment Procedures.

28. The Debtors seek entry of the Assumption and Assignment Procedures to facilitate the fair and orderly assumption and assignment of the Assigned Contracts in connection with the Sale Transactions. Because the Bidding Procedures Order sets forth the Assumption and Assignment Procedures in detail, they are not restated herein. Generally, however, the Assumption and Assignment Procedures: (a) outline the process by which the Debtors will serve notice to all counterparties to the Assigned Contracts regarding the proposed assumption and assignment and related cure amounts, if any, informing such parties of their right and the procedures to object thereto and (b) establish objection and other relevant deadlines and the manner for resolving

disputes relating to the assumption and assignment of the Assigned Contracts to the extent necessary.

<u>Basis for Relief</u>

A. The Relief Sought in the Bidding Procedures Order Is in the Best Interests of the Debtors' Estates and Should Be Approved.

29. Courts have made clear that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. *See, e.g.*, *In re Culp*, 550 B.R. 683, 697 (D. Del. 2015) ("In determining whether to authorize use, sale or lease of property of the estate under Section 363, courts require the [debtor] to show that a sound business purpose justifies such actions. If the [debtor's] decision evidences a sound business purpose, then the Bankruptcy Court should approve the sale.") (quoting *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999)); *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification'" (internal citations omitted)); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (quoting *In re Schipper*); *see also In re Integrated Res. Inc.*, 147 B.R. 650, 656–7 (S.D.N.Y. 1992) (noting that bidding procedures that have been negotiated by a trustee are to be reviewed according to the deferential "business judgment" standard, under which such procedures and arrangements are "presumptively valid").

30. The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate. *See In re Adams Res. Expl. Corp.*, No. 17-10866 (KG), at 12 (Bankr. D. Del. 2017) ("The relief requested in the Sale Motion is a necessary and appropriate step toward enabling the Debtor to maximize the value of its bankruptcy estate, and it is in the best interests of the Debtor, its estate and its creditors."); *In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir 2004) (debtor-in-possession "had a fiduciary duty to protect and maximize the estate's

assets”); *In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to maximize value for the estate.”); *In re Food Barn Stores, Inc.*, 107 F.3d 558, 564–65 (8th Cir. 1997) (in bankruptcy sales, “a primary objective of the Code [is] to enhance the value of the estate at hand”); *Integrated Res*. 147 B.R. at 659 (“[I]t is a well-established principle of bankruptcy law that the objective of the bankruptcy rules and the trustee’s duty with respect to such sales is to obtain the highest price or greatest overall benefit possible for the estate.”) (internal citations omitted).

31. To that end, courts uniformly recognize that procedures intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy transactions. *See, e.g.*, *In re Dura Auto, Sys.*, 379 B.R. 257, 263 (Bankr. D. Del. 2007) (bidding procedures “enhance[ing] competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales”); *Integrated Res.*, 147 B.R. at 659 (bidding procedures “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); *In re Fin. News Network, Inc.*, 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1991) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for a fair and efficient resolution of bankrupt estates”).

32. The Debtors believe that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will elicit the highest or otherwise best offers available for the Assets. The proposed Bidding Procedures will allow the Debtors to conduct the sale process in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who will offer the best package for the Assets and who can demonstrate the ability to close a transaction. Specifically, the Bidding Procedures contemplate an open auction process

with minimal barriers to entry and provide potential bidding parties with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

33. At the same time, the Bidding Procedures provide the Debtors with a robust opportunity to consider competing bids and select the highest or otherwise best offer for the completion of the Sale Transaction. As such, creditors of the Debtors' estates can be assured that the consideration obtained will be fair and reasonable and at or above market. Accordingly, for all of the foregoing reasons, the Debtors believe that the Bidding Procedures: (a) will encourage robust bidding for the Assets; (b) are consistent with other procedures previously approved by courts in this District; and (c) are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings and should be approved.

34. The Debtors submit that the proposed Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings and bidding incentives in bankruptcy proceedings, and are consistent with other procedures previously approved by this Court. *See, e.g.*, *In re Yellow Corp.*, No. 23-11069 (CTG) (Bankr. D. Del. Sept. 15, 2023); *In re PGX Holdings, Inc.*, No. 23-10718 (CTG) (Bankr. D. Del. Aug. 4, 2023); *In re SiO2 Med. Prods., Inc.*, No. 23-10366 (JTD) (Bankr. D. Del. Apr. 25, 2023); *In re Lucira Health, Inc.*, No. 23-10242 (MFW) (Bankr. D. Del. Mar. 27, 2023); *In re Starry Group Holdings, Inc.*, No. 23-10219 (KBO) (Bankr. D. Del. Mar. 21, 2023).

B. The Form and Manner of Service of the Sale Notice Should Be Approved.

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

36. As noted above, within two (2) days of entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will serve the Sale Notice upon the following parties or their respective counsel, if known: (a) the U.S. Trustee; (b) the Contract Counterparties; (c) all parties who have expressed a written interest in some or all of the Assets; (d) all parties who are known or reasonably believed, after reasonable inquiry, to have asserted any lien, encumbrance, claim, or other interest in the Assets; (e) the Internal Revenue Service; (f) all applicable state and local taxing authorities; (g) all the Debtors' other creditors; (h) each governmental agency that is an interested party with respect to the proposed Sale Transaction; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002.The Debtors shall also publish an abbreviated version of the Sale Notice on the Case Website.

37. In addition, within four (4) business days, or as soon as reasonable practicable thereafter, the Debtors will provide notice of the Sale Hearing through publication of the Sale Notice on their restructuring website, https://omniagentsolutions.com/Vyaire (the "Case Website") and will also publish the Sale Notice, with any modifications necessary for ease of publication (the "Publication Notice"), in *The New York Times* (national edition), to provide notice to any other potential interested parties.

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

C. The Bid Protections Have a Sound Business Purpose and Should be Approved.

39. The Debtors are also seeking authority to designate one or more Stalking Horse Bidders and offer Bid Protections to each such Stalking Horse Bidder. The use of a stalking horse in a public auction process for sales is a customary practice in chapter 11 cases, as the use of a stalking horse bid is, in many circumstances, the best way to maximize value in an auction process by "establish[ing] a framework for competitive bidding and facilitat[ing] a realization of that value." *Interforum Holding LLC*, No. 11-CV-219, 2011 WL 2671254 at *1 n. 1 (E.D. Wis. July 7, 2011). As a result, stalking horse bidders virtually always require break-up fees and, in many cases, other forms of bidding protections as an inducement for "setting the floor at auction, exposing [their] bid[s] to competing bidders, and providing other bidders with access to the due diligence necessary to enter into an asset purchase agreement." *Id*. (citation omitted). Thus, the use of bidding protections has become an established practice in chapter 11 cases.

40. Indeed, break-up fees and other forms of bid protections are a normal and, in many cases, necessary component of significant sales conducted in chapter 11: "Break-up fees are important tools to encourage bidding and to maximize the value of the debtor's assets . . . In fact, because the directors of a corporation have a duty to encourage bidding, break-up fees can be *necessary* to discharge the directors' duties to maximize value." *Integrated Res.*, 147 B.R. at 659–60 (emphasis in original). Specifically, bid protections "may be legitimately necessary to convince a 'white knight' to enter the bidding by providing some form of compensation for the risks it is undertaking." *In re 995 Fifth Ave. Assocs., L.P.*, 96 B.R. 24, 28 (Bankr. S.D.N.Y. 1989) (citation and quotations omitted); *see also Integrated Res.*, 147 B.R. at 660–61 (noting bid protections can prompt bidders to commence negotiations and "ensure that a bidder does not retract its bid").

41. As a result, courts routinely approve such bid protections in connection with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the estate.

See In re Energy Future Holdings Corp., 904 F.3d 298 (3d Cir. 2018) (holding that "[T]he allowability of break-up fees. . . depends upon the requesting party's ability to show that the fees [a]re actually necessary to preserve the value of the estate.") (citing *In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999)) (alterations in original)*; In re Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010) (same). The allowance of the Bid Protections, in the event that the Debtors execute a Stalking Horse APA, is in the best interests of the Debtors' estates and their creditors, as any Stalking Horse APA will establish a floor for further bidding that may increase the consideration given in exchange for the Assets that are the subject of such Stalking Horse APA, which will inure to the benefit of the Debtors' estates.

42. In the Third Circuit, bid protections, such as those proposed here, are subject to the general standard used for administrative expenses under section 503 of the Bankruptcy Code. *Energy Future*, 904 F.3d at 313 ("[T]ermination fees are subject to the same general standard used for all administrative expenses under 11 U.S.C. § 503."); *Women First Healthcare, Inc.*, 332 B.R. 115, at 121–23 (Bankr. D. Del. 2005) (holding that the general standard used for all administrative expenses applies to bid protections). Thus, the "allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party's ability to show that the fees were actually necessary to preserve the value of the estate." *Reliant Energy*, 594 F.3d at 206 (internal quotations omitted) (quoting *O'Brien*, 181 F.3d at 535).

43. Here, the flexibility to offer Bid Protections—which may include a break-up fee that is limited under the Bidding Procedures to no more than 3.0% of the total cash consideration payable under a Stalking Horse APA, inclusive of any expense reimbursement—is a critical component of the Debtors' ability to obtain the commitment of one or more Stalking Horse Bidders. To qualify as a Stalking Horse Bidder, a Qualified Bidder will need to have expended

and will continue to expend time and resources negotiating, drafting, and performing due diligence activities necessitated by the Sale Transaction, despite the fact that its Qualified Bid will be subject not only to Court approval, but also to overbidding by third parties. Any Bid Protections offered to a Stalking Horse Bidder will have been negotiated in good faith and at arm's length and with significant give-and-take with respect to such Bid Protections. As a result, by preserving the flexibility to offer Bid Protections, the Debtors ensure that their estates can realize the benefit of a transaction with a Stalking Horse Bidder without sacrificing the potential for interested parties to submit overbids at the Auction. Furthermore, to the extent any party objects to the Bid Protections, such party's ability to object is preserved, since there will be an objection deadline following the filing of the Stalking Horse Notice and an opportunity for a hearing.

44. The Bid Protections provided to any Stalking Horse Bidder (a) are an actual and necessary cost and expense of preserving the Debtors' estates within the meaning of sections 503(b) and 507(a)(2) of the Bankruptcy Code, (b) are commensurate to the real and material benefits conferred upon the Debtors' estates by the Stalking Horse Bidder, and (c) are fair, reasonable, and appropriate, including in light of the size and nature of the proposed Sale Transaction, the commitments that have been made, and the efforts that have been and will be expended by any Stalking Horse Bidder.

45. If the Court does not approve Bid Protections, the Debtors may not be able to induce any Qualified Bidders to serve as Stalking Horse Bidders, to the detriment of the Debtors' estates. Further, if the Debtors enter into a Stalking Horse APA with Bid Protections that were ultimately to be paid, it will necessarily be because the Debtors have received higher or otherwise superior offers for the applicable Assets. In short, the proposed Bid Protections constitute a "fair and

reasonable percentage of the proposed purchase price" and are "reasonably related to the risk, effort, and expenses of the prospective purchaser." *Integrated Res.*, 147 B.R. at 662.

46. The Bid Protections are a sound exercise of the Debtors' business judgment and are in the best interests of the Debtors, their estates, and all stakeholders. Accordingly, the Court should approve Bid Protections.

D. The Assumption and Assignment Procedures Are Appropriate and Should Be Approved.

47. As set forth above, the Sale Transactions contemplate the assumption and assignment of contracts to the Successful Bidder arising from the Auctions, if any. In connection with this process, the Debtors believe it is necessary to establish the Assumption and Assignment Procedures by which: (a) the Debtors and contract counterparties can reconcile cure obligations, if any, in accordance with section 365 of the Bankruptcy Code; and (b) such counterparties can object to the assumption and assignment of contracts and/or related cure amounts.

48. As set forth in the Bidding Procedures Order, the Debtors also request that any party that fails to object to the proposed assumption and assignment of any contract be deemed to consent to the assumption and assignment of the applicable contract pursuant to section 365 of the Bankruptcy Code on the terms set forth in the sale order, along with the cure amounts identified in the contract notice. *See, e.g.*, *In re Boy Scouts of Am.*, 642 BR 504, 569 (Bankr. D. Del. 2022) ("The lack of objection of a [creditor] is also consensual for purposes of § 363 and, again, permissible under § 363(f)(2)."); *In re Tabone, Inc.*, 175 B.R. 855, 858 (Bankr. D.N.J. 1994) (same); *Pelican Homestead v. Wooten (In re Gabel)*, 61 B.R. 661, 667 (Bankr. W.D. La. 1985) (same).

49. The Debtors believe that the Assumption and Assignment Procedures are fair and reasonable, provide sufficient notice to parties to the executory contracts and leases, and provide

certainty to all parties in interest regarding their obligations and rights in respect thereof. Accordingly, the Debtors request that the Court approve the Assumption and Assignment Procedures set forth in the Bidding Procedures Order.

E. The Debtors Intend to Seek Approval of the Sale Transaction as an Exercise of Sound Business Judgment at the Sale Hearing.

50. Section 363(b)(1) of the Bankruptcy Code provides that a debtor, "after notice and a hearing, may use, sell or lease, other than in the ordinary course of business, property of the estate." A sale of the debtor's assets should be authorized pursuant to section 363 of the Bankruptcy Code if a sound business purpose exists for the proposed transaction. *See, e.g.*, *In re Martin*, 91 F.3d 389, 395 (3d. Cir. 1996) ("Under Section 363, the debtor in possession can sell property of the estate . . . if he has an 'articulated business justification' . . . ."); *see also In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991) (same); *In re Abbotts Dairies of Pennsylvania, Inc.*,788 F.2d 143 (3rd Cir. 1986); *Stephens Indus., Inc. v. McClung*, 789 F. 2d 386, 390 (6th Cir. 1986); *Comm. of Equity Sec. Holders v. Lionel Corp. (In re Lionel Corp.)*, 722 F.2d 1063, 1070 (2d Cir. 1983); *In re Telesphere Commc's, Inc.*, 179 B.R. 544, 552 (Bankr. N.D. Ill. 1999); *In re Delaware & Hudson Railway Co.*, 124 B.R. 169, 176 (D. Del. 1991). The *Delaware & Hudson Railway* court rejected the pre-Code "emergency" or "compelling circumstances" standard, finding the "sound business purpose" standard applicable and, discussing the requirements of that test under *McClung* and *Lionel*, observing:

> A non-exhaustive list of factors to consider in determining if there is a sound business purpose for the sale include: the proportionate value of the asset to the estate as a whole; the amount of elapsed time since the filing; the likelihood that a plan of reorganization will be proposed and confirmed in the near future; the effect of the proposed disposition of the future plan of reorganization; the amount of proceeds to be obtained from the sale versus appraised values of the Property; and whether the asset is decreasing or increasing in value.

124 B.R. at 176.

51. The *Delaware & Hudson Railway* court further held that "[o]nce a court is satisfied there is a sound business reason or an emergency justifying the pre-confirmation sale, the court must also determine that the trustee has provided the interested parties with adequate and reasonable notice, that the sale price is fair and reasonable and that the Buyer is proceeding in good faith." *Id*.

52. Once the Debtors articulate a valid business justification, "[t]he business judgment rule 'is a presumption that in making the business decision the directors of a corporation acted on an informed basis, in good faith,' and in the honest belief that the action was in the best interests of the company." *In re S.N.A. Nut Co.*, 186 B.R. 98, 102 (Bankr. N.D. Ill 1995) (citations omitted); *In re Filene's Basement, LLC*, No. 11-13511 (KJC), 2014 WL 1713416, at *12 (Bankr. D. Del. Apr. 29, 2014) ("If a valid business justification exists, then a strong presumption follows that the agreement at issue was negotiated in good faith and is in the best interests of the estate") (citations omitted); *Integrated Res.*, 147 B.R. at 656; *In re Johns-Manville Corp.*, 60 B.R. 612, 615–16 (Bankr. S.D.N.Y. 1986) ("a presumption of reasonableness attaches to a debtor's management decisions.").

53. At the Sale Hearing, the Debtors intend to demonstrate that a sound business purpose exists for the sale free and clear of all encumbrances, due and adequate notice has been provided, the purchase price reflects fair value, and the Sale Transaction has been proposed in good faith without collusion or undue influence, and relief under Bankruptcy Rules 6004(h) and 6006(d), among other things. The Debtors reserve the right to submit supplemental materials, including declarations, in connection with the Sale Hearing.

<u>Notice</u>

54. The Debtors will provide notice of this motion to: (a) the United States Trustee for the District of Delaware; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) the office of the attorney general for each of the states in which the Debtors operate; (d) the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the United States Securities and Exchange Commission; (g) counsel to the 1L Ad Hoc Group; (h) the agent of the DIP Facility and counsel thereto; (i) the agent of the First Lien Credit Agreement and counsel thereto; (j) the Second Lien Credit Agreement Agent and counsel thereto; (k) the agent of the First Lien Notes and counsel thereto; (l) counsel to the DIP Lenders; (m) all parties to executory contracts and leases to be assumed and assigned, or rejected as part of the proposed sale; (n) all parties who have expressed a written interest in some or all of the Debtors' assets; (o) all known holders of liens, encumbrances, and other claims secured by the Debtors' assets; (p) all applicable state and local taxing authorities; (q) each governmental agency that is an interested party with respect to the Sale Transactions; and (r) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

<u>No Prior Request</u>

55. No prior request for the relief sought in this motion has been made to this or any other court.

[*Remainder of page intentionally left blank*]

WHEREFORE, the Debtors request entry of the Order, substantially in the form attached hereto as **Exhibit A**, (a) granting the relief requested herein and (b) granting such other relief as the Court deems appropriate under the circumstances.

Dated: June 10, 2024
Wilmington, Delaware

/s/ Patrick J. Reilley

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Proposed Co-Counsel to the Debtors
and Debtors in Possession

EXHIBIT A

Bidding Procedures Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested) **Re: Docket No. __**

ORDER (I) APPROVING BIDDING PROCEDURES IN CONNECTION WITH THE SALE OF SUBSTANTIALLYALL OF THE DEBTORS' ASSETS, (II) AUTHORIZING THE DEBTORS TO ENTER INTO A STALKING HORSE AGREEMENT AND PROVIDE BID PROTECTIONS, (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (IV) SCHEDULING AN AUCTION AND SALE HEARING, (V) APPROVING PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF CONTRACTS, (VI) APPROVING THE SALE OF THE DEBTORS' ASSETS FREE AND CLEAR, AND (VII) GRANTING RELATED RELIEF

Upon the *Motion of the Debtors for Entry of an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* (the "Motion")[2] filed by the debtors and debtors in possession (collectively, the "Debtors") in the above-captioned debtors chapter 11 cases (the "Chapter 11 Cases"); this Court having reviewed the Motion, the First Day

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

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

Declaration, the Schlappig Declaration, and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing before the Court on [⊠], 2024 to consider certain of the relief requested in the Motion (the "Bidding Procedures Hearing"); and after due deliberation, this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, and their creditors, and the Debtors having demonstrated good, sufficient, and sound business justifications for the relief granted herein;

IT IS HEREBY FOUND AND DETERMINED THAT:[3]

A. Jurisdiction and Venue. The United States District Court for the District of Delaware has jurisdiction over this matter pursuant to 28 U.S.C. §1334, which was referred to the United States Bankruptcy Court for the District of Delaware (the "Court") under 28 U.S.C. § 157 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. The Debtors confirm their consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), to the entry of a final order by the Court in connection with this motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

[3] The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent 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. Statutory and Legal Predicates. The statutory and legal predicates for the relief requested in the Motion are sections 105(a), 363, 365, 503, and 507 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014, and Local Rules 2002-1, 6004-1, and 9006-1.

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

D. Bidding Procedures. The Debtors have articulated good and sufficient business reasons for the Court to approve the bidding procedures attached hereto as **Exhibit 1** (the "Bidding Procedures"). The Bidding Procedures are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of one or more sales (each, a "Sale Transaction") of some, all, or substantially all of the Debtors' assets (the "Assets"). The Bidding Procedures were negotiated in good faith and at arm's length and are reasonably designed to promote a competitive and robust bidding process to generate the greatest level of interest in the Debtors' Assets. The proposed process for potentially designating a Stalking Horse Bidder or Bidders was fair and appropriate under the circumstances and in the best interests of the Debtors' estates. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

E. The Debtors have demonstrated a compelling and sound business justification for the Court to enter this Order and thereby: (a) approve the Bidding Procedures in connection with the sale of some or substantially all of the Assets, (b) approve the form and manner of notice thereof as described in paragraph 7 herein (including the Sale Notice), (c) schedule an Auction and Sale Hearing, (d) approve procedures for the assumption and assignment of contracts and leases, and (e) grant related relief as set forth herein. Such compelling and sound business justification, which was set forth in the Motion, the Schlappig Declaration, and the First Day Declaration, are incorporated herein by reference and, among other things, form the basis for the findings of fact and conclusions of law set forth herein.

F. Sale Notice. The sale notice, the form of which is attached as **Exhibit 2** (the "Sale Notice"), is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing (as defined in the Bidding Procedures), the Bidding Procedures, the Sale Transaction(s), and all relevant and important dates and objection deadlines with respect to the foregoing, and no other or further notice of the Sale Hearing, the Sale Transaction(s), or the Auction shall be required.

G. Assumption and Assignment Provisions. The Debtors have articulated good and sufficient business reasons for the Court to approve the assumption and assignment procedures set forth herein, in the Bidding Procedures (the "Assumption and Assignment Procedures") and the Potentially Assumed and Assigned Contracts Notice attached hereto as **Exhibit 3** (the "Potentially Assumed and Assigned Contracts Notice"), which are fair, reasonable, and appropriate. The Assumption and Assignment Procedures comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

H. Potentially Assumed and Assigned Contracts Notice. The Potentially Assumed and Assigned Contracts Notice, the form of which is attached hereto as **Exhibit 3**, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Assumption and Assignment Procedures, as well as any and all objection deadlines related thereto, and no other or further notice shall be required for the Motion and the procedures described therein, except as expressly required herein.

I. The Successful Bidder Notice, substantially in the form attached hereto as **Exhibit 4**, is reasonably calculated to provide interested parties with timely and proper notice of the proposed Sale Transaction(s), including, without limitation: (a) the Successful Bidder, (b) the Back-Up Bidder, if applicable, (c) the proposed Bid Protections provided to the Successful Bidder, if any, (d) the key terms of the proposed Sale Transaction(s), and (e) the date, time, and place of the Sale Hearing.

J. Notice. Notice of the Motion, the proposed Bidding Procedures, the proposed process for designation of a Stalking Horse Bidder or Bidders, and the Bidding Procedures Hearing was (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules and (iii) adequate and sufficient under the circumstances of the Debtors' Chapter 11 Cases, such that no other or further notice need be provided except as set forth in the Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest.

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

L. The Bidding Procedures comply with the requirements set forth by Local Rule 6004-(1)(c).

IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED as set forth herein.

2. All objections to the relief granted in this order (the "Order") that have not been withdrawn, waived, or settled, and all reservations of rights included therein are hereby overruled and denied on the merits with prejudice.

3. **Potential Stalking Horse Bidder Designation**. Pursuant to the Bidding Procedures, the Debtors are authorized, subject to the consent of the Required DIP Lenders (as defined in the DIP Order), but not directed to select one or more Qualified Bidders that submit a Qualified Bid for all or any portion of the Assets to act as a Stalking Horse Bidder and enter into a Stalking Horse APA with each such Stalking Horse Bidder **no later than July 1, 2024**. The Debtors are further authorized, subject to consent of the Required DIP Lenders, but not directed, to offer the Bid Protections to such Stalking Horse Bidder(s) provided that the total Bid Protections offered to any Stalking Horse Bidder shall not exceed three percent (3%) of the total cash consideration payable under such Stalking Horse APA, if any, inclusive of any expense reimbursement, and subject to the objection process in paragraph 3 below. The Stalking Horse Bid and Stalking Horse APA, if any, shall be subject to higher or otherwise better offers consistent with the Bidding Procedures, and no Bid Protections shall be offered on account of any portion of the purchase price of such Stalking Horse Bid that is a credit bid, assumption of liabilities, or non-cash (or cash-equivalent) consideration. Further, no Bid Protections shall be provided to an insider or an affiliate of the Debtors.

4. If the Debtors, consistent with the Bidding Procedures and subject to the consent of the Required DIP Lenders, determine to offer Bid Protections to any Stalking Horse Bidder, the Debtors shall file with the Court and serve a notice (a "Stalking Horse Notice") seeking approval of the designation and the Bid Protections which shall include: (a) the identity of the Stalking Horse Bidder; (b) the amount of the Stalking Horse Bid; (c) a copy of the Stalking Horse APA;

(d) the proposed Bid Protections to be provided to the Stalking Horse Bidder; and (e) a declaration in support of the proposed Bid Protections, which includes whether the Stalking Horse Bidder has any connection with the Debtors other than that which arises from the Stalking Horse Bid. Any objection to (i) the Bid Protections set forth in a Stalking Horse Notice or (ii) the designation of the Stalking Horse (a "Stalking Horse Objection"), shall be filed **no later than four (4) days after the filing of the Stalking Horse Notice at 4:00 p.m., (prevailing Eastern Time)**. If a timely Stalking Horse Objection is filed, the Debtors are authorized to seek an expedited hearing with respect to the Stalking Horse Objection on **not less than three (3) calendar days' notice**. Absent any timely Stalking Horse Objection, the Bid Protections set forth in the Stalking Horse Notice and the designation of the Stalking Horse are approved.

5. **IOI Deadline**. **July 1, 2024, at 4:00 p.m., (prevailing Eastern Time)**, is the deadline by which all IOIs for a Sale Transaction must be submitted in accordance with the terms of the Bidding Procedures. The Debtors may extend such deadline in accordance with the Bidding Procedures subject to the consent of the Required DIP Lenders and without any further motion in this Court; *provided* that the Debtors shall file a notice with the Court if the Debtors decide to extend the deadline by which IOIs for a Sale Transaction must be submitted; *provided further* that if no IOIs (individually or in the aggregate), in the good faith estimate of the Debtors and their advisors, with the consent of the Required DIP Lenders, are likely to lead to Bids that (individually or in the aggregate) meet the Minimum Bid Requirement as set forth in the Bidding Procedures and herein, then the Debtors shall terminate the sale process and cancel the Auction.

6. **Bid Deadline**. **July 22, 2024, at 5:00 p.m., (prevailing Eastern Time)**, is the deadline by which all Bids for a Sale Transaction (as well as the Good Faith Deposit and other documentation required under the Bidding Procedures for a Bid to be considered a Qualified Bid)

must be submitted in accordance with the terms of the Bidding Procedures. For the avoidance of doubt, a Bid or series of Bids shall not constitute a "Qualified Bid" unless such Bid(s) (a) meets the Minimum Bid Requirement and (b) contemplates that the aggregate cash sale proceeds of such Bid(s) shall be indefeasibly paid to the DIP Lenders immediately upon the closing of the Sale Transaction(s) subject to deductions for wind-down costs and expenses required to be paid pursuant to the DIP Orders and the restructuring support agreement (the "RSA") (which such deducted amounts shall be paid to the Debtors). The Debtors may extend such deadline in accordance with the Bidding Procedures subject to the consent of the Required DIP Lenders and without any further motion in this Court; *provided* that the Debtors shall file a notice with the Court if the Debtors decide, with the consent of the Required DIP Lenders, to extend the deadline by which Bids for a Sale Transaction must be submitted; *provided further* that if no Bids, individually or in the aggregate, meet the Minimum Bid Requirement as set forth in the Bidding Procedures and herein, then the Debtors shall terminate the sale process and cancel the Auction.

7. **Minimum Bid Requirement**. Each Bid for all or substantially all of the Debtors' Assets must consist of or include cash consideration to be paid at the closing of the transactions, which such amount would be payable to the DIP Lenders, contemplated by the Modified APA in an amount equal to at least an amount that would satisfy the Minimum Bid Requirement (as defined below); *provided*, *however*, that any Bid for less than substantially all of the Debtors' Assets will not be subject to any minimum bid amount threshold. Each Bid must set forth the total purchase price for such Bid. Notwithstanding the foregoing and as further described in the Bidding Procedures, if the aggregate cash consideration for the Debtors' Assets, whether consisting of one Bid or a series of Bids for some, all, or substantially all of the Debtors' Assets that would be

payable to the DIP Lenders does not meet or exceed $140,000,000 (the "Minimum Bid Requirement"), then the Debtors shall terminate the sale process and cancel the Auction.

8. **Credit Bidding**. Nothing in this Order shall impact or limit the rights of the Prepetition Agents, DIP Lenders, and DIP Agent, pursuant to section 363(k) of the Bankruptcy Code, to credit bid all or any portion of the Obligations, under (and as defined in) each of the Prepetition Credit Agreements and the DIP Credit Agreement, as applicable, to acquire the Assets (each dollar of such obligations that is credit bid shall be treated the same as a dollar of cash); *provided* that the DIP Lenders and the DIP Agent agree, solely in the event that the Company receives a Bid or series of Bids by the Bid Deadline that is not less than the Minimum Bid Requirement, then the DIP Lenders and the DIP Agent shall not credit bid for the Assets. Notwithstanding anything to the contrary herein, nothing in these Bidding Procedures shall be considered as a waiver of any other party in interest to object to, or seek to limit, the Credit Bid during the Challenge Period under section 363(k) of the Bankruptcy Code; *provided*, however, that this reservation of rights is not intended to, and does not, expand or limit the Challenge Period or the Challenge rights provided for under the DIP Order.

9. **Auction**. If at least two Qualified Bids (including any Bid by a Stalking Horse Bidder) are received by the Bid Deadline with regard to any particular Asset when combined with any other Qualified Bids that, in the aggregate, meet the Minimum Bid Requirement, the Debtors will conduct an auction no later than **July 24, 2024, at 10:00 a.m., (prevailing Eastern Time)** in person at the office of Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, IL 60654 and/or via remote video at the Debtors' election (the "Auction Date"). If held, the Auction proceedings will be transcribed. In the event the Debtors determine an Auction shall be held, the Debtors shall file notice on the docket and send written notice (email sufficient) of the date, time, and place of

the Auction to the Qualified Bidders no later than one (1) business day before such Auction, and will post notice of the date, time, and place of the Auction no later than one (1) business day before such Auction on their restructuring website, www.omniagentsolutions.com/Vyaire (the "Case Website"). Only the following parties, and their respective professionals and principals, and their respective representatives and counsel, may attend the Auction: (i) the Debtors, (ii) the United States Trustee, (iii) any Qualified Bidder, (iv) advisors to the DIP Lenders, (v) any creditors that request access to the Auction within 48 hours prior to the date of the Auction, and (vi) any other parties that the Debtors deem appropriate. Notwithstanding the foregoing, if no Qualified Bids, individually or in the aggregate, meet the Minimum Bid Requirement, then the Debtors shall terminate the sale process and cancel the Auction. For the avoidance of doubt, a Bid or series of Bids shall not constitute a "Qualified Bid" unless such Bid(s) (a) meets the Minimum Bid Requirement and (b) contemplates that the aggregate cash sale proceeds of such Bid(s) shall be indefeasibly paid to the DIP Lenders immediately upon the closing of the Sale Transaction(s) subject to deductions for wind-down costs and expenses required to be paid pursuant to the DIP Orders and the RSA (which such deducted amounts shall be paid to the Debtors).

10. Each Qualified Bidder participating in the Auction will be required to confirm in writing and on the record at the Auction that (a) it has not engaged in any collusion with respect to the bidding or sale of any of the Debtors' Assets or otherwise taken any other action to prevent a transparent and competitive auction process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder or Back-Up Bidder.

11. Following the Auction, the Debtors, with the consent of the Required DIP Lenders, will determine which Qualified Bid is the highest or otherwise best Bid(s) for the Assets or subsets thereof. No later than **July 24, 2024, at 4:00 p.m., (prevailing Eastern Time)**, or as soon as

reasonably practicable following the Auction, the Debtors will serve the Successful Bidder Notice, substantially in the form attached hereto as **Exhibit 4**, or notice of cancellation, as applicable, (a) by overnight delivery service upon the applicable contract or lease counterparties (the "Contract Counterparties") at the address set forth in the notice provision of the applicable contract (and their counsel, if known) and (b) by first class mail, email, or fax upon the Notice Parties (as defined below). The Debtors shall file the Successful Bidder Notice or notice of cancellation, as applicable, and the final form of proposed order approving the Sale Transaction.

12. **Good Faith Deposits**. The Debtors may open one or more escrow accounts to hold the Good Faith Deposits of all Qualified Bidders. The Debtors shall hold and return the Good Faith Deposits of Qualified Bidders in accordance with the Bidding Procedures. If a Successful Bidder (or if the Sale Transaction is to be consummated with the applicable Back-Up Bidder, then such Back-Up Bidder) fails to consummate the Sale Transaction because of a breach or failure to perform on the part of such Bidder, then the Debtors and their estates shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale Transaction is to be consummated with a Back-Up Bidder, then such Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. Any such forfeited Good Faith Deposit shall become property of the Debtors' estates, shall be considered proceeds of the Assets, and shall be subject to the liens of the Debtors' DIP Lenders and Prepetition Secured Parties (as defined in the DIP Order), in accordance with the lien priorities set forth in the DIP Orders.

13. **Sale Transaction Objections**. All general objections to the Sale Transaction, if any, must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, (c) be filed with the Court and served so as to be ***actually received*** by no later than **July 22, 2024, at 4:00 p.m., (prevailing Eastern Time)** on the following parties (collectively, the "Notice

Parties”): (i) the Debtors, 6125 North Riverwoods Boulevard, Mettawa, Illinois 60045; (ii) proposed co-counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, (Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com) and Chris Ceresa (chris.ceresa@kirkland.com)); and Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, (Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com), Yusuf U. Salloum (yusuf.salloum@kirkland.com), and Rebecca Marston (rebecca.marston@kirkland.com)); and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, (Attn: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Stacy L. Newman (snewman@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com), and Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, (Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com)); (iii) co-counsel to the DIP Lenders, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Jason Zachary Goldstein (jgoldstein@gibsondunn.com), Joshua Brody (jbrody@gibsondunn.com), and Kevin Liang (kliang@gibsondunn.com)); and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 (Attn: Laura Davis Jones (ljones@pszjlaw.com)); (iv) the Office of the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov); and (v) any other party that has requested notice pursuant to Bankruptcy Rule 2002.

14. Following service of the Successful Bidder Notice, parties may object to the conduct of the Auction, the particular terms of any proposed Sale Transaction in a Successful Bid, the identity of the Successful Bidder(s) or Backup Bidder(s), or adequate assurance of future

performance of the Successful Bidder(s) (each such objection, a "Post-Auction Objection"). Any Post-Auction Objection must (a) be in writing, (b) state, with specificity, the legal and factual bases thereof, and (c) be filed with the Court and served so as to be ***actually received*** by no later than **July 25, 2024, at 4:00 p.m., (prevailing Eastern Time)** on the Notice Parties.

I. Auction, Bidding Procedures, and Related Relief.

15. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are incorporated herein and are hereby approved in their entirety. The Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any Sale Transaction. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures and the Debtors and their professionals shall direct and preside over the Auction.

16. **Noticing Procedures**. The noticing procedures as set forth in this Order and the Motion, including the Sale Notice attached hereto as **Exhibit 2**, are hereby approved. Within two (2) business days after entry of this Order, or as soon as reasonably practicable thereafter, the Debtors shall serve the Sale Notice by first-class mail upon the parties that received notice of the Motion. On or about the same date, the Debtors will publish the Sale Notice on the Debtors' Case Website and will also publish a notice substantially similar to the Sale Notice in *The New York Times* (national edition) (the "Publication Notice"). Service of the Sale Notice and publication thereof in the manner described in this Order constitutes good and sufficient notice of the Auction and the Sale Hearing. No other or further notice is required.

Cancellation of Auction. If only one Qualified Bid that meets the Minimum Bid Requirement (including any Stalking Horse Bid) or no Qualified Bid that meets the Minimum Bid Requirement (or Bid that may be remedied into a Qualified Bid pursuant to the Bidding Procedures and is actually remedied into a Qualified Bid that meets the Minimum Bid Requirement prior to the Auction) is received by the Bid Deadline, the Debtors shall (a) notify the Court in writing that the Auction is cancelled, (b) file a notice of cancellation of the Auction, and (c) if applicable, seek authority at the Sale Hearing to consummate the Sale Transaction with the Qualified Bidder (including any Stalking Horse Bidder). The Debtors may also cancel the Auction if they determine, with the written consent of the Required DIP Lenders, to implement the Sale Transaction through a chapter 11 plan of reorganization in advance of the Bid Deadline. For the avoidance of doubt and notwithstanding anything else herein or in the Bidding Procedures, if there are no Qualified Bids that, individually or in the aggregate, meet the Minimum Bid Requirement, the Debtors shall terminate the sale process and cancel the Auction. For the avoidance of doubt, a Bid or series of Bids shall not constitute a "Qualified Bid" unless such Bid(s) (a) meets the Minimum Bid Requirement and (b) contemplates that the aggregate cash sale proceeds of such Bid(s) shall be indefeasibly paid to the DIP Lenders immediately upon the closing of the Sale Transaction(s) subject to deductions for wind-down costs and expenses required to be paid pursuant to the DIP Orders and the RSA (which such deducted amounts shall be paid to the Debtors).

17. **<u>Sale Hearing</u>**. The Sale Hearing shall be held in the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, 6th Floor, Courtroom No. [⊠], Wilmington, Delaware 19801, on **July 29, 2024, at 10:00 a.m., (prevailing Eastern Time)** or such other date and time that the Court may later direct; *provided* that the Sale Hearing may be adjourned, from time to time, in accordance with the Bidding Procedures without further notice to creditors or parties in interest other than by filing a notice on the Court's docket or indicating such adjournment in an agenda filed on the Court's docket.

II. Approval of the Assumption and Assignment Procedures.

18. The assumption and assignment procedures as set forth in this Order and the Motion, including the Potentially Assumed and Assigned Contracts Notice and Successful Bidder Notice attached hereto as **Exhibit 3** and **Exhibit 4**, are hereby approved. No later than two (2) business days (or as soon as reasonably practicable thereafter) after the entry of this Order, the Debtors shall file an Potentially Assumed and Assigned Contracts Notice, substantially in the form attached hereto as **Exhibit 3**, and serve such notice (a) by overnight delivery service upon the applicable Contract Counterparties at the address set forth in the notice provision of the applicable contract or lease (and their counsel, if known) and (b) by first class mail, email, or fax upon the Notice Parties. The Potentially Assumed and Assigned Contracts Notice shall notify the Contract Counterparties that the applicable executory contracts and unexpired leases are subject to potential assumption and assignment and of the Debtors' proposed cure amounts relating to such executory contracts and unexpired leases.

19. Following the Bid Deadline, upon request by any Contract Counterparty, the Debtors will send such party evidence by first class mail and email (if known), that any Qualified Bidder that included such contract or lease in its Bid has the ability to perform thereunder and otherwise complies with the requirements of adequate assurance of future performance under section 365(b)(1) of the Bankruptcy Code on a confidential basis for all nonpublic information.

20. A Contract Counterparty objecting to a proposed cure amount or assumption and assignment on any basis (except objections solely related to adequate assurance of future performance by Successful Bidder) must file a written objection with the Court by fourteen (14) days after serving the applicable Potentially Assumed and Assigned Contracts Notice, and serve such objection on the Notice Parties (such deadline, the "Assumption and Assignment Objection

Deadline”). The Debtors shall file on the docket in these chapter 11 cases copies of the Successful Bidder Notice or notice of cancellation, as applicable, and the final form of proposed order approving the Sale Transaction as agreed upon between the Debtors and the Successful Bidder.

21. In the event that the Debtors later identify any Contract Counterparty which was not served with the Potentially Assumed and Assigned Contracts Notice, the Debtors may subsequently serve such Contract Counterparty with a Potentially Assumed and Assigned Contract substantially in the form attached hereto (each, a “Supplemental Potentially Assumed and Assigned Contracts Notice”), and the Assumption and Assignment Procedures will nevertheless apply to such Contract Counterparty; *provided* that the Assumption and Assignment Objection Deadline with respect to a Contract Counterparty listed on a Supplemental Potentially Assumed and Assigned Contracts Notice shall be fourteen (14) days following the date of service of a Supplemental Potentially Assumed and Assigned Contracts Notice.

22. If an objection to the Debtors’ proposed cure amounts is timely filed and not withdrawn or resolved by the Sale Hearing, such cure objections will not be heard at the Sale Hearing. Any dispute regarding the cure amounts will either be resolved consensually, if possible, or, if the parties are unable to resolve, at a later date as set by the Court. The Debtors shall file and serve a notice for a hearing for the Court to consider the unresolved cure objection(s) at the next scheduled omnibus hearing which shall be set fourteen (14) days after the Sale Hearing, subject to Court availability, unless the Debtors and the objecting parties agree to a different time and subject to the Court’s schedule. The Debtors reserve the right to reject, and not assume and assign, any contract depending on the ultimate resolution of any cure amount in dispute; *provided* that, in the case of an unexpired lease of non-residential real property, such determination shall be prior to the expiration of the applicable deadline to assume or reject unexpired leases under section 365(d)(4)

of the Bankruptcy Code. For the avoidance of doubt, if the Successful Bidder determines, in its sole discretion, that the cure dispute is too material, the Successful Bidder may delay the assignment of such contract or lease until the resolution of the cure amount; *provided* that, in such case, if any, the Successful Bidder shall be responsible for any and all costs arising under such contract or lease during the pendency of the dispute.

23. If no objection to the assumption of any contract or lease is timely filed or if an objection is filed and resolved, each contract or lease to be assumed and assigned to the Successful Bidder shall be assumed as of the effective date of the assumption and assignment of the contract or lease (the "Assignment Date") set forth in the applicable Successful Bidder Notice or such other date as the Debtors and the Contract Counterparty agree and the proposed cure amount shall be binding on all Contract Counterparties and the Contract Counterparties will be forever barred from asserting any other claims related to the contract or lease against the Debtors. Upon the Assignment Date, the Successful Bidder shall pay all applicable cure amounts.

24. As soon as reasonably practicable after the closing of a Sale Transaction, the Debtors will file with the Court, serve on the applicable Contract Counterparties and cause to be published on the Case Website, a notice containing the list of contracts and leases that the Debtors assumed and assigned pursuant to any asset purchase agreement with a Successful Bidder.

25. The inclusion of a contract on the Successful Bidder Notice shall not: (a) obligate the Debtors to assume or assign any contracts or leases listed thereon; or (b) constitute any admission or agreement of the Debtors that such contract or lease is an executory contract. Only those contracts and leases that are included on a schedule of assumed and acquired contracts and leases attached to a final asset purchase agreement will be assumed and assigned, and shall only be assumed and assigned upon the Assignment Date.

26. In the event the Auction is cancelled pursuant to the Bidding Procedures, the Debtors may continue to utilize the assumption and assignment procedures as set forth in this Order and the Motion to further assess the potential assumption, assumption and assignment, or rejection of any executory contracts and unexpired leases and to determine any applicable cure amounts.

III. Miscellaneous.

27. The failure to include or reference a particular provision of the Bidding Procedures, the RSA, and the DIP Orders, specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

28. All parties in interest reserve any right they may have to object to, or otherwise contest, any proposed sale of the Debtors' assets requiring Court approval (and the appropriate allocation of sale proceeds set forth in any order).

29. In the event of any inconsistencies between this Order and the Motion and/or the Bidding Procedures, this Order shall govern in all respects.

30. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a), and such notice satisfies the applicable Local Rules.

31. To the extent the dates and deadlines herein are modified pursuant to the Bidding Procedures and such modification is inconsistent with the requirements of Local Rule 9006-1, such requirements shall be deemed satisfied.

32. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to any interim and final orders, as applicable, approving the use of such cash collateral and/or the Debtors' entry into any

postpetition financing facilities or credit agreements, and any budgets in connection therewith governing any such postpetition financing and/or use of cash collateral (each such order, a "DIP Order"). To the extent there is any inconsistency between the terms of the DIP Orders and any action taken or proposed to be taken hereunder, the terms of the DIP Orders shall control. Nothing in the Motion or this Order waives or modifies the requirements of the RSA, including without limitation, any milestone or consent and consultation rights contained in the RSA or DIP Documents (as defined in the DIP Orders).

33. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

35. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order. This Court has the authority to fashion appropriate relief, on an emergency basis or otherwise, for any violations of this Order or the Bidding Procedures.

EXHIBIT 1

Bidding Procedures

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	(Joint Administration Requested)

BIDDING PROCEDURES

The debtors and debtors in possession (collectively, the "Debtors") in the above-captioned chapter 11 cases (collectively, the "Chapter 11 Cases") will use the procedures set forth herein (the "Bidding Procedures") in connection with a sale or disposition of some, all, or substantially all of the Debtors' assets (the "Assets") in one or more sale transactions (each, a "Sale Transaction"), which transaction(s) may be effectuated through either a chapter 11 plan of reorganization or a sale pursuant to section 363 of the Bankruptcy Code, and which transactions may contemplate the sale of one or more of:

- any and all assets associated with the Debtors' Ventilation business (the "Ventilation Assets");
- any and all assets associated with the Debtors' Respiratory Diagnostics business (the "Respiratory Diagnostics Assets");
- a portion of any and all assets, including, but not limited to, any Ventilation Assets, Respiratory Diagnostic Assets, or a combination thereof, up to all of the Debtors' assets (the "Entire Business Assets")

On June 9, 2024, the Debtors filed with the United States Bankruptcy Court for the District of Delaware (the "Court") the *Motion of the Debtors for Entry of an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* [Docket No. [☒]] (the "Motion"). By the Motion, the Debtors sought, among other things, entry of an order

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

approving Bidding Procedures[2] for soliciting bids for, conducting an auction (the "Auction") of, and consummating one or more Sale Transactions of, the Assets, as further described herein.

On [⊠], 2024, the Court entered an *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* [Docket No. [⊠]] (the "Bidding Procedures Order").

Assets to Be Sold "Free and Clear"

Except as otherwise provided in a Modified APA (as defined below) submitted by a Successful Bidder (as defined below), all of the Debtors' right, title, and interest in and to the Assets subject thereto shall be sold, subject to the Minimum Bid Requirement described below, free and clear of any pledges, liens, security interests, encumbrances, claims, charges, options, and interests thereon (collectively, the "Interests"), subject only to the Assumed Liabilities and Permitted Encumbrances (each as defined in the Modified APA of the applicable Successful Bidder), to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Interests to attach to the net proceeds of the sale(s) of the Assets with the same validity, force, effect, and priority as such Interests applied against the Assets as of the date the Debtors' commenced these Chapter 11 Cases, subject to any rights, claims, and defenses of the Debtors.

A party may participate in the bidding process by submitting a bid for **(a) all or substantially all of the Assets and/or (b) one or more, or any combination of, Assets of one or more Debtors**, as that party may desire.

[2] All capitalized terms not herein defined shall have the meanings ascribed to them in the Motion and/or the Bidding Procedures Order (as defined below), as applicable.

Submission of Bid

Any interested bidder should contact, as soon as practicable:

PJT Partners LP
280 Park Avenue
New York, NY 10017

Attn:

Michael Schlappig	Jamie Baird	Dylan Friesner
michael.schlappig@pjtpartners.com	jamie.baird@pjtpartners.com	dylan.friesner@pjtpartners.com
(tel.) +1 (212) 364-2783	(tel.) +1 (212) 364-5300	(tel.) +1 (260) 417-0405

Key Dates and Deadlines

The key dates and deadlines for the sale process are as follows:

Deadline	Item
July 1, 2024, at 4:00 p.m., (prevailing Eastern Time)	Deadline for submission of a non-binding Indication of Interest
July 1, 2024	Stalking Horse Bidder Designation (as defined below) (if the Debtors so choose to designate one or more Stalking Horse Bidders (as defined below)
July 1, 2024	Bidding Procedures Hearing (subject to the court's availability)
No later than four (4) days after the filing of the Stalking Horse Notice (as defined below) at 4:00 p.m., (prevailing Eastern Time)	Stalking Horse Objection Deadline
July 3, 2024 (or as soon as reasonably practicable thereafter)	Deadline for the Debtors to file and serve the Sale Notice[3]
July 3, 2024 (or as soon as reasonably practicable thereafter)	Deadline for the Debtors to file and serve the Potentially Assumed and Assigned Contract Notice

[3] "Sale Notice" shall mean the notice the Debtors will file with the Bankruptcy Court and cause to be published on the Debtors' Case Website setting forth (A) a description of the Assets available for sale in accordance with these Bidding Procedures; (B) the date, time, and location of the Auction and proposed Sale Hearing; (C) the Sale Transaction Objection Deadline and the procedures for filing such objections; and, if applicable, (D) a summary of the material terms of any Stalking Horse APA, including the terms and conditions of any Bid Protections to be provided thereunder, if applicable.

Deadline	Item
Fourteen (14) days following service of any notice of proposed assumption and assignment.	Assumption and Assignment Objection Deadline
July 5, 2024 (or as soon as reasonably practicable thereafter)	Deadline for the Debtors to publish the Publication Notice[4]
July 22, 2024, at 4:00 p.m., (prevailing Eastern Time)	Sale Transaction Objection Deadline
July 22, 2024, at 5:00 p.m., (prevailing Eastern Time)	Bid Deadline
July 24, 2024, at 10:00 a.m., (prevailing Eastern Time)	Auction Date (if any)
July 24, 2024 (or as soon as reasonably practicable)	Deadline for the Debtors to file with the Bankruptcy Court the Successful Bidder Notice (as defined below), including the proposed Sale Order(s) (as defined below), the final asset purchase agreement, and any relevant schedules thereto
July 25, 2024, at 4:00 p.m., (prevailing Eastern Time)	Post-Auction Objection Deadline
July 26, 2024, at 4:00 p.m., (prevailing Eastern Time)	Sale Transaction Reply Deadline
July 29, 2024, at 10:00 a.m., (prevailing Eastern Time) (subject to the Court's availability)	Sale Hearing (as defined below)
August 19, 2024	Deadline to consummate Sale Transaction

The Debtors, with the consent of the Required DIP Lenders, may adjourn any of the key dates or deadlines herein without further order of the Bankruptcy Court; *provided* that the Debtors shall promptly file a notice with the Bankruptcy Court of any changes to the key dates or deadlines herein. Any such adjournment shall not itself modify any of the Milestones under (and as defined in) the terms of the proposed debtor-in-possession financing (the "DIP Facility") and the restructuring support agreement (the "RSA").

4 "Publication Notice" shall mean a notice which the Debtors shall cause to be published in *The New York Times* (national edition) which shall include the information contained in the Sale Notice.

Consultation Parties

Throughout the sale process, the Debtors and their advisors will regularly and timely consult with the following parties (collectively, the "Consultation Parties"): (i) the advisors to the DIP Lenders, DIP Agent, and the Prepetition Agents (each as defined below), (ii) the advisors to the official committee of unsecured creditors appointed in these Chapter 11 Cases (the "Committee"), and (iii) any other statutory committee appointed under 11 U.S.C. § 1102 in the Chapter 11 Cases; *provided*, *however*, that during any period in which a Consultation Party has submitted a Qualified Bid and has become a Qualified Bidder, such Consultation Party shall no longer be considered a Consultation Party under these Bidding Procedures solely for so long as such Consultation Party's Bid remains a Qualified Bid and is not disqualified or withdrawn. The DIP Lenders and the DIP Agent agree solely in the event that the Debtors receive a Bid or series of Bids by the Bid Deadline that is not less than the Minimum Bid Requirement, then the DIP Lenders and the DIP Agent shall not submit a Bid, including a credit bid, for the Assets; *provided* that if the Minimum Bid Requirement is not satisfied and the Debtors terminate the sale process and cancel the Auction, the DIP Lenders and the DIP Agent may thereafter elect to credit bid for the Assets. For the avoidance of doubt, unless approved by the Bankruptcy Court, no amendment or other modification to these Bidding Procedures shall be made by the Debtors without the consent of the Required DIP Lenders (as defined below).

Qualifications to Submit Bids and Participate in Auction

A. Diligence Materials

To participate in the bidding process for a Sale Transaction and to receive access to due diligence materials (the "Diligence Materials"), a party must submit to the Debtors (i) an executed confidentiality agreement, which must be based on the form confidentiality agreement supplied by the Debtors in a designated data room and in form and substance satisfactory to the Debtors and (ii) reasonable evidence demonstrating the party's financial capability to consummate a Sale Transaction with respect to those Assets in which the party is preliminarily interested as determined by the Debtors in their reasonable business judgment. No party will be permitted to conduct any due diligence without entering into a confidentiality agreement described in clause (i).

A party who qualifies for access to Diligence Materials shall be a "Preliminary Interested Investor." The Debtors will afford any Preliminary Interested Investor the time and opportunity to conduct due diligence within the deadlines set forth in these Bidding Procedures. Until the Bid Deadline (as defined below), in addition to granting access to the Diligence Materials, the Debtors will provide Preliminary Interested Investors with due diligence access and additional information, as may be requested by a Preliminary Interested Investor, to the extent that the Debtors and the Required DIP Lenders determine that such requests are reasonable and appropriate under the circumstances. All due diligence requests shall be directed to PJT Partners LP ("PJT") (Attn: Dylan Friesner (dylan.friesner@pjtpartners.com)). The Debtors, with the assistance of PJT, will coordinate all reasonable requests for additional information and due diligence access from Preliminary Interested Investors.

The Debtors reserve the right to withhold or modify any Diligence Materials that the Debtors, with the consent of the Required DIP Lenders, determine in good faith are business sensitive or otherwise not appropriate for disclosure to a Preliminary Interested Investor who is a competitor, vendor, or customer of the Debtors or is directly or indirectly affiliated with any competitor, vendor, or customer of the Debtors. Neither the Debtors nor their representatives shall be obligated to furnish information of any kind whatsoever to any party that is not determined to be a Preliminary Interested Investor.

B. Due Diligence from Bidders

Each Preliminary Interested Investor and Bidder (as defined below) shall comply with all reasonable requests with respect to information and due diligence access by the Debtors or their advisors regarding such Preliminary Interested Investor or Bidder, as applicable, and its contemplated Sale Transaction. Failure by a potential bidder (including any Qualified Bidder (as defined below)) to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors to determine that such Bidder is no longer a Qualified Bidder or that a bid made by such Bidder is not a Qualified Bid (as defined below).

C. Indication of Interest Deadline

In order to be eligible to submit a Bid, Acceptable Bidders will first be required to submit a non-binding Indication of Interest on or before **July 1, 2024, at 4:00 p.m., (prevailing Eastern Time)** (as may be extended in accordance with the terms of the Bidding Procedures Order and these Bidding Procedures, the "IOI Deadline"), to the Debtors and their proposed investment banker, PJT Partners LP, 280 Park Avenue, New York, New York 10017, Attn: Michael Schlappig (schlappig@pjtpartners.com), Jaimie Baird (baird@pjtpartners.com), and Dylan Friesner (friesner@pjtpartners.com); *provided*, that, with the consent of the Required DIP Lenders, the Debtors may extend the IOI Deadline or waive the requirement of an Indication of Interest for one or more Acceptable Bidders upon request, without further order of the Court ; *provided* that the Debtors shall file a notice with the Court if the Debtors decide, subject to the consent of the Required DIP Lenders, to extend the deadline by which IOIs for a Sale Transaction must be submitted for all parties; *provided further* that if the Debtors do not receive any indications of interests by the IOI deadline that (individually or in the aggregate), in the good faith estimate of the Debtors and their advisors, and with the consent of the Required DIP Lenders, are reasonably likely to lead to Bids that (individually or in the aggregate) meets the Minimum Bid Requirement, then the Debtors shall terminate the sale process and cancel the Auction. If the Debtors extend the IOI Deadline as to all parties, the Debtors will promptly notify all Acceptable Bidders and file a notice of such extension on the Court's docket. The Debtors will then notify each Acceptable Bidder whether its Indication of Interest satisfies the requirements set forth in the Motion and that such bidder is qualified to submit a Bid that reflects such Indication of Interest.

D. Bid Deadline and Auction Qualification Process

To be eligible to participate in the Auction, a party must be a Preliminary Interested Investor and must submit a written offer for a Sale Transaction of some or all of the Debtors' Assets (each, a "Bid" and the Preliminary Interested Investor that submits a Bid, a "Bidder") that must (i) be determined by the Debtors to satisfy each of the conditions set forth in this section and (ii) be actually received by (a) counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, (Attn.: Joshua A. Sussberg, P.C.

(joshua.sussberg@kirkland.com), and Chris Ceresa (chris.ceresa@kirkland.com)); and Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, (Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com) and Yusuf U. Salloum (yusuf.salloum@kirkland.com)); and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, (Attn: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Stacy L. Newman (snewman@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com)), and Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, (Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com)) **on or before July 22, 2024, at 5:00 p.m., (prevailing Eastern Time)** (as may be extended in accordance with the terms of this Order and the Bidding Procedures, the "Bid Deadline").

A Bid will not be considered qualified for the Auction if such Bid does not satisfy each of the following conditions:

1. Executed Agreement: Each Bid must include (a) an offer letter, signed by an authorized representative of the Bidder, pursuant to which the Bidder offers to consummate the Sale Transaction contemplated by such Bid on the terms set forth in the Modified APA (as defined below) together with (b) an asset purchase agreement, which may be based on the form asset purchase agreement supplied by the Debtors in a designated data room (the "Form APA") or, if applicable, the Stalking Horse APA (as defined below), signed by an authorized representative of the Bidder, pursuant to which the Bidder agrees to consummate such Sale Transaction for the Assets referenced therein (together with all ancillary documents and schedules contemplated thereby, a "Modified APA"). For the avoidance of doubt, a Bidder shall not be required to base a Modified APA on the Form APA or, if applicable, the Stalking Horse APA so long as such Bidder's Bid contains all material terms of such Bid. Each Modified APA must provide a commitment to close the Sale Transaction contemplated by such Modified APA within a time frame acceptable to the Debtors after all closing conditions set forth in such Modified APA are met (other than those which are to be satisfied at the closing of the transactions contemplated by such Modified APA).

2. Good Faith Deposit: Each Bid must be accompanied by a cash deposit in the amount of ten percent (10%) of the cash purchase price contemplated in such Bid, before any adjustments to the purchase price, to an escrow account to be identified and established by the Debtors (the "Good Faith Deposit"). To the extent a Qualified Bid is modified before, during, or after the Auction in any manner that increases the cash purchase price contemplated by such Qualified Bid, the Debtors reserve the right to require that such Qualified Bidder increase its Good Faith Deposit so that it equals ten percent (10%) of the increased purchase price. In the event that any Bid includes non-cash consideration, the Debtors reserve the right to require a Good Faith Deposit of cash in the amount of ten percent (10%) of the value of the total consideration contemplated by such Bid, as determined in the Debtors' discretion.

3. Good Faith Offer: Each Bid must represent an irrevocable, binding, good faith, and bona fide offer to purchase some or all of the Assets identified in such Bid if such Bid is selected as the Successful Bid or the Back-Up Bid (each as defined herein).

4. Minimum Bid Requirement: Each Bid for all or substantially all of the Debtors' Assets must consist of or include cash consideration to be paid at the closing of the transactions,

which such amount will be payable to the DIP Lenders, contemplated by the Modified APA in an amount equal to at least an amount that would satisfy the Minimum Bid Requirement (as defined below); *provided*, *however*, that any Bid for less than substantially all of the Debtors' Assets will not be subject to any minimum Bid amount threshold. Each Bid must set forth the total purchase price for such Bid.

Notwithstanding the foregoing, if the aggregate cash consideration for the Debtors' Assets, whether consisting of one Bid or a series of Bids for either some, all, or substantially all of the Debtors' Assets that would be payable to the DIP Lenders does not meet or exceed $140,000,000 (the "Minimum Bid Requirement"), then the Debtors shall terminate the sale process and cancel the Auction.

5. Joint Bids: The Debtors, with the consent of the Required DIP Lenders, will be authorized to approve joint Bids in their reasonable discretion on a case-by-case basis.

6. Purchased Assets and Assumed Liabilities: Each Bid must clearly provide which of the Assets the Bidder seeks to acquire, and which of the Assumed Liabilities (as defined in the Modified APA) the Bidder agrees to assume. With respect to any bids for less than all or substantially all of the Debtors' Assets, the Debtors reserve the right to request an allocation of the purchase price among the Assets the Bidder seeks to acquire and the Assumed Liabilities the Bidder agrees to assume.

7. Designation of Assigned Contracts and Leases: Subject to the terms of the Modified APA, each Bid must identify any and all executory contracts and unexpired leases of the Debtors that the Bidder wishes to be assumed and assigned to the Bidder at the closing of the Sale Transaction contemplated by such Bid.

8. Corporate Authority: Each Bid must include written evidence reasonably acceptable to the Debtors demonstrating appropriate corporate or similar governance authorization of the Bidder to consummate the proposed Sale Transaction; provided that, if the Bidder is an entity specially formed for the purpose of effectuating the Sale Transaction, then the Bidder must furnish written evidence reasonably acceptable to the Debtors of the approval of the Sale Transaction by the equity holder(s) of such Bidder and any other governing body of the Bidder that is required to approve the Sale Transaction.

9. Disclosure of Identity of Bidder: Each Bid must fully disclose the identity of each entity (including any equity owners, sponsors, or co-investors) that will be bidding for or purchasing the Assets or otherwise directly or indirectly participating in connection with such Bid.

10. Proof of Financial Ability to Perform: Each Bid must include written evidence that the Debtors conclude demonstrates that the Bidder has the necessary financial ability to (i) timely close the Sale Transaction contemplated by such Bid within a time frame acceptable to the Debtors after all closing conditions set forth in the Modified APA are met and (ii) provide adequate assurance of future performance under all contracts to be assumed and assigned in such Sale Transaction. Such information must include, inter alia, the following:

a. Contact names and numbers for verification of financing sources, if any;

b. Written evidence of the Bidder's internal financial resources and ability to finance its Bid with cash on hand, available lines of credit, uncalled capital commitments or otherwise available funds (including through the posting of an irrevocable letter of credit or customary debt or equity financing commitment letters that comply with the requirements of this sub paragraph 10.b or sub-paragraph 10.c below, as applicable, in each case, from reputable financial institutions) in an aggregate amount sufficient to pay the cash purchase price contemplated by such Bid, to pay for cure costs for contracts to be assumed and assigned in the Sale Transaction, and to satisfy all other obligations of the Bidder pursuant to the Modified APA ("Bidder's Obligations"); provided that, if the Bidder is an entity that is specially formed for the purpose of effectuating the Sale Transaction or if the Bidder intends to raise any equity financing to fund any portion of Bidder's Obligations, then the Bidder must furnish to the Debtors a fully executed and effective equity commitment letter or guarantee ("Bidder Support") (which Bidder Support shall remain outstanding until at least sixty (60) days after the date of entry of the Sale Order (or the "outside date" in the Modified APA, if later), subject to a potential further extension as set forth herein or therein) from its equity holders or other affiliated entities with respect to the portion of Bidder's Obligations that are not to be paid with cash on hand (which Bidder Support may not be subject to any conditions other than the satisfaction of the conditions set forth in the Modified APA and shall include third party beneficiary language in favor of the Debtors entitling the Debtors to enforce such Bidder Support directly against the counterparties) and provide written evidence that its equity holders or other affiliated entities providing the Bidder Support have the resources and ability to finance such portion of the Bidder's Obligations;

c. Without limiting the requirements of sub-paragraph 10.b above, if the Bidder intends to raise any debt financing to fund any portion of the Bidder's Obligations, the Bid must include fully executed and effective debt financing commitment letter(s), which letter(s) shall (i) not be subject to any internal approvals, credit committee approvals or diligence conditions, (ii) be in customary form, and (iii) remain outstanding until sixty (60) days after the date of entry of the Sale Order (subject to a potential further extension as set forth herein); and

d. Any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors demonstrating that such Bidder (or, if the Bidder is an entity formed for the purpose of making a Bid, its Bidder Support) has the ability to close the Sale Transaction on the terms set forth in the Modified APA.

11. Adherence to Bidding Procedures: By submitting its Bid, each Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.

12. Regulatory and Third-Party Approvals: Each Bid must set forth each government, licensing, regulatory, and other third-party approval or filing required to be obtained or made by the Bidder or its Bidder Support, and each waiting period required to have expired or terminated, for the Bidder to consummate the Sale Transaction, and the time period within which the Bidder expects to receive such approvals, to make such filings or such waiting periods to expire or terminate (and in the case that receipt of any such approval, the making of any such filing, or the expiration or termination of any such waiting period is expected to take more than thirty (30) days following execution and delivery of the Modified APA, those actions the Bidder will take to ensure

receipt of such approval(s), the making of such filing(s) or the expiration or termination of such waiting period(s) as promptly as possible).

13. Contact Information and Affiliates: Each Bid must provide the contact information for the Bidder and full disclosure of any affiliates of the Bidder.

14. Contingencies and Other Provisions: Each Bid shall not contain any escrow arrangements, indemnities, or adjustments to the purchase price. Without limiting the immediately preceding sentence, each Bid shall not include any conditions or contingencies relating to financing (including, for the avoidance of doubt, any conditionality, or limitations on specific performance, relating to any financing contemplated by sub-paragraph 10.c above), internal approvals, or the absence of any material adverse effect.

15. Contingencies Regarding Due Diligence: Each Bid shall not include any conditions or contingencies relating to due diligence.

16. Acknowledgement of Independent Review: Each Bid must include a written acknowledgement and representation that the Bidder: (i) has had an opportunity to conduct any and all due diligence prior to making its Bid; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the Assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties, express, implied, statutory or otherwise, regarding the Assets, the financial performance of the Assets or the physical condition of the Assets, or the accuracy or completeness of any information provided in connection therewith or the Auction, except as expressly stated in these Bidding Procedures or the Modified APA.

17. Irrevocable: Each Bid must be irrevocable unless and until the Debtors accept a higher Bid and such Bidder is not selected as the Back Up Bidder (as defined below); provided that if a Bid is accepted as the Successful Bid or the Back-Up Bid, such Bid shall continue to remain irrevocable, subject to the terms and conditions of these Bidding Procedures.

18. Compliance with Diligence Requests: The Bidder submitting the Bid must have complied with reasonable requests for additional information and due diligence access from the Debtors to the satisfaction of the Debtors.

19. Back-Up Bid: Each Bid shall provide that the Bidder will serve as back-up bidder if the Bidder's Bid is selected as the next highest and best bid after the Successful Bid and will remain irrevocable in accordance with the terms and conditions of these Bidding Procedures.

20. Consent to Jurisdiction: Each Bidder and its Bidder Support (if applicable) must (i) consent to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, these Chapter 11 Cases, the Bidding Procedures, the Auction, any Sale Transaction, any Modified APA, or the construction and enforcement of documents relating to any Sale Transaction, (ii) waive any right to a jury trial in connection with any disputes relating to the Debtors, these Chapter 11 Cases, the Bidding Procedures, the Auction, any Sale Transaction, any Modified APA, or the construction and enforcement of documents relating to any Sale Transaction, and (iii) consent to the entry of a final order or judgment in any way related to the Debtors, these Chapter 11 Cases, the Bidding

Procedures, the Auction, any Modified APA, any Sale Transaction, or the construction and enforcement of documents relating to any Sale Transaction if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

21. Disclaimer of Break-Up Fees and Expense Reimbursement: Except as otherwise provided below with respect to any potential Stalking Horse Bidder (as defined below), each Bid must not, and must acknowledge that such Bid shall not, entitle the Bidder to any break-up fee, termination fee or similar type of payment, compensation or expense reimbursement (including legal fees) and, by submitting the Bid, the Bidder waives the right to pursue any administrative expense claim (including under a theory of substantial contribution) under 11 U.S.C. § 503 related in any way to the submission of its Bid or participation in any Auction.

22. Acknowledgement of Remedies: Each Bid shall include a written acknowledgement from the Bidder that, in the event of the Bidders' breach of, or failure to perform under, the Modified APA, the Debtors and their estates shall be entitled to retain the Good Faith Deposit as part of the damages resulting to the Debtors and their estates for such breach or failure to perform, and pursue all other available legal and equitable remedies.

23. Acknowledgement of No Collusion: Each Bid shall include a written acknowledgement from the Bidder that it has not (i) engaged in any collusion with respect to the bidding or sale of any of the Assets described herein or (ii) taken any other action to prevent a transparent and competitive auction process.

A Bid received from a Bidder before the Bid Deadline that meets the above requirements shall constitute a "Qualified Bid," as determined by the Debtors, in their reasonable business judgment, and such Bidder shall constitute a "Qualified Bidder;" provided that, if the Debtors receive a Bid that is not a Qualified Bid, the Debtors may provide (but shall not be obligated to provide), subject to the consent of the Required DIP Lenders, the Bidder with the opportunity to remedy any deficiencies prior to the Auction; provided, further, that if any Qualified Bidder fails to comply with reasonable requests for additional information and due diligence access from the Debtors to the satisfaction of the Debtors, and the Required DIP Lenders, then the Debtors may disqualify any such Qualified Bidder and Qualified Bid, subject to the consent of the Required DIP Lenders, and such Bidder shall not be entitled to attend or participate in the Auction. The Debtors may, subject to the consent of the Required DIP Lenders, accept a single Qualified Bid or multiple Bids for non-overlapping material portions of the Assets such that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders will be treated as a single Qualified Bidder for purposes of selecting the Successful Bid; provided that the Debtors also reserve the right, subject to the consent of the Required DIP Lenders, to conduct more than one sale process or Auction with respect to non-overlapping material portions of the Assets). The Debtors shall determine whether (i) a Bid is or is not a Qualified Bid or (ii) any Qualified Bid or Qualified Bidder should be disqualified. The Debtors shall have the right, subject to the consent of the Required DIP Lenders, to deem a Bid a Qualified Bid even if such Bid does not conform to one or more of the requirements above; provided that any Bid for all or substantially all of the Debtors' Assets that does not include cash consideration of at least $[⌧] may only be deemed a Qualified Bid with the prior written consent of the Required DIP Lenders. Any Bidder that does not submit a Bid before the Bid Deadline will not be permitted to submit a Bid after the Bid Deadline or to participate in the Auction unless otherwise agreed by the Required DIP Lenders.

For the avoidance of doubt, a Bid or series of Bids shall not constitute a "Qualified Bid" unless such Bid(s) (a) meets the Minimum Bid Requirement and (b) contemplates that the aggregate cash sale proceeds of such Bid(s) shall be indefeasibly paid to the DIP Lenders immediately upon the closing of the Sale Transaction(s) subject to deductions for wind-down costs and expenses required to be paid pursuant to the DIP Orders and the RSA (which such deducted amounts shall be paid to the Debtors).

Credit Bidding

The agent under that certain Senior Secured Super-Priority Term Loan Debtor-In-Possession Credit Agreement to be entered into by and among Vyaire Medical, Inc., Vyaire Finance B.V., the lenders party thereto (collectively in such capacities, the "DIP Lenders"),[5] and Wilmington Savings Fund Society, FSB, as administrative agent, and collateral agent (in such capacities, the "DIP Agent") (such credit agreement, as amended, restated, amended and restated, supplemented, waived, or otherwise modified from time to time, the "DIP Credit Agreement") and the agents under that certain (i) First Lien Credit Agreement dated as of April 16, 2018, by and among Vyaire Company, Vyaire Medical, Inc., Vyaire Finance B.V., each of the other lenders from time to time party thereto (collectively in such capacities, the "Prepetition First Lien Term Lenders"), and Bank of America, N.A. as administrative agent and collateral agent (in such capacities, the "Prepetition First Lien Agent") (such credit agreement, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Credit Agreement"), (ii) Note Purchase Agreement dated as of May 3, 2019, by and among Holdings, Vyaire Medical, Inc., Vyaire Finance B.V., each of the purchasers party thereto (collectively in such capacities, the "Prepetition Noteholders"), and Wilmington Trust, National Association as notes agent and collateral agent (in such capacities, the "Prepetition First Lien Notes Agent") (such note purchase agreement, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Note Purchase Agreement"), and (iii) Second Lien Credit Agreement dated as of April 16, 2018, by and among Holdings, Vyaire Medical, Inc., Vyaire Finance B.V., each of the other lenders from time to time party thereto (collectively in such capacities, the "Prepetition Second Lien Term Lenders", and together with the Prepetition First Lien Term Lenders and the Prepetition Noteholders, the "Prepetition Lenders"), Wilmington Trust, National Association as administrative agent and collateral agent (in such capacities, the "Prepetition Second Lien Agent", and together with the Prepetition First Lien Agent and the Prepetition First Lien Notes Agent, the "Prepetition Agents") (such credit agreement, as amended, restated, amended and restated, supplemented, or otherwise modified from time to time, the "Prepetition Second Lien Credit Agreement", and together with the Prepetition First Lien Credit Agreement and the Prepetition First Lien Note Purchase Agreement, the "Prepetition Credit Agreements") have liens on all Assets being sold in the Auction, and reserve the right (at the direction of the applicable Required Lenders or Required Purchasers, as applicable, and each as defined in the applicable Prepetition Credit Agreement) to

[5] The DIP Lenders holding at least 66.67% of the aggregate outstanding principal amount and commitments of the DIP Facility at the relevant time of determination shall constitute the "Required DIP Lenders."

credit bid for any or all of the Assets securing their respective facilities. The DIP Lenders, the DIP Agent, and the Prepetition Agents shall be permitted, pursuant to section 363(k) of the Bankruptcy Code, to credit bid all or any portion of the Obligations, under (and as defined in) each of the Prepetition Credit Agreements, as applicable, to acquire the Assets (each dollar of such obligations that is credit bid shall be treated the same as a dollar of cash); *provided* that the DIP Lenders and the DIP Agent agree, solely in the event that the Company receives a Bid or series of Bids by the Bid Deadline that is not less than the Minimum Bid Requirement, then the DIP Lenders and the DIP Agent shall not credit bid for the Assets. Notwithstanding anything to the contrary herein, nothing in these Bidding Procedures shall be considered as a waiver of any other party in interest to object to, or seek to limit, the credit bid during the Challenge Period under section 363(k) of the Bankruptcy Code; *provided*, *however*, that this reservation of rights is not intended to, and does not, expand or limit the Challenge Period or the Challenge rights provided for under the DIP Order.

Potential Stalking Horse

The Debtors may, pursuant to these Bidding Procedures and subject to the consent of the Required DIP Lenders, (i) designate one or more Qualified Bidders that submit a Qualified Bid for all or any portion of the Assets a stalking horse bidder (the "Stalking Horse Bidder"), whose Qualified Bid shall serve as the stalking horse bid (the "Stalking Horse Bid"), and (ii) execute, subject to higher or otherwise better offers consistent with these Bidding Procedures, one or more purchase agreements memorializing the proposed transaction set forth in the Stalking Horse Bid (a "Stalking Horse APA"), which may include a break-up fee of or no more than 3.0% of the total cash consideration payable under such Stalking Horse APA, inclusive of any expense reimbursement (the "Bid Protections") **on or before July 1, 2024, at 9:00 p.m., (prevailing Eastern Time)** (the "Stalking Horse Bidder Designation"). To the extent the Debtors, subject to the consent of the Required DIP Lenders, designate more than one Stalking Horse Bidder pursuant to the Bidding Procedures, no two Stalking Horse Bidders will be designated with respect to any of the same Assets. The Debtors shall not pay Bid Protections to any Stalking Horse Bidder on account of the portion of the purchase price of such Bid that is a credit bid, assumption of liabilities, or other non-cash (or cash-equivalent) consideration, nor provide any Bid Protections to an insider or affiliate of the Debtors.

To the extent the Debtors, consistent with these Bidding Procedures, determine, subject to the consent of the Required DIP Lenders, to offer Bid Protections to any Stalking Horse Bidder, the Debtors shall disclose such Bid Protections in a corresponding notice designation such Stalking Horse Bidder (the "Stalking Horse Notice"). A Stalking Horse Notice, if filed, shall also include (a) the identity of the Stalking Horse Bidder; (b) the amount of the Stalking Horse Bid; (c) a copy of the Stalking Horse APA; (d) the proposed Bid Protections to be provided to the Stalking Horse Bidder; and (e) a declaration in support of the proposed Bid Protections, which includes whether the Stalking Horse Bidder has any connection with the Debtors other than that which arises from the Stalking Horse Bid. Any objection to (i) the Bid Protections set forth in the Stalking Horse Notice or (ii) the designation of the Stalking Horse Bidder (a "Stalking Horse Objection"), shall be filed **no later than five (5) days after the filing of the Stalking Horse Notice at 4:00 p.m. (prevailing Eastern Time)**. If a timely Stalking Horse Objection is filed, the Debtors are authorized to seek an expedited hearing with respect to the Stalking Horse Objection on not less than three (3) calendar days' notice. Absent any timeline Stalking Horse Objection, the Court may approve the the Bid Protections set forth in the Stalking Horse Notice and the designation of the Stalking Horse Bidder without further hearing.

If the designation of a Stalking Horse Bidder is approved, any Modified APA may be based on the Stalking Horse APA.

Auction

If one or more Qualified Bids that, individually or in the aggregate, meet the Minimum Bid Requirement are received by the Bid Deadline, the Debtors will conduct the Auction to determine, with the consent of the Required DIP Lenders, the highest and best Qualified Bid. The determination of the highest and best Qualified Bid shall take into account any factors the Debtors in their reasonable business judgment deem relevant to the value and certainty of the Qualified Bid to the Debtors' estates and may include, but are not limited to, the following: (i) the amount and nature of the consideration; (ii) the number, type, and nature of any changes to the Form APA requested by each Bidder, including the Assets acquired; (iii) the extent to which such modifications are likely to delay closing of the Sale Transaction contemplated by such Qualified Bid and the cost to the Debtors of such modifications or delay; (iv) the total consideration to be received by the Debtors; (v) any contingencies or conditions to closing the Sale Transaction contemplated by such Qualified Bid; (vi) the likelihood of the Bidder's ability to close the Sale Transaction contemplated by such Qualified Bid and the timing thereof; (vii) the tax consequences of such Qualified Bid; and (viii) any other qualitative or quantitative factor that the Debtors deem reasonably appropriate under the circumstances (collectively, the "Bid Assessment Criteria").

If only one Qualified Bid that meets the Minimum Bid Requirement or no Qualified Bid that meets the Minimum Bid Requirement is received by the Bid Deadline, the Debtors shall cancel the Auction. For the avoidance of doubt and notwithstanding anything else herein or in the Bidding Procedures, if there are no Qualified Bids that, individually or in the aggregate, meet the Minimum Bid Requirement, the Debtors shall terminate the sale process and cancel the Auction. For the further avoidance of doubt, a Bid or series of Bid(s) shall not constitute a "Qualified Bid" unless such Bid(s) (a) meets the Minimum Bid Requirement and (b) contemplates that the aggregate cash sale proceeds of such Bid(s) shall be indefeasibly paid to the DIP Lenders immediately upon the closing of the Sale Transaction(s) subject to deductions for wind-down costs and expenses required to be paid pursuant to the DIP Orders and the RSA (which such deducted amounts shall be paid to the Debtors).

A. Location and Date of Auction

The Auction, if any, shall take place on or before **July 24, 2024, at 10:00 a.m., (prevailing Eastern Time)** in person at the office of Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, IL 60654 and/or via remote video at the Debtors' election. If held, the Auction proceedings will be transcribed.

B. Attendees and Participants

Except as otherwise determined by the Debtors, only the following parties, and their respective representatives and counsel, may attend the Auction: (i) the Debtors, (ii) the United States Trustee, (iii) any Qualified Bidder, (iv) advisors to the DIP Lenders; (v) any creditors that request access to the Auction within 48 hours prior to the date of the Auction, and (vi) any other parties that the Debtors deem appropriate. The Debtors shall provide all Qualified Bidders with notice of all participants attending the Auction at least one (1) day prior to the Auction.

Bidders and their representatives may not communicate or coordinate with one another for purposes of submitting a Bid or Bids or participating in the Auction without the prior consent of the Debtors. All parties are prohibited from (i) engaging in any collusion with respect to the bidding or sale of any of the Assets described herein or (ii) taking any other action to prevent a transparent and competitive auction process.

Each Qualified Bidder participating in the Auction must confirm on the record at the commencement of the Auction that (i) it has not engaged in any of the prohibited actions set forth in the immediately preceding paragraph, (ii) its Qualified Bid is a good faith bona fide offer and it intends to consummate the Sale Transaction contemplated by such Qualified Bid if selected as the Successful Bidder or Back Up Bidder, (iii) it has reviewed, understands and accepts the Bidding Procedures, and (iv) it has consented to the core jurisdiction of the Bankruptcy Court with respect to the Sale Transaction, including the Bidding Procedures, the Auction, any Sale Transaction, any Modified APA, or the construction and enforcement of documents relating to any Sale Transaction (as described more fully below).

All parties attending the Auction must comply with their applicable confidentiality agreements.

C. Conducting the Auction

The Debtors and their professionals shall direct and preside over the Auction and the Auction shall be transcribed and shall be conducted openly. Other than as expressly set forth herein, the Debtors may conduct the Auction in the manner they determine will result in the highest and best offer for the Assets so long as such conduct is not inconsistent in any material respect with the other terms and provisions of these Bidding Procedures.

D. Auction Baseline Bid

The Debtors will notify any other Qualified Bidder participating in the Auction of the highest and best Qualified Bid received before the Bid Deadline for purposes of constituting the opening Bid at the Auction (the "Auction Baseline Bid"), and shall provide copies of the Modified APA and Modified Sale Order (each a "Modified Sale Order") associated with the Auction Baseline Bid as soon as practicable (together with the redline copies of such documents, as described in paragraph C.1 above) prior to the commencement of the Auction.

E. Terms of Overbids

An "Overbid" is any bid made at the Auction subsequent to the Debtors' announcement of the Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

1. Minimum Overbid Increments. The Debtors shall determine, with the consent of the Required DIP Lenders, the minimum bid increments for any particular Asset or subset of Assets, if applicable.

2. Terms Are the Same as for Qualified Bids: Except as modified herein, an Overbid at the Auction must comply with the conditions for a Qualified Bid set forth above; *provided, however,* that the DIP Lenders, DIP Agent, and Prepetition Agents shall not be required to comply with such conditions. Any Overbid must include, in addition to the amount and the form of consideration of the Overbid, a description of all changes requested by the Bidder to the Modified APA or Modified Sale Order in connection therewith. Any Overbid must remain open and binding on the Bidder until (a) the Debtors announce that they have received a higher and better Overbid and (b) such Overbid is not selected as the Back-Up Bid. To the extent not previously provided, a Bidder submitting an Overbid at the Auction must submit, as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors) reasonably demonstrating such Bidder's ability to satisfy the Bidder's Obligations as set forth in the Qualified Bid requirements set forth in paragraph C.10.b. Further, Bidders submitting Overbids may be required to promptly top up their Good Faith Deposits to equal ten percent (10%) of the cash purchase price contained in such Overbids.

F. Announcement and Consideration of Overbids

1. Announcement of Overbids: All Overbids shall be made and received on an open basis. The Debtors shall announce at the Auction the material terms of each Overbid, the total amount of consideration offered in each such Overbid, and the basis for calculating such total consideration. The Debtors shall, after submission of each Overbid, promptly inform each participant in the Auction which Overbid reflects the highest and best Bid, and the Debtors shall clarify any and all questions that any Qualified Bidder may have regarding such Overbid.

2. Consideration of Overbids: Subject to the deadlines set forth herein, the Debtors reserve the right, in their own reasonable business judgment, subject to the consent of the Required DIP Lenders, to make one or more continuances of the Auction to, among other things: facilitate discussions between the Debtors and individual Qualified Bidders; allow individual Qualified Bidders to consider how they wish to proceed; or give Qualified Bidders the opportunity to provide the Debtors with additional evidence that the Qualified Bidder has sufficient internal resources, or has received sufficient non contingent debt and/or equity funding commitments, to consummate the proposed Sale Transaction at the prevailing Overbid amount.

G. No Round-Skipping

To remain eligible to participate in the Auction, in each round of bidding, (i) each Qualified Bidder must submit an Overbid with respect to such round of bidding and (ii) to the extent a

Qualified Bidder fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction.

H. Closing the Auction

The Auction shall continue until there is only one (1) Qualified Bid for the Assets (or one or more Qualified Bids for discrete portions of the Assets) that the Debtors determine, in their reasonable business judgment with the consent of the Required DIP Lenders, is (or are) the highest and best Qualified Bid (or Qualified Bids) at the Auction. Thereafter, the Debtors shall select, with the consent of the Required DIP Lenders, such Qualified Bid(s) that is the best Qualified Bid (each such Qualified Bid, a "Successful Bid," and the Qualified Bidder submitting any such Successful Bid, the "Successful Bidder"), taking into account any factors the Debtors reasonably deem relevant to the value and certainty of the Qualified Bid(s) to the Debtors' estates and may include, but are not limited to, the Bid Assessment Criteria, as the winner of the Auction and, at the time of such selection, shall announce the identity of each Successful Bidder and the amount and material terms of each Successful Bid to all attendees at the Auction. Notwithstanding anything to the contrary herein, no Qualified Bid (other than a credit bid by one or more DIP Lender, DIP Agent, or Prepetition Agent) may be the Successful Bid unless such Qualified Bid (which can be a combination of Bids as described above) provides for payment of consideration at the closing of the Sale Transaction contemplated by such Qualified Bid in an amount equal to or greater than the aggregate amount of Obligations as defined in the applicable DIP Credit Agreement and/or Prepetition Credit Agreement that have been credit bid by, or on behalf of, the DIP Lenders, DIP Agent, and/or the Prepetition Agents, as applicable. For the avoidance of doubt, no Qualified Bid shall be a Successful Bid if such bid does not, individually or together with another Successful Bid, (a) satisfy the Minimum Bid Requirement and (b) contemplate that the aggregate cash sale proceeds of such Bid(s) shall be indefeasibly paid to the Required DIP Lenders immediately upon the closing of the Sale Transaction(s) subject to deductions for wind down costs and expenses required to be paid pursuant to the DIP Orders and the Restructuring Support Agreement (which such deducted amounts shall be paid to the Debtors).

The Auction shall not conclude until the Successful Bidder(s) submit(s) fully executed sale and transaction documents memorializing the terms of the Successful Bid(s).

Promptly following the Debtors' selection of the Successful Bid(s) and the conclusion of the Auction, the Debtors shall file with the Bankruptcy Court notice of the Successful Bid(s) and Successful Bidder(s), along with the Modified APA and Modified Sale Order reflecting the Successful Bid(s). The Debtors shall not consider any Bids or Overbids submitted after the Auction has closed, and any and all Bids or Overbids submitted after the conclusion of the Auction shall be deemed untimely and shall under no circumstances constitute a Bid or Overbid.

I. Back-Up Bidder

Notwithstanding anything in these Bidding Procedures to the contrary, if an Auction is conducted, the Qualified Bidder(s) with the next highest and otherwise best Bid to the Successful Bid(s) at the Auction for the applicable Assets, as determined by the Debtors, in the exercise of their reasonable business judgment, subject to the consent of the Required DIP Lenders, will be designated as a back-up bidder (each a "Back-Up Bidder"). The identity of the Back-Up Bidder(s) and the amount and material terms of the Back-Up Bid(s) shall be announced by the Debtors at the same time the Debtors announce the identity of the Successful Bidder(s).

The Back-Up Bidder(s) shall be required to keep its (or their) initial Qualified Bid(s) (or if a Back Up Bidder submitted one or more Overbids at the Auction, such Back Up Bidder's final Overbid) (each a "Back-Up Bid") open and irrevocable until the earlier of (i) the closing of the Sale Transaction contemplated by the applicable Successful Bid and (ii) 5:00 p.m. (prevailing Eastern Time) on the date that is sixty (60) days after the date of entry of the Sale Order, which date will be extended for an additional thirty (30) days if the only condition to closing the applicable Successful Bid on the sixtieth (60th) day after entry of the Sale Order is satisfaction of regulatory approvals required under the applicable Modified APA.

If a Successful Bid is terminated for any reason prior to consummation of the Sale Transaction contemplated thereby (a "Successful Bid Failure"), the Debtors will be authorized, without further order of the Bankruptcy Court, subject to the consent of the Required DIP Lenders, to consummate the Sale Transaction contemplated by the applicable Back-Up Bid with the applicable Back-Up Bidder; provided that the Debtors shall provide prompt notice of such Successful Bid Failure and the Debtors shall post a notice on the docket of the Chapter 11 Cases regarding the Successful Bid Failure and the consummation of such Sale Transaction with the applicable Back Up Bidder. In the case of a Successful Bid Failure, the Successful Bidder's deposit shall be forfeited to the Debtors or returned to the applicable Successful Bidder in accordance with the terms of the terminated Modified APA. The Debtors, on their behalf and on behalf of each of their respective estates, specifically reserve the right to seek all available damages, including specific performance, from any defaulting Successful Bidder (including any Back Up Bidder following a Successful Bid Failure) in accordance with the terms of the Bidding Procedures, the Bidding Procedures Order, or the Modified APA, as applicable.

J. Notice of Bid Results

Absent further order or direction of the Court, the Debtors shall file copies of the following: (a) a notice designating each Successful Bid and the Back-Up Bid, if any, and the terms of each such bid (the "Successful Bidder Notice") and (b) final form(s) of order(s) approving the Sale Transaction(s) as agreed upon between the Debtors and the Successful Bidder(s) (the "Sale Order(s)"). Further, the Debtors shall serve, by overnight mail, the Successful Bidder Notice and Sale Order(s), along with any adequate assurance materials, upon affected Contract Counterparties as soon as reasonably practicable following the conclusion of the Auction.

K. Sale Hearing and Approval of the Sale Transaction

A hearing to consider the approval of the Sale Transaction (the "Sale Hearing"), is currently scheduled to take place on **July 29, 2024, at 10:00 a.m., (prevailing Eastern Time)**, before Honorable [☒], at the United States Bankruptcy Court for the District of Delaware, 824 N Market Street, 6th Floor, Courtroom No. [☒], Wilmington, Delaware 19801 or conducted consistent with the procedures established pursuant to the Bankruptcy Court.

At the Sale Hearing, certain findings will be sought from the Bankruptcy Court, including, among other things, that: (1) the Auction was conducted (if held) and each Successful Bidder was selected, in each case in accordance with the Bidding Procedures; (2) the Auction (if held) was fair in substance and procedure; (3) the Successful Bid(s) and Back-Up Bid(s) were Qualified Bids as defined in the Bidding Procedures; and (4) consummation of any Sale Transaction as contemplated by the Successful Bid(s) in the Auction will provide the highest and best offer for the Assets and is in the best interests of the Debtors and their estates. The Sale Hearing may be continued to a later date by the Debtors, subject to the consent of the Required DIP Lenders, by sending notice prior to, or making an announcement at, the Sale Hearing (subject in all cases to approval of the Bankruptcy Court).

All general objections to the Sale Transaction and entry of any Sale Order must (i) be in writing; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Bankruptcy Court; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with the Bankruptcy Court and served so as to be actually received by the Debtors and counsel to the Debtors on **July 22, 2024, at 4:00 p.m., (prevailing Eastern Time).**

All Post-Auction Objections must (i) be in writing; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Bankruptcy Court; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with the Bankruptcy Court and served so as to be actually received by no later than **July 25, 2024, at 4:00 p.m., (prevailing Eastern Time)** on the Notice Parties.

L. Additional Procedures

The Debtors may announce at the Auction additional procedural rules that are reasonable under the circumstances for conducting the Auction so long as such rules are not inconsistent in any material respect with the Bidding Procedures and do not impose additional requirements on the DIP Agent or the Prepetition Agents; provided that any Qualified Bidder shall have the right to request a telephonic hearing before the Bankruptcy Court in the event the Qualified Bidder disputes that the proposed additional rule is reasonable or not inconsistent in any material respect with the Bidding Procedures or does not impose additional requirements on the DIP Agent or the Prepetition Agents.

Consent to Jurisdiction and Authority as Condition to Bidding

All Qualified Bidders shall be deemed to have (1) consented to the jurisdiction of the Bankruptcy Court to enter an order or orders, which shall be binding in all respects, in any way related to the Debtors, these Chapter 11 Cases, the Bidding Procedures, any Modified APA, the Auction, any Sale Transaction, or the construction and enforcement of documents relating to any Sale Transaction, (2) WAIVED ANY RIGHT TO A JURY TRIAL IN CONNECTION WITH ANY DISPUTES RELATING TO THE DEBTORS, THESE CHAPTER 11 CASES, THE BIDDING PROCEDURES, THE AUCTION, any Modified APA, ANY SALE TRANSACTION, OR THE CONSTRUCTION AND ENFORCEMENT OF DOCUMENTS RELATING TO ANY SALE TRANSACTION, and (3) consented to entry of a final order or judgment in any way related to the Debtors, these Chapter 11 Cases, the Bidding Procedures, the Auction, any Modified APA, any Sale Transaction, or the construction and enforcement of documents relating to any Sale

Transaction if it is determined that the Bankruptcy Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Sale Is As Is/Where Is

Except as may be set forth in the Modified APA, the Assets sold pursuant to the Bidding Procedures shall be conveyed at the closing of such sale in their then present condition, "AS IS, WITH ALL FAULTS, AND WITHOUT ANY WARRANTY WHATSOEVER, EXPRESS OR IMPLIED."

Return of Good Faith Deposits

The Good Faith Deposits of all Qualified Bidders shall be held in one or more escrow accounts by the Debtors, but shall not become property of the Debtors' estates absent further order of the Bankruptcy Court or as set forth below. The Good Faith Deposit of any Qualified Bidder that is neither a Successful Bidder nor a Back-Up Bidder shall be returned to such Qualified Bidder not later than five (5) Business Days after consummation of the Sale Transaction or upon the permanent withdrawal of the proposed Sale Transaction. The Good Faith Deposit of a Back-Up Bidder, if any, shall be returned to such Back-Up Bidder (or retained by the estates) upon the termination of such Back Up Bidder's Bid in accordance with its terms. If a Successful Bidder timely closes the Sale Transaction contemplated in the Successful Bid, its Good Faith Deposit shall be credited towards the purchase price and become property of the estate. If a Successful Bidder (or, if the Sale Transaction is to be consummated with the applicable Back-Up Bidder, then such Back-Up Bidder) fails to consummate the Sale Transaction because of a breach or failure to perform on the part of such Bidder, then the Debtors and their estates shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale Transaction is to be consummated with a Back-Up Bidder, then such Back-Up Bidder) as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors' retention of a Good Faith Deposit shall not constitute a waiver of any of the Debtors' legal or equitable rights relating to a Successful Bidder's or a Back-Up Bidder's breach or failure to perform, and all such rights and remedies are preserved.

Reservation of Rights of the Debtors and Modifications

Except as otherwise provided in the Bidding Procedures Order, the Debtors further reserve the right as the Debtors may reasonably determine in their discretion to be in the best interest of the Debtors' estates, subject to the consent of the Required DIP Lenders, to: (i) determine which Bidders are Qualified Bidders; (ii) determine which Bids are Qualified Bids; *provided* that, for the avoidance of doubt, a Bid or series of Bids shall not constitute a "Qualified Bid" unless such Bid(s) (a) meets the Minimum Bid Requirement and (b) contemplates that the aggregate cash sale proceeds of such Bid(s) shall be indefeasibly paid to the DIP Lenders immediately upon the closing of the Sale Transaction(s) subject to deductions for wind-down costs and expenses required to be paid pursuant to the DIP Orders and the RSA (which such deducted amounts shall be paid to the Debtors); (iii) determine which Qualified Bid (or Qualified Bids) is the highest and best bid and which is the next highest and best bid; (iv) reject any Bid that is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (c) contrary to the best interests of the Debtors and their estates; (v) impose additional terms and conditions with respect to all potential bidders; (vii) make non-material modifications to the Bidding Procedures; and (viii) implement additional procedural rules with respect to the conduct of the Auction that the Debtors determine (together with the Bidding Procedures, the "Auction Rules"), in their reasonable business judgment, will better promote the goals of the bidding process and are not inconsistent with any Bankruptcy Court order, the Bankruptcy Code or any rights of the Prepetition Agents under these Bidding Procedures; *provided* that nothing herein shall limit any party in interest's right to file an objection with the Bankruptcy Court with respect to any Auction Rules (other than the Bidding Procedures).

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require the Debtors to take any action or to refrain from taking any action related to any Sale Transaction to the extent taking or failing to take such action would be inconsistent with applicable law or the Debtors' fiduciary obligations, if any, under applicable law; provided, however, that the Debtors shall promptly provide any Qualified Bidders and the Required DIP Lenders with notice of such action or inaction and, to the extent any such action or inaction would constitute a material change from the Bidding Procedures, the Debtors shall first seek approval from the Bankruptcy Court for such action or inaction.

I. NOTICING

A. Bid Notice Parties

Qualified Bids must be submitted in writing to the following parties (collectively, the "Bid Notice Parties"):

- the Debtors, c/o Vyaire Medical, Inc., 26125 North Riverwoods Boulevard, Mettawa, Illinois 60045 (Attn: Rachel Lisenby); and

- proposed co-counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, (Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com), and Chris Ceresa (chris.ceresa@kirkland.com)); and Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, (Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com) and Yusuf U. Salloum (yusuf.salloum@kirkland.com)); and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, (Attn: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Stacy L. Newman (snewman@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com)), and Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, (Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com)).

B. Sale Notice Parties

The "Sale Notice Parties" shall include the following persons and entities:

- counsel to any Stalking Horse Bidder;

- all persons and entities known by the Debtors to have expressed an interest to the Debtors in a Sale Transaction involving any of the Assets during the past 12 months, including any person or entity that has submitted a Bid for any of the Assets;

- all persons and entities known by the Debtors to have asserted any lien, claim, interest or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtors), including, for the avoidance of doubt, the DIP Agent (on behalf of the DIP Lenders) and the Prepetition Agent (on behalf of the Prepetition Lenders);

- co-counsel to the DIP Lenders, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Scott J. Greenberg (sgreenberg@gibsondunn.com), Jason Zachary Goldstein (jgoldstein@gibsondunn.com), Joshua Brody (jbrody@gibsondunn.com), and Kevin Liang (KLiang@gibsondunn.com)) and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 (Attn: Laura Davis Jones (ljones@pszjlaw.com));

- all relevant non-Debtor parties (each, a "<u>Counterparty</u>") to any Contract that may be assumed or rejected in connection with a Sale Transaction;

- all of the Debtors' known creditors (for whom identifying information and addresses are available to the Debtors);

- all of the Debtors' equity holders;

- any governmental authority known to have a claim against the Debtors in these Chapter 11 Cases;

- the office of the U.S. Trustee;

- all applicable federal, state and local taxing authorities, including the Internal Revenue Service;

- the United States Securities and Exchange Commission;

- the United States Attorney's Office for the District of Delaware;

- United States Attorney General's Office for the District of Delaware;

- the Office of the Attorney General and the Secretary of State in each state in which the Debtors operate;

- all of the parties entitled to notice pursuant to Bankruptcy Rule 2002; and

- all other parties as directed by the Court.

C. Sale Notice and Publication Notice

Within two (2) business days after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will file with the Court, serve on the Sale Notice Parties and cause to be published on the Claims Agent Website a notice (the "Sale Notice") setting forth (A) a description of the Assets available for sale in accordance with these Bidding Procedures, (B) the date, time and location of the Auction and Sale Hearing, (C) the Sale Transaction Objection Deadline and Post- Auction Objection Deadline (each as defined in Section X.D below) and the procedures for filing such objections, and, if applicable, (D) a summary of the material terms of any Stalking Horse Agreement, including the terms and conditions of any termination payment or expense reimbursement to be provided thereunder, as of the date of the Sale Notice.

As soon as reasonably practicable after entry of the Bidding Procedures Order, the Debtors will provide notice of the Sale Hearing through the publication of the Sale Notice, on the website of the Debtors' proposed noticing and claims agent to be retained in these chapter 11 cases, Omni, at www.omniagentsolutions.com/Vyaire. Within four (4) business days after entry of the Bidding Procedures Order, or as soon as reasonably practicable thereafter, the Debtors will provide notice of the Sale Hearing through publication of the Sale Notice, with any modifications necessary for ease of publication, once in *The New York Times* (national edition) (the "Publication Notice").

D. Sale Objections and Post-Auction Objections

Objections to a sale of the Assets, including (i) any objection to a sale of the Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code and (ii) entry of any Sale Order shall, by **no later than July 22, 2024, at 4:00 p.m., (prevailing Eastern Time)** (the "Sale Transaction Objection Deadline"), be filed with the Court and served on the following parties (collectively, the "Objection Notice Parties"):

- the Debtors, c/o Vyaire Medical, Inc., 26125 North Riverwoods Boulevard, Mettawa, Illinois 60045 (Attn: Rachel Lisenby);

- proposed co-counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, (Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com) and Chris Ceresa (chris.ceresa@kirkland.com)); and Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, (Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com), Yusuf U. Salloum (yusuf.salloum@kirkland.com), and Rebecca Marston (rebecca.marston@kirkland.com)); and Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, (Attn: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Stacy L. Newman (snewman@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com)), and Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, (Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com));

- co-counsel to the DIP Lenders, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193 (Attn: Scott J. Greenberg (SGreenberg@gibsondunn.com), Jason Zachary Goldstein (JGoldstein@gibsondunn.com), Joshua Brody

(JBrody@gibsondunn.com), and Kevin Liang (KLiang@gibsondunn.com) and Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801 (Attn: Laura Davis Jones (ljones@pszjlaw.com));

- counsel for any relevant Successful Bidder(s); and

- counsel for any relevant Backup Bidder(s).

Following service of the Notice of Auction Results, Sale Notice Parties may object to the conduct of the Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid, other than with respect to a Stalking Horse Bid (each such objection, a "Post-Auction Objection") by no later than **later of (i) July 25, 2024, at 4:00 p.m., (prevailing Eastern Time) and (ii) three (3) days prior to the Sale Hearing** (the "Post-Auction Objection Deadline"). Each Post-Auction Objection shall be filed with the Court and served on the Objection Notice Parties.

EXHIBIT 2

Sale Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	[(Jointly Administered)]

NOTICE OF BIDDING PROCEDURES, AUCTION, AND SALE HEARING

PLEASE TAKE NOTICE that on June 9, 2024, the above-captioned debtors and certain of its subsidiaries (collectively, the "Debtors") filed the *Motion of the Debtors for Entry of an Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (IV) Approving Procedures for the Assumption and Assignment of Contracts, (V) Approving the Sale of the Debtors' Assets Free and Clear, and (VI) Granting Related Relief* [Docket No. [●]] (the "Sale Motion")[2] with the United States Bankruptcy Court for the District of Delaware (the "Court") seeking, among other things, entry of an order (the "Sale Order") authorizing and approving: (a) the sale or sales of all, substantially all, or any portion of the Debtors' assets, free and clear of liens, claims, encumbrances, and other interests, except as set forth in the applicable Stalking Horse Agreement, if any, or an alternative asset purchase agreement with a Successful Bidder for up to substantially all the assets of the Debtors (the "Sale"); and (b) the assumption and assignment of certain executory contracts and unexpired leases (collectively, the "Contracts").

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of some, all, or substantially all of the assets of the Debtors' assets, including bids exclusively for the assets of the Debtors' Ventilation business and exclusively for the assets of the Debtors' Respiratory Diagnostics business, as well as bids on any combination up to all of the Debtors' assets, consistent with the bidding procedures (the "Bidding Procedures") approved by the Court by entry of an order on [●] [●], 2024 [Docket No. [●]] (the "Bidding Procedures Order"). **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding

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

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

Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that, if the Debtors so choose to designate one or more stalking horse bidders, the deadline for designating a stalking horse bidder is **on or before July 1, 2024, at 4:00 p.m., (prevailing Eastern Time)** (the "Stalking Horse Bidder Designation Deadline").

PLEASE TAKE FURTHER NOTICE that, if the Debtors so choose to designate one or more stalking horse bidders, any objection to Bid Protections set forth in (i) the Stalking Horse Notice, or (ii) the form of Stalking Horse Order (a "Stalking Horse Objection"), shall be filed **no later than four (4) days after the filing of the Stalking Horse Notice at 4:00 p.m., (prevailing Eastern Time)** (the "Stalking Horse Objection Deadline").

PLEASE TAKE FURTHER NOTICE that, if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the "Auction") of the Assets **on July 24, 2024, at 10:00 a.m., (prevailing Eastern Time)** virtually through an online platform (or at any other location or electronically as the Debtors may hereafter designate).

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale at a hearing scheduled to commence **on July 29, 2024, at 10:00 a.m., (prevailing Eastern Time)** (the "Sale Hearing") before the Honorable [●], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, 824 North Market Street, 3rd Floor, Courtroom No. [●], Wilmington, Delaware 19801.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures Order, including with respect to any objections to proposed cure amounts or the assumption and assignment of Contracts, objections to the relief requested in the Sale Motion ***must***: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received*** **on or within fourteen (14) days following service of any notice of proposed assumption and assignment** by the parties in the table below.

PLEASE TAKE FURTHER NOTICE that, except as otherwise set forth in the Bidding Procedures Order, any objections to the auction proceedings, or the relief requested in the Sale Motion ***must***: (a) be in writing; (b) conform to the applicable provisions of the Bankruptcy Rules and the Local Rules; (c) state with particularity the legal and factual bases for the objection and the specific grounds therefor; and (d) be filed with the Court and served so as to be ***actually received*** **on or before the Post-Auction Objection and Sale Transaction Objection Deadlines, on July 25, 2024, at 4:00 p.m., (prevailing Eastern Time) and July 22, 2024 at 4:00 p.m. (prevailing Eastern Time), respectively,** by the parties below:

[Proposed] Co-Counsel to the Debtors	[Proposed] Co-Counsel to the Debtors
Kirkland & Ellis LLP 601 Lexington Ave New York, New York 10022 Attn. Joshua A. Sussberg, P.C. Chris Ceresa Email: joshua.sussberg@kirkland.com chris.ceresa@kirkland.com Kirkland & Ellis LLP 333 West Wolf Point Plaza Chicago, Illinois 60654 Attn.: Spencer Winters, P.C. Yusuf U. Salloum Email: spencer.winters@kirkland.com yusuf.salloum@kirkland.com	Cole Schotz, P.C. 500 Delaware Avenue, Suite 1410 Wilmington, Delaware 19801 Attn: Patrick J. Reilley, Esq. Email: preilley@coleschotz.com Cole Schotz, P.C. Court Plaza North, 25 Main Street Hackensack, New Jersey 07601 Attn: Michael D. Sirota, Esq. Email: msirota@coleschotz.com
The United States Trustee	**Counsel to the Stalking Horse Bidder**
Office of the United States Trustee for the District of Delaware 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801 Attn. Benjamin A. Hackman Benjamin.A.Hackman@usdoj.gov	[●] [Street Address] [City],[State][Zip Code] Attn.: [●] Email: [●]

CONSEQUENCES OF FAILING TO TIMELY MAKE AN OBJECTION

ANY PARTY OR ENTITY WHO FAILS TO TIMELY MAKE AN OBJECTION TO THE SALE ON OR BEFORE THE SALE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER SHALL BE FOREVER BARRED FROM ASSERTING ANY OBJECTION TO THE SALE, INCLUDING WITH RESPECT TO THE TRANSFER OF THE DEBTORS' ASSETS FREE AND CLEAR OF ALL LIENS, CLAIMS, ENCUMBRANCES, AND OTHER INTERESTS, EXCEPT AS SET FORTH IN THE APPLICABLE PURCHASE AGREEMENT.

PLEASE TAKE FURTHER NOTICE that copies of the Sale Motion, Bidding Procedures, and Bidding Procedures Order, as well as all related exhibits, is available: (a) free of charge upon request to Omni Agent Solutions, Inc. (the notice and claims agent retained in these chapter 11 cases) by calling (866) 956-2140 (U.S./Canada) or (818) 666-3635 (International); (b) by visiting the website maintained in these chapter 11 cases at https://omniagentsolutions.com/Vyaire; or (c) for a fee via PACER by visiting http://www.deb.uscourts.gov.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information concerning the above-captioned chapter 11 cases at the website maintained in these chapter 11 cases at https://omniagentsolutions.com/Vyaire.

Dated: [●], 2024
Wilmington, Delaware

/s/ DRAFT

COLE SCHOTZ P.C.
Patrick J. Reilley, Esq. (DE Bar No. 4451)
500 Delaware Avenue, Suite 1410
Wilmington, Delaware 19801
Telephone: (302) 652-3131
Facsimile: (302) 652-3117
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- and -

Michael D. Sirota, Esq. (*pro hac vice admission pending*)
Warren A. Usatine, Esq (*pro hac vice admission pending*)
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Proposed Co-Counsel to the Debtors
and Debtors in Possession

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- and -

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yusuf.salloum@kirkland.com

Proposed Co-Counsel to the Debtors
and Debtors in Possession

EXHIBIT 3

Potentially Assumed and Assigned Contract Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	[(Jointly Administered)]

FIRST NOTICE TO CONTRACT PARTIES OF POTENTIALLY ASSUMED AND ASSIGNED EXECUTORY CONTRACTS AND UNEXPIRED LEASES

YOU ARE RECEIVING THIS NOTICE BECAUSE YOU OR ONE OF YOUR AFFILIATES IS A COUNTERPARTY TO AN EXECUTORY CONTRACT OR UNEXPIRED LEASE WITH ONE OR MORE OF THE DEBTORS AS SET FORTH ON EXHIBIT A ATTACHED HERETO.

PLEASE TAKE NOTICE that on [●] [●], 2024, the United States Bankruptcy Court for the District of Delaware (the "Court") entered the *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VII) Granting Related Relief* [Docket No. [●]] (the "Bidding Procedures Order"),[2] authorizing the Debtors to conduct an auction (the "Auction") under certain circumstances to select the party to purchase the Debtors' assets. The Auction will be governed by the bidding procedures approved pursuant to the Bidding Procedures Order (attached to the Bidding Procedures Order as Exhibit 1, the "Bidding Procedures").

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures and the terms of any Successful Bid, the Debtors **may** assume and assign to the Successful Bidder the contracts or agreements listed on **Exhibit A** (each, a "Potentially Assumed and Assigned Contract") to which you are a counterparty, upon approval of the Sale. The Debtors have conducted a review of their books and records and have determined that the cure amount for unpaid

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

[2] All capitalized terms used but not otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order or the Sale Motion (as defined in the Bidding Procedures Order), as applicable.

monetary obligations under such Potentially Assumed and Assigned Contracts is as set forth on **Exhibit A** attached hereto (the "Cure Amounts").

PLEASE TAKE FURTHER NOTICE that if you disagree with the proposed Cure Amounts, object to a proposed assignment to the Successful Bidder of any Potentially Assumed and Assigned Contract, your objection must: (i) be in writing; (ii) comply with the applicable provisions of the Bankruptcy Rules, Local Bankruptcy Rules, and any order governing the administration of these chapter 11 cases; (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure Amounts, state the correct cure amount alleged to be owed to the objecting Contract Counterparty, together with any applicable and appropriate documentation in support thereof; and (iv) be filed with the Court and served and **actually received within fourteen (14) calendar days after service of the this notice** (the "**Assumption and Assignment Objection Deadline**") by the Court and the following parties: (i) [proposed] co-counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com) and Chris Ceresa (chris.ceresa@kirkland.com), and Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com), Yusuf U. Salloum (yusuf.salloum@kirkland.com), and Rebecca Marston (rebecca.marston@kirkland.com); (ii) [proposed] co-counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, Attn: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com), and Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com); and (iii) the Debtors' [proposed] investment banker, PJT Partners LP, 280 Park Avenue, New York, New York 10017, Attn: Michael Schlappig (schlappig@pjtpartners.com), Jaimie Baird (baird@pjtpartners.com), and Dylan Friesner (friesner@pjtpartners.com) (v) counsel to the 1L Ad Hoc Group, (a) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, Attn.: Scott J. Greenberg (SGreenberg@gibsondunn.com), Jason Zachary Goldstein (JGoldstein@gibsondunn.com), Joshua Brody (JBrody@gibsondunn.com), and Kevin Liang (KLiang@gibsondunn.com) and (b) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn.: Laura Davis Jones (ljones@pszjlaw.com); (vi) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov).

PLEASE TAKE FURTHER NOTICE that no later than **July 24, 2024**, or as soon as reasonably practicable after the close of the Auction, the Debtors shall (a) file the Successful Bidder Notice with the Court (which notice shall identify the Successful Bidder, the amount of the Successful Bid, the Back-Up Bid, and the amount of the Back-Up Bid(s), and include the final form(s) of the Sale Order(s)), and (b) cause the Successful Bidder Notice to be published on the Debtors' restructuring website, https://omniagentsolutions.com/Vyaire. Further, the Debtors shall serve, by overnight mail, the Successful Bidder Notice and Sale Order(s), along with any adequate assurance materials, upon affected Contract Counterparties as soon as reasonably practicable following the conclusion of the Auction.

PLEASE TAKE FURTHER NOTICE that if you object to the conduct of the Auction and/or the particular terms of any proposed Sale Transaction in a Successful Bid, other than with respect to a Stalking Horse Bid, your objection must: (i) be in writing; (ii) comply with the Bankruptcy

Code, Bankruptcy Rules, Local Rules, and all orders of the Bankruptcy Court; (iii) state with particularity the legal and factual basis for the objection and the specific grounds therefor; and (iv) be filed with the Bankruptcy Court and served and **actually received no later than July 25, 2024, at 4:00 p.m. (prevailing Eastern Time) (the "Post-Auction Objection Deadline")** by the following parties: by the Court and the following parties: (i) [proposed] co-counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com) and Chris Ceresa (chris.ceresa@kirkland.com), and Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com), Yusuf U. Salloum (yusuf.salloum@kirkland.com), and Rebecca Marston (rebecca.marston@kirkland.com); (ii) [proposed] co-counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, Attn: Patrick J. Reilley, Esq. (preilley@coleschotz.com), Michael E. Fitzpatrick, Esq. (mfitzpatrick@coleschotz.com), and Jack M. Dougherty, Esq. (jdougherty@coleschotz.com), and Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com); and (iii) the Debtors' [proposed] investment banker, PJT Partners LP, 280 Park Avenue, New York, New York 10017, Attn: Michael Schlappig (schlappig@pjtpartners.com), Jaimie Baird (baird@pjtpartners.com), and Dylan Friesner (friesner@pjtpartners.com).

PLEASE TAKE FURTHER NOTICE that if no objection to (a) the Cure Amounts(s), (b) the proposed assignment and assumption of any Potentially Assumed and Assigned Contract, or (c) adequate assurance of the Successful Bidder's ability to perform is filed by the Contract Objection Deadline, then (i) you will be deemed to have stipulated that the Cure Amounts as determined by the Debtors are correct, (ii) you will be forever barred, estopped, and enjoined from asserting any additional cure amount under the proposed Potentially Assumed and Assigned Contract, and (iii) you will be forever barred, estopped, and enjoined from objecting to such proposed assignment to the Successful Bidder on the grounds that the Successful Bidder has not provided adequate assurance of future performance as of the closing date of the Sale.

PLEASE TAKE FURTHER NOTICE that any objection to the proposed assumption and assignment of a Potentially Assumed and Assigned Contract or related Cure Amounts in connection with the Successful Bid that otherwise complies with these procedures yet remains unresolved as of the commencement of the Sale Hearing, shall be heard separately from the Sale Hearing at a later date as may be fixed by the Court.

PLEASE THAT FURTHER NOTICE that, notwithstanding anything herein, the mere listing of any Potentially Assumed and Assigned Contract on the Cure Notice does not require or guarantee that such Potentially Assumed and Assigned Contract will be assumed by the Debtors at any time or assumed and assigned, and all rights of the Debtors and the Successful Bidder with respect to such Executory Contracts and/or Unexpired Leases are reserved. Moreover, the Debtors explicitly reserve their rights, in their reasonable discretion, to seek to reject or assume each Potentially Assumed and Assigned Contract pursuant to section 365(a) of the Bankruptcy Code and in accordance with the procedures allowing the Debtors and/or the Successful Bidder, as applicable, to designate any Potentially Assumed and Assigned Contract as either rejected or assumed on a post-closing basis.

PLEASE TAKE FURTHER NOTICE that, nothing herein (i) alters in any way the prepetition nature of the Potentially Assumed and Assigned Contracts or the validity, priority, or amount of any claims of a counterparty to any Potentially Assumed and Assigned Contract against the Debtors that may arise under such Potentially Assumed and Assigned Contract, (ii) creates a postpetition contract or agreement, or (iii) elevates to administrative expense priority any claims of a counterparty to any Potentially Assumed and Assigned Contract against the Debtors that may arise under such Potentially Assumed and Assigned Contract.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information concerning the above-captioned chapter 11 cases at the website maintained in these chapter 11 cases at https://omniagentsolutions.com/Vyaire.

[*Remainder of page intentionally left blank*]

Dated: [●], 2024
Wilmington, Delaware

/s/ DRAFT

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Proposed Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Potentially Assumed and Assigned Contracts[1]

Potentially Assumed and Assigned Contracts				
Unique Vendor Name	**Contract #**	**Debtor Entity**	**Description**	**Total Agg. Cure Amount**

[1] The inclusion of a contract on this list (each, a "Contract") does not constitute an admission as to the executory or non-executory nature of the Contract, or as to the existence or validity of any claims held by the counterparty or counterparties to such Contract. The Debtors reserve all rights with respect to assumption or rejection of any Contract included on this list.

EXHIBIT 4

Successful Bidder Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
VYAIRE MEDICAL, INC., *et al.*,[1]	)	Case No. 24-11217 (___)
Debtors.	)	[(Jointly Administered)]
	)	**Re: Docket No. _**

NOTICE OF SUCCESSFUL BIDDER

PLEASE TAKE NOTICE that, on June 9, 2024, each of the above-captioned debtors and certain of its subsidiaries (collectively, the "Debtors") filed a petition with this Court under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code").

PLEASE TAKE FURTHER NOTICE that, on [●], 2024, the United States Bankruptcy Court for the District of Delaware (the "Court") entered the *Order (I) Approving Bidding Procedures in Connection with the Sale of Substantially All of the Debtors' Assets, (II) Authorizing the Debtors to Enter Into a Stalking Horse Agreement and Provide Bid Protections, (III) Approving the Form and Manner of Notice Thereof, (IV) Scheduling an Auction and Sale Hearing, (V) Approving Procedures for the Assumption and Assignment of Contracts, (VI) Approving the Sale of the Debtors' Assets Free and Clear, and (VI) Granting Related Relief* [Docket No. [●]] (the "Bidding Procedures Order"), authorizing the Debtors to solicit and select the highest or otherwise best offer(s) for a sale (or sales) (each, a "Sale Transaction") of (a) all or substantially all of the assets or (b) one or more, or any combination of, assets of one or more Debtors (each, an "Asset," and collectively, the "Assets").[2]

PLEASE TAKE FURTHER NOTICE that, **on July 24, 2024, at 10:00 a.m. (prevailing Eastern Time)**, pursuant to the Bidding Procedures Order, the Debtors conducted the Auction with respect to the Assets at the office of Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, IL 60654 and/or via remote video at the Debtors' election.

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

[2] Capitalized terms used but not defined herein have the meanings given to them in the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that, upon the conclusion of the Auction, the Debtors, in the exercise of their reasonable and good-faith business judgment, have selected (a) [●] as a Successful Bidder (the "Purchaser"), and (b) [●] as a Back-Up Bidder.

PLEASE TAKE FURTHER NOTICE that, as set forth more fully in that certain purchase and sale agreement (the "Purchase Agreement") between the Debtors (collectively, the "Sellers") and [●] (as Purchaser), the Successful Bid [●] provides a purchase price of $[●] for [the Assets]. Further, the Back-Up Bid submitted by the Back-Up Bidder provides for a purchase price of $[●] for [the Assets].

PLEASE TAKE FURTHER NOTICE that, the Debtors (as Sellers) and [●] (as Purchaser) entered into the Purchase Agreement to effectuate the Sale Transaction on the terms set forth in the Purchase Agreement, attached hereto as **Exhibit A**.

PLEASE TAKE FURTHER NOTICE that the Debtors have determined to effectuate the Sale Transaction.

PLEASE TAKE FURTHER NOTICE that the proposed forms of order that the Debtors will seek to have the Court enter to authorize the Sale Transaction under the Purchase Agreement is attached hereto as **Exhibit B**. The Debtors reserve the right to modify such proposed order prior to the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that the Debtors will seek approval of the Sale Transaction of these Assets to the Purchaser at the Sale Hearing scheduled to commence **on July 29, 2024, at 10:00 a.m., (prevailing Eastern Time)** before the Honorable [●], United States Bankruptcy Judge for the Bankruptcy Court for the District of Delaware, at 824 North Market Street, 6th Floor, Courtroom No. [●], Wilmington, Delaware 19801. The Sale Hearing may be adjourned by announcement in open Court or on the Court's calendar without any further notice required.

PLEASE TAKE FURTHER NOTICE that objections specific to a Successful Bidder must be made on or before **July 22, 2024, at 4:00 p.m., (prevailing Eastern Time)** (the "Sale Transaction Objection Deadline"). Objections specific to the Auction must be made on or before **July 25, 2024, at 4:00 p.m., (prevailing Eastern Time)** (the "Post-Auction Objection Deadline"). Objections must be made in writing, state the basis of such objection with specificity, and shall be filed with the Court, with a courtesy copy to chambers, and must be filed no later than the Auction Objection Deadline, as applicable, and must be served on the following parties: (i) the Debtors, 26125 North Riverwoods Boulevard, Mettawa, Illinois, 60045; (ii) proposed co-counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Joshua A. Sussberg, P.C. (joshua.sussberg@kirkland.com) and Chris Ceresa (chris.ceresa@kirkland.com), and Kirkland & Ellis LLP, 333 West Wolf Point Plaza, Chicago, Illinois 60654, Attn.: Spencer A. Winters, P.C. (spencer.winters@kirkland.com), Yusuf U. Salloum (yusuf.salloum@kirkland.com), and Rebecca Marston (rebecca.marston@kirkland.com); (iii) proposed co-counsel to the Debtors, Cole Schotz P.C., 500 Delaware Avenue, Suite 1410, Wilmington, Delaware 19801, Attn: Patrick J. Reilley, Esq. (preilley@coleschotz.com), and Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn.: Michael D. Sirota, Esq. (msirota@coleschotz.com); and (iv) the Debtors' proposed investment banker, PJT

Partners LP, 280 Park Avenue, New York, New York 10017, Attn: Michael Schlappig (schlappig@pjtpartners.com), Jaimie Baird (baird@pjtpartners.com), and Dylan Friesner (friesner@pjtpartners.com). (v) counsel to the 1L Ad Hoc Group, (i) Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, NY 10166-0193, Attn.: Scott J. Greenberg (SGreenberg@gibsondunn.com), Jason Zachary Goldstein (JGoldstein@gibsondunn.com), Joshua Brody (JBrody@gibsondunn.com), and Kevin Liang (KLiang@gibsondunn.com) and (ii) Pachulski Stang Ziehl & Jones LLP, 919 North Market Street, 17th Floor, Wilmington, DE 19801, Attn.: Laura Davis Jones (ljones@pszjlaw.com); (vi) the United States Trustee, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn.: Benjamin A. Hackman (Benjamin.A.Hackman@usdoj.gov); and (vii) any other party that has requested notice pursuant to Bankruptcy Rule 2002.

PLEASE TAKE FURTHER NOTICE that at the Sale Hearing, the Debtors will seek the Court's approval of the Successful Bid by the Purchaser. Unless the Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the Sale Transaction, and there will be no further bidding at the Sale Hearing.

PLEASE TAKE FURTHER NOTICE that, unless an objection is timely filed regarding the assumption or assignment to the Successful Bidder of a contract or lease, such contract or lease shall be assumed and assigned to the Successful Bidder as of [●] (the "Assignment Date").

PLEASE TAKE FURTHER NOTICE that this Successful Bidder Notice is subject to the terms and conditions of the Bidding Procedures Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict, and the Debtors encourage parties in interest to review such documents in their entirety.

PLEASE TAKE FURTHER NOTICE that you may obtain additional information concerning the above-captioned chapter 11 cases at the website maintained in these chapter 11 cases at https://omniagentsolutions.com/Vyaire.

[*Remainder of page intentionally left blank*]

Dated: [●], 2024
Wilmington, Delaware

/s/ DRAFT

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