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 (BLS)
Debtors.	)	(Jointly Administered)
	)	**Re: Docket No. 16**

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

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* [Docket No. 16] (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

---

[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' 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.

reviewed the Motion, the First Day Declaration, the Schlappig Declaration [Docket No. 158], the Braley Declaration [Docket No. 157] and having considered the statements of counsel and the evidence adduced with respect to the Motion at a hearing (if any) 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, the Braley 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, and which consent shall not be unreasonably withheld), and in consultation with the official committee of unsecured creditors (the "Committee"), 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 11, 2024**. Subject to the consent of the Required DIP Lenders (which consent shall not be unreasonably withheld), and in consultation with the Committee, the Debtors are further authorized, but not directed, to offer the Bid Protections to such Stalking Horse Bidder(s) provided that the total Bid Protections offered to each Stalking Horse Bidder shall not exceed the greater of: (a) a break-up fee (a "Break-Up Fee") of three percent (3%) of the total cash consideration payable under such Stalking Horse APA, if any, which Break-Up Fee would be inclusive of any expenses incurred by such Stalking Horse Bidder, and (b) a Break-Up Fee of three percent (3%) of the total cash consideration payable under such Stalking Horse APA, if any, plus reasonable and documented expenses (an "Expense Reimbursement," and together with any Break-Up Fee, the "Bid Protections"), which Expense Reimbursement shall be no greater than $250,000; *provided* that, the sum of the Break-Up Fee and the Expense Reimbursement in this clause (b) shall not exceed $850,000 in the aggregate; *provided*

further, that any and all Bid Protections shall be subject to the objection process in paragraph 4 below; *provided further*, that the Debtors shall be entitled to offer Bid Protections to no more than two (2) Stalking Horse Bidders. 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 (which consent shall not be unreasonably withheld), and in consultation with the Committee, 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. For the avoidance of doubt, nothing in this Order is shifting the Debtors' burden of proof that the Bid Protections are actually necessary to preserve the value of the estates pursuant to section 503(b) of the Bankruptcy Code. Nothing in this Order shall be deemed to award any Bid Protections (i) related to a credit bid or (ii) in favor of an insider of or affiliate of the Debtors. 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) business 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 Court may enter an order approving the Bid Protections set forth in the Stalking Horse Notice and the designation of the Stalking Horse.

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 (which consent shall not be unreasonably withheld) 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 described in section D.4.[4] of the Bidding Procedures (such deducted amounts which 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 (which consent shall not be unreasonably withheld) 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 (which consent shall not be unreasonably withheld), 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

[4] For the avoidance of doubt, payment of the aggregate cash sale proceeds to the DIP Lenders shall be subject to the Committee's challenge rights set forth in paragraph 12 of the Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying Automatic Stay, and (VI) Granting Related Relief (the "Final DIP Order").

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, Prepetition Lenders, Prepetition Agents, 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) advisors to the Committee, (iv) any Qualified Bidder, (v) advisors to the DIP Lenders, (vi) any creditors that request access to the Auction within 48 hours prior to the date of the Auction, and (vii) 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).[5]

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

[5] For the avoidance of doubt, payment of the aggregate cash sale proceeds to the DIP Lenders shall be subject to the Committee's challenge rights set forth in paragraph 12 of the Final DIP Order.

bona fide offer that it intends to consummate if selected as the Successful Bidder or Back-Up Bidder.

11. Following the Auction, the Debtors will determine, with the consent of the Required DIP Lenders, 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. **<u>Sale Transaction Objections</u>**. 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 "<u>Notice Parties</u>"): (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) proposed counsel to the Committee,

McDermott Will & Emery LLP, One Vanderbilt Avenue, New York, NY 10017-3852, Attn: Darren Azman (dazman@mwe.com) and Kristin Going (kgoing@mwe.com) and McDermott Will & Emery LLP, The Brandywine Building, 1000 N. West Street, Suite 1400, Wilmington, Delaware 19801, Attn.: David Hurst (dhurst@mwe.com) and Maris Kandestin (mkandestin@mwe.com); (v) 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 (vi) 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, or the identity of the Successful Bidder(s) or Back-Up 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.

15. Following service of the Successful Bidder Notice, parties may object to the adequate assurance of future performance of the applicable Successful Bidder or Back-Up Bidder (each such objection, an "Adequate Assurance Objection"). Any Adequate Assurance 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 29, 2024 at 4:00 p.m. (prevailing Eastern Time)** on the Notice Parties; *provided* that, to the extent not consensually resolved, any Adequate Assurance Objection may be set for hearing at a date and time following the Sale Hearing.

I. Auction, Bidding Procedures, and Related Relief.

16. 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.

17. **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.

18. **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).

19. **Sale Hearing**. 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. 1, Wilmington, Delaware 19801, on **July 31, 2024, at 2:00 p.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.

20. 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.

21. 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. Notwithstanding the foregoing, the rights of the U.S. Trustee and any domestic governmental unit (as defined in 11 U.S.C. § 101(27)) to object to the terms of any proposed sale order or purchase agreement shall be preserved for a period of at least four (4) business days of the filing of such document; *provided* that, in the event any revised version of such document is filed, such 4-business-day period shall relate back to the date when the initial version of such document, as applicable, was filed, except to the extent the revisions or modifications reflected in such revised version may materially affect the interests of the U.S. Trustee or any domestic governmental unit,

as applicable, in which case, the 4-business-day period shall be preserved for such party as to such revisions or modifications based on when such revised version was filed.

22. 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.

23. 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.

24. 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.

25. 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.

26. 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.

27. 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.

28. 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.

29. 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.

30. 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).

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

32. 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.

33. 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.

34. 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 "<u>DIP Order</u>"). 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, and to the extent there is any inconsistency between the terms of the RSA and any action taken or proposed to be taken hereunder, the terms of this Order 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).

35. The Debtors and Cigna Health and Life Insurance Company ("<u>Cigna</u>") are parties to an Administrative Services Contract and a Stop Loss Policy that facilitate the Debtors' self-funded employee healthcare benefits (jointly, the "<u>Cigna Employee Benefits Agreements</u>"). Notwithstanding anything in this Order to the contrary, for any Sale Transaction, unless Cigna and the Debtors agree otherwise, the Debtors shall provide to Cigna, through its counsel (email

sufficient), no later than (a) in the event there is no Auction, two (2) business days prior to the Sale Hearing, or (b) in the event the Auction goes forward, not later than noon, one (1) business day prior to the Sale Hearing, written notice of Debtors' irrevocable (subject to closing of the applicable Sale Transaction) decision as to whether or not the Debtors propose to assume and assign the Cigna Employee Benefits Agreements to the applicable Successful Bidder(s) as part of the applicable proposed Sale Transaction.

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

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

38. This Court retains 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.

Dated: July 11th, 2024
Wilmington, Delaware

BRENDAN L. SHANNON
UNITED STATES BANKRUPTCY JUDGE