# Exhibit 1

Debtor: Vyaire Medical, Inc.

UNITED STATES BANKRUPTCY COURT DISTRICT OF DELAWARE

Case Number: 24-11217

**FILED**

Claim No. 148

**August 02, 2024**

By Omni Claims Agent
For U.S. Bankruptcy Court
District of Delaware

Official Form 410

# Proof of Claim

04/22

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.**

Carefully read instructions included with this Proof of Claim before completing.

## Part 1: Identify the Claim

**1. Who is the current creditor?**

Ayming USA, Inc.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

**2. Has this claim been acquired from someone else?**

[X] No
[ ] Yes From whom?

**3. Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

| Where should notices to the creditor be sent? | Where should payments to the creditor be sent? (if different) |
|---|---|
| William N. Haacker | Ayming USA, Inc. |
| 6363 Woodway Dr., Suite 700 | 2603 Augusta Drive, Suite 805 |
| Houston, TX 77057 | Houston, TX 77057 |
| Contact Phone 713-917 -0024 | Contact Phone |
| Contact email Will.Haacker@dtlawyers.com | Contact email accountsreceivable@aymingusa.com |

Uniform claim identifier for electronic payments in chapter 13 (if you use one)

**4. Does this claim amend one already filed?**

[X] No
[ ] Yes Claim Number on court claims registry (if known) Filed On MM / DD / YYYY

**5. Do you know if anyone else has filed a proof of claim for this claim?**

[X] No
[ ] Yes Who made the earlier filing?

## Part 2: Give Information About the Claim as of the Date the Case Was Filed

**6. Do you have any number you use to identify the debtor?**

[X] No
[ ] Yes Last 4 digits of the debtor's account or any number you use to identify the debtor: ______

**7. How much is the claim?**

$ $1,217,673.89

**Does this amount include interest or other charges?**

[X] No
[ ] Yes Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

**8. What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information

Breach of Contact / Unpaid Tax Consulting Services

**9. Is all or part of the claim secured?**

[X] No
[ ] Yes The claim is secured by a lien on property

**Nature of property:**

[ ] Real Estate If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*
[ ] Motor Vehicle
[ ] Other Describe: ______

**Basis for perfection:** ______

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.

**Value of Property:** $ ______

**Amount of the claim that is secured:** $ ______

**Amount of the claim that is unsecured:** $ ______ (The sum of the secured and unsecured amounts should match the amount in line 7).

**Amount necessary to cure any default as of the date of the petition:** $ ______

**Annual Interest Rate:** (when case was filed) ______%

[X] Fixed
[ ] Variable

**10. Is this claim based on a lease?**

[X] No
[ ] Yes **Amount necessary to cure any default as of the date of the petition.** $ ______

**11. Is this claim subject to a right of setoff?**

[X] No
[ ] Yes Identify the property: ______

**12. Is this claim for the value of goods received by the debtor within 20 days before the commencement date of this case (11 U.S.C. § 503(b)(9)).?**

[X] No
[ ] Yes Amount of 503(b)(9) Claim: $ ______

**13. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

[X] No

[ ] Yes *Check one:*

| | **Amount entitled to priority** |
|---|---|
| [ ] Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | $ |
| [ ] Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | $ |
| [ ] Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | $ |
| [ ] Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | $ |
| [ ] Contributions to an employee benefit plan 11 U.S.C. § 507(a)(5). | $ |
| [ ] Other. Specify subsection of 11 U.S.C. § 507(a)(___) that applies. | $ |

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

## Part 3: Sign Below

**The person completing this proof of claim must sign and date it.**

**FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

**A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.**

*Check the appropriate box:*

[X] I am the creditor.

[ ] I am the creditor's attorney or authorized agent.

[ ] I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

[ ] I am the guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowlegment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 8/2/2024
MM / DD / YYYY

/s/ Nicholas Moringo
Signature

**Print the name of the person who is completing and signing this claim:**

Name: Nicholas Moringo
First Name Middle Name Last Name

Title: Senior Associate

Company: Ayming USA, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 2603 Augusta Drive, Suite 805
Houston, TX 77057

Contact Phone: 346-453-9153 Email: NMoringo@aymingusa.com

**Fill in this information to identify the case:**

Debtor 1 Vyaire Medical Inc.

Debtor 2
(Spouse, if filing)

United States Bankruptcy Court for the: District of Delaware

Case number 24-11217-BLS

Official Form 410

# Proof of Claim

**04/22**

**Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.**

**Filers must leave out or redact** information that is entitled to privacy on this form or on any attached documents. Attach redacted copies of any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to $500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

**Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy** (Form 309) **that you received.**

## Part 1: Identify the Claim

**1. Who is the current creditor?**

Ayming USA, Inc.
Name of the current creditor (the person or entity to be paid for this claim)

Other names the creditor used with the debtor

**2. Has this claim been acquired from someone else?**

☑ No
☐ Yes. From whom?

**3. Where should notices and payments to the creditor be sent?**

Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)

| **Where should notices to the creditor be sent?** | **Where should payments to the creditor be sent?** (if different) |
|---|---|
| Name: William N. Haacker | Name: Ayming USA, Inc. |
| Number Street: 6363 Woodway Dr., Suite 700 | Number Street: 2603 Augusta Drive, Suite 805 |
| City: Houston State: TX ZIP Code: 77057 | City: Houston State: TX ZIP Code: 77057 |
| Contact phone: 713-917-0024 | Contact phone: |
| Contact email: Will.Haacker@dtlawyers.com | Contact email: accountsreceivable@aymingusa.com |

Uniform claim identifier for electronic payments in chapter 13 (if you use one):

__ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __ __

**4. Does this claim amend one already filed?**

☑ No
☐ Yes. Claim number on court claims registry (if known) ______ Filed on ______ MM / DD / YYYY

**5. Do you know if anyone else has filed a proof of claim for this claim?**

☑ No
☐ Yes. Who made the earlier filing?

## Part 2: Give Information About the Claim as of the Date the Case Was Filed

**6. Do you have any number you use to identify the debtor?**

☑ No
☐ Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ ____ ____ ____

**7. How much is the claim?**

$ 1,217,673.89

**Does this amount include interest or other charges?**
☑ No
☐ Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

**8. What is the basis of the claim?**

Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.

Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).

Limit disclosing information that is entitled to privacy, such as health care information.

Breach of Contact / Unpaid Tax Consulting Services

**9. Is all or part of the claim secured?**

☑ No
☐ Yes. The claim is secured by a lien on property.

**Nature of property:**
☐ Real estate. If the claim is secured by the debtor's principal residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
☐ Motor vehicle
☐ Other. Describe: ____________________

**Basis for perfection:** ____________________

Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)

**Value of property**: $__________

**Amount of the claim that is secured:** $__________

**Amount of the claim that is unsecured:** $__________ (The sum of the secured and unsecured amounts should match the amount in line 7.)

**Amount necessary to cure any default as of the date of the petition:** $__________

**Annual Interest Rate** (when case was filed)_______%
☐ Fixed
☐ Variable

**10. Is this claim based on a lease?**

☑ No
☐ Yes. **Amount necessary to cure any default as of the date of the petition.** $__________

**11. Is this claim subject to a right of setoff?**

☑ No
☐ Yes. Identify the property: ____________________

**12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?**

A claim may be partly priority and partly nonpriority. For example, in some categories, the law limits the amount entitled to priority.

☑ No

☐ Yes. *Check one:*

| | Amount entitled to priority |
|---|---|
| ☐ Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B). | $ |
| ☐ Up to $3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7). | $ |
| ☐ Wages, salaries, or commissions (up to $15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4). | $ |
| ☐ Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8). | $ |
| ☐ Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5). | $ |
| ☐ Other. Specify subsection of 11 U.S.C. § 507(a)(__) that applies. | $ |

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

## Part 3: Sign Below

**The person completing this proof of claim must sign and date it. FRBP 9011(b).**

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

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*Check the appropriate box:*

☑ I am the creditor.

☐ I am the creditor's attorney or authorized agent.

☐ I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

☐ I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgment that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have a reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 08/02/24
MM / DD / YYYY

Nicholas Moringo (Aug 2, 2024 12:15 CDT)
Signature

**Print the name of the person who is completing and signing this claim:**

Name: Nicholas Moringo
First name / Middle name / Last name

Title: Senior Associate

Company: Ayming USA, Inc.
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address: 2603 Augusta Drive, Suite 805
Number Street

Houston TX 77057
City State ZIP Code

Contact phone 346-453-9153 Email NMoringo@aymingusa.com

# ADDENDUM TO PROOF OF CLAIM

This Addendum is attached to and a part of the proof of claim filed by Ayming USA, Inc. ("Ayming").

**7. HOW MUCH IS THE CLAIM? (continued):**
**8. WHAT IS THE BASIS OF THE CLAIM? (continued):**

The amounts due as of the date of this filing are based upon the fee structures set forth under the "Remuneration and Term" sections of the January 23, 2023 Agreement and November 13, 2023 Agreement. The services provided under those agreements were, respectively related to analysis and consultation related to: 1) Research & Development ("R&D") Tax Credits; and 2) expenses under I.R.C. Section 174.

The fees are premised upon the tax credits identified between 2020 and 2022:

| **Total Gross Federal and StateR&D Tax Credits (Tax Year 2020-2022)** |
|---|
| $ 11,201,738.00 |

The fee associated with the R&D Tax Credits is a Success Based Fee with a scaled percentage that decreases at $1,000,000 and $3,000,000 of the identified R&D Tax Credits:

| **R&D Tax Credit Fee Structure (*See* Jan. 23, 2023 Agreement)** | | | |
|---|---|---|---|
| **$1 - $1,000,000 14%** | **$1,000,001 - $3,000,000 12%** | **$3,000,001+ 10%** | **Total R&D Tax Credit Fee** |
| $ 140,000.00 | $ 239,999.88 | $ 820,173.70 | $ 1,200,173.58 |

The fee associated with Section 174 is a Success Based Fee based upon 10% of the fee associated with R&D Tax Credit fee for the tax year ending September 2023:

| **Section 174 Fee Structure (*See* Nov. 13, 2023 Agreement)** | | |
|---|---|---|
| R&D Tax Credit (Year ending Sept. 2023) | Fee Associated with R&D Tax Credit (Year ending Sept. 2023) | Total Section 174 Fee |
| $ 1,750,031.00 | $ 175,003.10 | $ 17,500.31 |

In total, the fees total $1,217,673.89:

| Total Fees Summary | |
|---|---|
| R&D Tax Credit Fee | $ 1,200,173.58 |
| Section 174 Fee | $ 17,500.31 |
| Total Fees Owed | $ 1,217,673.89 |

Ayming reserves its right to amend, modify, alter, supplement, replace, or withdraw this Proof of Claim and/or any attachments or exhibits. In submitting this Proof of Claim, Ayming does not waive any of the following:

- Any obligations owed to Ayming, any right to any security that may be determined to be held by him or for its benefit, or any rights of action that he may have against the Debtor or any other person or entity including, without limitation, the right to assert some or all of the its attorney's fees and costs incurred in connection with this Bankruptcy Case; the right to assert interest against the claim as permitted under the applicable agreement; or the right to assert any of the matters asserted herein by way of defense, counterclaim, offset or recoupment against any claim asserted by or on behalf of the Debtor or any representative or affiliate thereof, or successor thereto.

- Any claim, right or interest of Ayming against any person or entity, including any co-obligors, principals, guarantors, or successors-in-interest under the Promissory Note and related documents, including the Deed of Trust and Personal Guaranty;

- Any lien, right, interest, or security interest in any property (including without limitation in any property of any person or entity other than the Debtor);

- Any collateral of any kind for amounts owed to Ayming by the Debtor or any other person or entity;

- Any rights to a trial by jury in any proceeding as to any matters so triable, whether or not the same are designated legal or equitable rights in any case, controversy or proceeding related hereto, notwithstanding the designation or not of such matters as "core proceedings" pursuant to 11 U.S.C. § 157(b)(2)(H), and whether such jury trial right is pursuant to statute or the United States Constitution;

- Ayming's right to have any and all final orders in any and all non-core matters or proceedings entered only after de novo review by a United States District Court Judge; or

- Its right to an election of remedy.

AYMING USA INC.
5718 Westheimer Rd, Suite 1420
Houston, TX 77057
Aymingusa.com

**January 27th, 2023**

**Caleb Moore**
**Vice President, Finance & Treasury**
Vyaire Medical Inc.
26125 North Riverwoods Blvd,
Mettawa, IL
60045

Dear Caleb,

Thank you for considering **Ayming USA, Inc.** ("Ayming") to perform your Research and Development ("R&D") Tax Credit Study Services as defined below ("Services") for **[Vyaire Medical Inc.]** (the "**Company**"). Ayming through its employees and/or specialized consultants, will provide services outlined below. This letter and all Terms and Conditions form an integral part of this Agreement between Ayming and the Company (each a "**Party**" and collectively the "**Parties**") that are required to fulfil this agreement.

## R&D TAX CREDIT STUDY SERVICES

### AYMING'S RESPONSIBILITIES

- **Feasibility Analysis**
  Ayming will gather information to gain an understanding of Company's business activities and practices including project information, potential qualified activities, documentation processes and accounting. With this information, Ayming will perform a Feasibility Analysis to validate that Company qualifies for the R&D Tax Credit, and to develop a credit range estimate for the approximate benefits. Each company has unique policies and procedures so Study processes and deadlines will be tailored to your company. At the conclusion of the Feasibility Analysis Ayming will provide the Company with a credit estimate range (between X to Y dollars).

- **Qualification and Quantification**
  Through an interview process, Ayming will determine the involvement and contribution of the eligible employees and/or contractors towards the qualified R&D activities. Qualified expenses will be determined and quantified. Technical and financial documentation will be collected to substantiate qualified research projects. Finally, a proforma Form 6765 and requisite State schedules (if any) will be submitted to Company and/or your CPA.

- **Reporting, Roadmap and Audit Defense**
  Ayming will prepare and deliver the supporting documentation. Ayming will also maintain the documents received from Company for a period of three years from the date of performing a Study. In addition, Ayming will represent Company through the Examination and Appellate Conference processes with respect to any challenge by the Internal Revenue Service and/or State Taxing Authorities of the benefits taken in relation to the R&D Tax Credit Study in accordance with the above provisions.

### COMPANY'S RESPONSIBILITIES

- Company agrees and recognizes that time is of the essence regarding properly quantifying, calculating and timely filing tax forms to receive the tax refunds the Company is owed. To this end, Company agrees to use commercially reasonable efforts to timely provide Ayming with adequate and necessary data, information, financial reports, and access to its employees to comply with project and statutory deadlines.
- Ensure the R&D claims are made by filing any and all amended returns related to these services with the appropriate tax authority within the earlier of thirty (30) days of credit delivery to Company or prior to the statute of limitations.
- Amended returns shall be filed in accordance with the instructions provided with the final credits release and shall be sent via certified mail or IRS approved electronic equivalent.

### R&D REMUNERATION and TERM

The initial term of this R&D engagement is for all open tax years as well as tax years 2018 through 2023. The fee for our Services is defined below for each of the applicable tax years. Fees shall be billed in accordance with the terms and conditions attached hereto.

- 14% Success Based Fee for Net Federal and State Credits Identified for the first $1,000,000 in credits;
- 12% Success Based Fee for Net Federal and State Credits identified from $1,000,001 to $3,000,000 in credits; and
- 10% Success Based Fee for Net Federal and State Credits identified for credits in excess if $3,000,000

If these terms (including below All Terms and Conditions, which are attached and incorporated herein by reference) are acceptable to you, please sign, date, scan and send full agreement to us or indicate your signature through the DocuSign process. We are looking forward to serving you as a valuable client and sharing this mutually beneficial relationship.

Vyaire Medical Inc.

Per: DocuSigned by: Caleb Moore AC92ECCCD7BC49D...

Title: VP, Corp Controller

Date: 27-01-2023

AYMING USA INC.

Per: DocuSigned by: Thomas Folsom 61BD461D4AFB416...

Title: USA Country Mng Director

Date: 27-01-2023

## Terms and Conditions

**A.** **Nondisclosure, Proprietary and Confidential Information.** For the purposes of this Agreement "**Confidential Information**" of a Party means all information and data (in any format or medium) relating to the Party or to its business, strategies, pricing, personnel, customers, suppliers, products or services that is directly or indirectly disclosed to or accessed by the other Party, whether or not any of the information is identified as being confidential, but excludes any information that the recipient proves: (i) was lawfully in its possession before receiving it from the disclosing Party; (ii) was provided in good faith to the recipient by a third party that had no obligation to keep it confidential; or (iii) is or becomes generally available to the public through no fault of the recipient.

The Company acknowledges that all of the techniques, knowledge and methods used by Ayming also constitute Confidential Information.

A Party (the "**Recipient**") that receives Confidential Information from the other Party (the "**Discloser**") will keep that Confidential Information in strict confidence and will use all reasonable measures to protect the Confidential Information from unauthorized use, access, disclosure, and duplication.

The Recipient will not, without the Discloser's prior written consent: (a) disclose any Confidential Information to any third party other than as necessary to fulfil the Recipient's obligations or exercise the Recipient's rights under this Agreement; (b) or use any Confidential Information for any purpose other than as necessary to fulfil the Recipient's obligations or exercise the Recipient's rights under this Agreement; (c) duplicate, transfer, sell, publish, transmit, modify, reverse-engineer or take any benefit from any Confidential Information; or (d) directly or indirectly assist, facilitate or encourage any third party to carry on any activity that the Recipient is not permitted to carry on under this section.

The Recipient will restrict access to the Discloser's Confidential Information to those of its employees, directors, officers, mandataries, and other representatives (collectively, the "**Representatives**") who need to know that Confidential Information to perform their duties in relation to the purpose set out in this section, and the Recipient will cause its Representatives to comply this section and will be responsible and liable for any Representative's breach of this section.

**B.** **Payment of Invoices and Fee Cap.** Ayming's invoices are payable within 90 days of receipt. The invoices will be broken into three portions of the total fee (25% estimated, 50%, remaining balance). Ayming will issue an initial invoice for 25% of the fee based on the low end of the credit estimate at the conclusion of the Feasibility Analysis. Ayming will issue a second invoice when the credit calculations are delivered equal to 50% of the fee based on the Net Credits identified and delivered to Company. Ayming will issue a final invoice on completion of the Study for any remaining balance, based on the Net Credits identified and any adjustments to the initial 25% which was calculated based on the Feasibility Study. Without limiting its rights or remedies, Ayming shall have the right to halt or terminate its services and / or withhold the final documentation until payment is received on all invoices. <u>Interest on overdue accounts accrues at 12% per annum starting 90 days following the date payment is due</u>. **Please note that the fee cap shall be based solely upon the credits identified within the study and not based upon any audit adjustments, settlements, or utilization/realization of tax benefits. If the Company fails to adhere to any portion of this provision, Ayming may suspend performance of its services and Ayming's obligation to provide audit defense services may be deemed to be null and voidable at Ayming's sole discretion.**

**C.** **Requirement to Execute Power of Attorney.** Company understands that Ayming may require Company to execute Form 2848, Power of Attorney, so that Ayming may check on the status of the refund claim and answer questions and queries presented to Company by the Service as necessary with regard to the tax credit and or refund claim.

**D.** **Term.** Upon the end of the initial term expressed in the Agreement, this Agreement shall automatically renew annually, unless terminated in writing by either Party giving at least three (3) months' notice before the beginning of the renewal period in question.

**E.** **Limitation on Damages. Except as expressly set forth in the Agreement, neither Party shall assume nor be responsible to each other on for any claims, liabilities, or expenses relating to this Agreement for an aggregate amount in excess of the fees paid to Ayming by Company. In no event shall Ayming or its personnel be liable for consequential, special, indirect, incidental, punitive, or exemplary losses or damages relating to this Agreement. This limitation on liability provision shall apply to the fullest extent of the law, whether in contract, statute, tort, or otherwise.**

**F.** **Third Parties and Internal Use.** Except as otherwise agreed, all services hereunder shall be solely for Company's internal purposes and use, and this Agreement does not create privity between Ayming and any person or party other than Company. This Agreement is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on the advice, opinions, reports, or other services of Ayming.

**G.** **Expenses.** Company shall reimburse Ayming for all out-of-pocket expenses including, but not limited to, reasonable travel expenses incurred on Company's behalf during the implementation and/or audit processes. Expenses shall not exceed $1,500 without Company's permission.

**H.** **Information and Data.** Ayming shall be entitled to assume, without independent verification, the accuracy of all representations, assumptions, information and data that Company and its representatives provide to Ayming. All assumptions, representations, information and data to be supplied by Company and its representatives will be complete and accurate to the best of its knowledge.

**I.** **Based on Current Tax Laws.** Company understands that any tax assistance provided pursuant hereto will be based upon the law, regulations, cases, rulings and other tax authority in effect at the time specific tax assistance is provided. If there are subsequent changes in or to the foregoing tax authorities (for which Ayming shall have no specific responsibility to advise Company), Company acknowledges that such changes may result in that tax assistance being rendered invalid or necessitate (upon Company's request) a reconsideration of that prior tax assistance.

**J.** **Governing Law and Severability.** These Terms and Conditions, and the Agreement letter to which these they are appended, including any appendix and exhibits, shall be governed by, and construed in accordance with, the laws of the State of Texas (without giving effect to the choice of law principles thereof). Furthermore, if any action is brought by either party, the parties agree that such action shall be brought within the jurisdiction of the State of Texas. Sole venue for disputes herein shall be in the State of Texas. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this Agreement.

**K.** **Document Retention.** Company must maintain all records substantiating their tax credits for at least three years from the period the credits are utilized or the period that such tax years remain subject to audit by the Internal Revenue Service.

**L.** **Duty to Cooperate.** Ayming relies upon the documentation, representations and other factual information provided by Company to implement and defend (in the event of audit) Tax Credits identified. If it is determined that the documentation, representations or other factual information provided by Company are false or if Company fails to cooperate with Ayming by not providing information or documentation in a reasonable time period during the implementation of Company's study or defense of Company's position in audit, Ayming's obligation to provide audit defense may be deemed to be null and voidable at Ayming's sole discretion.

## AYMING BANKING DETAILS

- [redacted]

  **ABA Routing Number:** [redacted]
  **Swift Code:** [redacted]
  **Account Number:** [redacted]

- Notifications must be sent to **accountsreceivable@aymingusa.com**

AYMING USA INC.
5718 Westheimer Road, Suite 1420
Houston, Texas 77056
Aymingusa.com

**Vikram Pajaj**
**Chief Financial Officer**
Vyaire Medical Inc.
26125 North Riverwoods Blvd.
Mettawa, IL
60045

**November 13, 2023**

SUBJECT: **Amendment to & Addendum to Agreement, dated January 27th, 2023.**

**Amendment to Agreement, dated January 27th, 2023**

The Terms and Conditions for R&D Tax Credit Services, between **Vyaire Medical Inc.** and **Ayming USA Inc.** as part of the Agreement dated January 27th, 2023 is amended to include the following:

- **Payment of Invoices and Fee Cap.** Ayming's invoices are payable within 90 days of receipt. The invoices will be broken into two portions of the total fee. Ayming will issue an invoice when the credit calculations are delivered equal to 75% of the fee based on the Net Credits identified and delivered to the Company. Ayming will issue another invoice upon completion of the Study for any remaining balance.

No other Terms and Conditions from the Agreement shall be amended.

**Addendum to Agreement, dated January 27th, 2023**

In addition, the following SOW and the attached Terms & Conditions for Section 174 R&D Tax Deduction & Amortization Analysis will be added as part of the Agreement dated January 27th, 2023:

## SECTION 174 R&D TAX DEDUCTION & AMORTIZATION ANALYSIS

### AYMING'S RESPONSIBILITIES

- **Analysis and Segregation of Expenses**
  Ayming will gather information to gain an understanding of Company's business activities and practices including project information, potential research activities, documentation processes, and accounting. With this information, Ayming will perform an analysis to calculate the value of research expenses in accordance with I.R.C. Section 174. Each company has unique policies and procedures so the processes and deadlines for this analysis and calculation will be tailored to your company.

  Through an interview process and in coordination with documentation analysis, Ayming will determine the involvement and contribution of the eligible employees and/or contractors towards the research activities. Ayming will analyze supply and other expenses (if any) to segregate and calculate research expenses. Technical and financial documentation will be collected to support the allocation of research and non-research expenses. Finally, schedules demonstrating the analysis will be submitted to Company and/or your CPA.

- **Reporting, Roadmap**
  Ayming will prepare and deliver the supporting documentation. Ayming will also maintain the documents received from Company for a period of three years from the date of performing a Services.

### COMPANY'S RESPONSIBILITIES

- Company agrees and recognizes that time is of the essence regarding properly quantifying, calculating, and timely filing tax forms to comply with section 174 filing requirements. To this end, Company agrees to use commercially reasonable efforts to timely provide Ayming with adequate and necessary data, information, financial reports, and access to its employees to comply with project and statutory deadlines.

### REMUNERATION and TERM

- The fee for our Services will be Success Based at 10% of the fee associated with the R&D analysis beginning with tax year ending in September 2023. Fees shall be billed in accordance with the Terms and Conditions attached hereto.

All other terms of the Agreement shall remain the same.

Vyaire Medical, Inc.

Per: James Talfourd-Cook

Title: Global Tax

Date: 20 November 2023

AYMING USA INC.

DocuSigned by:

Per: Thomas Folsom

61BD461D4AF8416...

Title: USA Country Mng Director

Date: 20-11-2023

**A.** **Nondisclosure, Proprietary and Confidential Information.** For the purposes of this Agreement "**Confidential Information**" of a Party means all information and data (in any format or medium) relating to the Party or to its business, strategies, pricing, personnel, customers, suppliers, products or services that is directly or indirectly disclosed to or accessed by the other Party, whether or not any of the information is identified as being confidential, but excludes any information that the recipient proves: (i) was lawfully in its possession before receiving it from the disclosing Party; (ii) was provided in good faith to the recipient by a third party that had no obligation to keep it confidential; or (iii) is or becomes generally available to the public through no fault of the recipient.

The Company acknowledges that all of the techniques, knowledge and methods used by Ayming also constitute Confidential Information.

A Party (the "**Recipient**") that receives Confidential Information from the other Party (the "**Discloser**") will keep that Confidential Information in strict confidence and will use all reasonable measures to protect the Confidential Information from unauthorized use, access, disclosure, and duplication.

The Recipient will not, without the Discloser's prior written consent: (a) disclose any Confidential Information to any third party other than as necessary to fulfil the Recipient's obligations or exercise the Recipient's rights under this Agreement; (b) or use any Confidential Information for any purpose other than as necessary to fulfil the Recipient's obligations or exercise the Recipient's rights under this Agreement; (c) duplicate, transfer, sell, publish, transmit, modify, reverse-engineer or take any benefit from any Confidential Information; or (d) directly or indirectly assist, facilitate or encourage any third party to carry on any activity that the Recipient is not permitted to carry on under this section.

The Recipient will restrict access to the Discloser's Confidential Information to those of its employees, directors, officers, mandataries, and other representatives (collectively, the "**Representatives**") who need to know that Confidential Information to perform their duties in relation to the purpose set out in this section, and the Recipient will cause its Representatives to comply this section and will be responsible and liable for any Representative's breach of this section.

**B.** **Payment of Invoices and Fee Cap.** Ayming's invoices are payable within 90 days of receipt. An invoice for the total amount of the fee will be issued upon delivery of credit calculations. Without limiting its rights or remedies, Ayming shall have the right to halt or terminate its services and / or withhold the final documentation until payment is received on all invoices. **Interest on overdue accounts accrues at 12% per annum starting 30 days following the date payment is due.** **If the Company fails to adhere to any portion of this provision, Ayming may suspend performance of its services and Ayming's obligation to provide Services may be deemed to be null and voidable at Ayming's sole discretion.** Beginning with work completed after one year from the contract date, hourly rates will be updated at the time of the issuance of the invoice by the rate of inflation for the prior twelve-month period as determined by the United States Department of Labor.

**C.** **Requirement to Execute Power of Attorney.** Company understands that Ayming may require Company to execute Form 2848, Power of Attorney, so that Ayming may answer questions and queries presented to Company by the Service as necessary with regard to services provided.

**D.** **Term.** Upon the end of the initial term expressed in the Agreement, this Agreement shall automatically renew annually, unless terminated in writing by either Party giving at least three (3) months' notice before the beginning of the renewal period in question.

**E.** **Limitation on Damages. Except as expressly set forth in the Agreement, neither Party shall assume nor be responsible to each other on for any claims, liabilities, or expenses relating to this Agreement for an aggregate amount in excess of the fees paid to Ayming by Company. In no event shall Ayming or its personnel be liable for consequential, special, indirect, incidental, punitive, or exemplary losses or damages relating to this Agreement. This limitation on liability provision shall apply to the fullest extent of the law, whether in contract, statute, tort, or otherwise.**

**F.** **Third Parties and Internal Use.** Except as otherwise agreed, all services hereunder shall be solely for Company's internal purposes and use, and this Agreement does not create privity between Ayming and any person or party other than Company. This Agreement is not intended for the express or implied benefit of any third party. No third party is entitled to rely, in any manner or for any purpose, on the advice, opinions, reports, or other services of Ayming.

**G.** **Expenses.** Company shall reimburse Ayming for all out-of-pocket expenses including, but not limited to, reasonable travel expenses incurred on Company's behalf during the implementation and/or audit processes. Expenses shall not exceed $1,500 without Company's permission.

**H.** **Information and Data.** Ayming shall be entitled to assume, without independent verification, the accuracy of all representations, assumptions, information and data that Company and its representatives provide to Ayming. All assumptions, representations, information and data to be supplied by Company and its representatives will be complete and accurate to the best of its knowledge.

**I.** **Based on Current Tax Laws.** Company understands that any tax assistance provided pursuant hereto will be based upon the law, regulations, cases, rulings and other tax authority in effect at the time specific tax assistance is provided. If there are subsequent changes in or to the foregoing tax authorities (for which Ayming shall have no specific responsibility to advise Company), Company acknowledges that such changes may result in that tax assistance being rendered invalid or necessitate (upon Company's request) a reconsideration of that prior tax assistance.

**J.** **Governing Law and Severability.** These Terms and Conditions, and the Agreement letter to which these they are appended, including any appendix and exhibits, shall be governed by, and construed in accordance with, the laws of the State of Texas (without giving effect to the choice of law principles thereof). Furthermore, if any action is brought by either party, the parties agree that such action shall be brought within the jurisdiction of the State of Texas. Sole venue for disputes herein shall be in the State of Texas. If any provision of this Agreement is found by a court of competent jurisdiction to be unenforceable, such provision shall not affect the other provisions, but such unenforceable provision shall be deemed modified to the extent necessary to render it enforceable, preserving to the fullest extent permissible the intent of the parties set forth in this Agreement.

**K.** **Document Retention.** Company must maintain all records substantiating their tax deduction and amortization for at least six years from the period the deductions are utilized or the period that such tax years remain subject to audit by the Internal Revenue Service.

**L.** **Duty to Cooperate.** Ayming relies upon the documentation, representations and other factual information provided by Company to implement these Services. If it is determined that the documentation, representations or other factual information provided by Company are false or if Company fails to cooperate with Ayming by not providing information or documentation in a reasonable time period during the implementation of these Services Ayming may charge Company overtime rates at 125% of the respective hourly rate.

## AYMING BANKING DETAILS

- [redacted]

  **ABA Routing Number:** [redacted]
  **Swift Code:** [redacted]
  **Account Number:** [redacted]

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