

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

In re:	:	Chapter 11
NOVASOM, INC.,	:	Case No. 19-11734 (BLS)
Debtor.	:	Re: D.I. 7, 30

**ORDER ESTABLISHING BIDDING AND SALE PROCEDURES AND  
AUTHORIZING DEBTOR TO ENTER INTO STALKING HORSE  
AGREEMENT, SUBJECT TO HIGHER AND BETTER OFFERS**

Upon consideration of the Sale Motion<sup>1</sup> of the debtor and debtor-in-possession in the above-captioned chapter 11 case (the “Debtor”)<sup>2</sup> seeking entry of this order (the “Bidding Procedures Order”) (i) approving the proposed sale, auction and bidding procedures attached as Exhibit 1 hereto (the “Bidding Procedures”) by which the Debtor will sell substantially all of its assets (the “ Acquired Assets”) to VirtuOx, Inc. (the “Stalking Horse Purchaser” or “VirtuOx”) under the “Stalking Horse Contract”<sup>3</sup>, subject to higher and better offers, free and clear of all liens, claims, encumbrances, and other interests, through the sale of the Acquired Assets (each, a

<sup>1</sup> The term “Sale Motion” shall mean the Debtor’s Sale and Bid Procedures Motion was filed as part of the Debtor’s Motion For Entry Of (A) An Order (I) Approving The Sale Of Substantially All Assets Of The Debtor To The Stalking Horse Purchaser Subject To Higher And Better Offers, (II) Scheduling A Hearing To Consider Approval Of The Sale Or Sales Of Substantially All Assets Of The Debtor And The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, (III) Approving Certain Bidding Procedures, Assumption And Assignment Procedures, And The Form And Manner Of Notice Thereof, (IV) Establishing Procedures In Connection With Protections Afforded To Stalking Horse Purchaser, And (IV) Granting Related Relief; And (B) One Or More Orders (I) Approving The Sale Of The Assets, (II) Authorizing The Sale Free And Clear Of All Liens, Claims, Encumbrances And Other Interests, (III) Authorizing The Assumption And Assignment Of Certain Executory Contracts And Unexpired Leases, And (IV) Granting Related Relief, Including Stalking Horse Protections To The Stalking Horse Purchaser, filed by the Debtor with the Bankruptcy Court on August 2, 2019 [D.I. 7], as amended on August 6, 2019 [D.I. 30].

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

<sup>3</sup> The term “Stalking Horse Contract” shall mean that certain Asset Purchase Agreement, dated August 2, 2019, by and between Debtor and the Stalking Horse Purchaser, as may be amended, amended and restated or otherwise modified from time to time thereafter.

“Sale”); (ii) establishing procedures for the assumption and assignment of certain executory contracts and unexpired leases, including notice of proposed cure amounts (the “Assumption and Assignment Procedures”); (iii) approving the form and manner of notice of all procedures, protections, schedules, and agreements described in the Sale Motion and attached thereto, and the provision of Bid Protections (as defined below) to VirtuOx; (iv) scheduling (a) a date for an auction if the Debtor receives one or more timely and acceptable Qualified Bids (the “Auction”) and (b) a final hearing (the “Sale Hearing”) to approve the Sale of the Acquired Assets (as defined in the Stalking Horse Contract) to the Stalking Horse Purchaser under the Stalking Horse Contract, subject to higher and better offers; and (v) granting related relief, all as more fully described in the Sale Motion; and it appearing that the relief requested is in the best interests of the Debtor’s estate, its creditors, and other parties-in-interest; and it appearing that this Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334; and it appearing that the Sale Motion is a core proceeding pursuant to 28 U.S.C. § 157; and adequate notice of the Sale Motion (with respect to the bid procedures only) and opportunity for objection having been given, with no objections having been filed, or all objections having been resolved or overruled, as the case may be; and it appearing that no other notice need be given; and after due deliberation and sufficient cause therefor,

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

1. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). The predicates for the relief granted herein are Bankruptcy Code sections 105, 363, and 365 and Bankruptcy Rules 2002, 6004, and 6006. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

2. The legal and factual bases set forth in the Sale Motion (with respect to the bid procedures only) establish just cause for the relief granted herein. Entry of this Bidding Procedures Order is in the best interests of the Debtor and its estate, creditors, and all other parties-in-interest.

3. Notice of the Sale Motion (with respect to the bid procedures only), the Bidding Procedures Hearing, and the proposed entry of this Bidding Procedures Order was adequate and sufficient under the circumstances of this Chapter 11 case, and such notice complied with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules. Accordingly, no further notice of the Sale Motion (with respect to the bid procedures only), the Bidding Procedures Hearing, or this Bidding Procedures Order is necessary or required.

4. The Debtor has demonstrated a sound business justification for the Court to grant the relief requested in the Sale Motion (with respect to the bid procedures only), including, without limitation, to (i) approve the Bidding Procedures, (ii) establish the Assumption and Assignment Procedures; (iii) approve the form and manner of notice of all procedures, protections, schedules, and agreements described in the Sale Motion (with respect to the bid procedures only) and attached thereto; (iv) schedule a date for the (a) Auction and (b) Sale Hearing; and (v) grant related relief as set forth herein. Such business justification, which was set forth in the Sale Motion (with respect to the bid procedures only) and on the record at the Bidding Procedures Hearing, is incorporated herein by reference and, among other things, forms the basis for the findings of fact and conclusions of law set forth herein.

5. The Court finds that the Debtor is exercising sound business judgment and that there are sufficient business justifications for the Debtor (i) providing certain bid protections to VirtuOx, as the “stalking horse bidder”, subject to the terms thereof; (ii) entering into the

Stalking Horse Contract with the Stalking Horse Purchaser, subject to higher and better offers, and to sell the Acquired Assets, and assume and assign certain executory contracts (free and clear of all claims, liens, encumbrances, and other interests), in each case pursuant to the terms set forth in the attached Bidding Procedures.

6. All objections to the relief requested in the Sale Motion (with respect to the bid procedures only) that have not been withdrawn, waived, or settled as announced to the Court at the Bidding Procedures Hearing or by stipulation filed with the Court are overruled except as otherwise set forth herein.

7. The Bidding Procedures, substantially in the form attached as Exhibit 1 hereto, and incorporated herein by reference as if fully set forth in this Bidding Procedures Order, are fair, reasonable and appropriate and represent the best method for maximizing the value of the Debtor's estate.

8. The Sale Notice, substantially in the form attached to the Sale Motion as Exhibit 2 hereto, and incorporated herein by reference as if fully set forth in this Bidding Procedures Order, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of the Acquired Assets, including the sale of the Acquired Assets free and clear of all liens, claims, encumbrances and interests, the Sale, the Bidding Procedures, the Auction and the Sale Hearing, and no other or further notice is required.

9. The Assumption and Assignment Notice, substantially in the form attached hereto as Exhibit 3 and incorporated herein by reference as if fully set forth in this Bidding Procedures Order, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the potential assumption and assignment of the Assumed Executory Contracts in

connection with the sale of the Acquired Assets and the related Cure Costs, if any, and no other or further notice is required.

10. The Bidding Procedures (i) are fair, reasonable, and appropriate; (ii) were designed to maximize the recovery from any sale of the Acquired Assets; and (iii) were negotiated in good faith between the Debtor and the Stalking Horse Purchaser.

11. The Stalking Horse Purchaser has expended, and likely will continue to expend, considerable time, money and energy pursuing the transaction proposed in the Stalking Horse Contract and has engaged in extended arm's length and good faith negotiations. The Stalking Horse Contract is the culmination of these efforts. The Debtor has been unable to find a buyer for the Acquired Assets who is willing to enter into a definitive agreement to purchase the Acquired Assets on terms as favorable to the Debtor and the estate as the Stalking Horse Contract. Recognizing, inter alia, the foregoing, the Debtor has agreed to offer the Bid Protections to Stalking Horse Purchaser on the terms and conditions set forth in the Stalking Horse Contract.

12. The Bid Protections, are (a) an actual and necessary cost of preserving the Debtor's estate, within the meaning of § 503(b) of the Bankruptcy Code, (b) of substantial benefit to the Debtor's estate and creditors and all parties in interest herein, (c) reasonable and appropriate in light of, among other things, (i) the size and nature of the sale transaction under the Stalking Horse Contract, (ii) the substantial efforts that have been and will be expended by Stalking Horse Purchaser, and (iii) the benefits that Stalking Horse Purchaser has provided to the Debtor's estate and creditors and all parties in interest herein, notwithstanding that the sale transaction is subject to higher or better offers, (d) the product of arm's length and good faith negotiations between the Debtor and Stalking Horse Purchaser, and (e) a material inducement

for, and condition necessary to ensure that Stalking Horse Purchaser will continue to pursue its proposed agreement to undertake any Sale.

13. The assurance of the payment in cash of the break up fee of \$175,000 (three and one half percent (3.5%) of the estimated minimum Purchase Price) (the “Break Up Fee”) and the payment in cash of the expense reimbursement fee of \$50,000 (the “Expense Reimbursement Fee”): (i) are reasonably calculated to promote more competitive bidding by inducing the Stalking Horse Purchaser's bid, which otherwise would not have been made and which may be the highest and best available offer for the Acquired Assets; (ii) has induced the Stalking Horse Purchaser to research the value of the Acquired Assets, and propose the sale transaction, including, among other things, submission of a bid that will serve as a minimum or floor bid on which all other bidders can rely; and (iii) will provide a benefit to the Debtor's estate by increasing the likelihood that the price at which the Acquired Assets are sold will reflect its true worth.

14. No other party to date has entered into an asset purchase agreement for the acquisition of the Acquired Assets on terms acceptable to the Debtor. The execution of the Stalking Horse Contract is a necessary prerequisite to determining whether any party other than the Stalking Horse Purchaser is willing to enter into a definitive agreement for the acquisition of the Acquired Assets on terms acceptable to the Debtor and its creditors. The protections afforded to the Stalking Horse Purchaser by payment of the Break Up Fee and the Expense Reimbursement in accordance with the provisions of the Stalking Horse Contract and this Bidding Procedures Order were material inducements for, and express conditions of, the Stalking Horse Purchaser's willingness to enter into the Stalking Horse Contract. The Stalking Horse Purchaser is unwilling to commit to hold open its offer to acquire the Acquired Assets under the

terms of the Stalking Horse Contract unless the provisions set forth in the Stalking Horse Contract with respect to the allowance and payment of the Break Up Fee and the Expense Reimbursement are approved.

15. The findings of fact and conclusions of law herein constitute the Court's findings of fact and conclusions of law for the purposes of Bankruptcy Rule 7052, made applicable pursuant to Bankruptcy Rule 9014. To the extent any findings of facts are conclusions of law, they are adopted as such. To the extent any conclusions of law are findings of fact, they are adopted as such.

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

1. The Sale Motion (with respect to the bid procedures only) is granted as set forth herein.<sup>4</sup>

**A. The Timeline for the Sale**

2. The Debtor is authorized to proceed with the Sale in accordance with the Bidding Procedures and is authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance with the following timeline:

<b>Milestones</b>	<b>Proposed Dates</b>
Bidding Procedures Hearing	August 23, 2019 at 10:00 a.m. (ET)
Deadline to Serve Assumption Notice	August 29, 2019
Deadline to Object to Assumption Notice (other than adequate assurance)	September 13, 2019 at 4:00 p.m. (ET)
Supplemental Cure Objection Deadline	7 days after service of a Supplemental Assumption Notice
Sale Objection Deadline (including objections)	September 23, 2019 at 4:00 p.m. (ET)

<sup>4</sup> Notwithstanding anything to the contrary herein, the consummation of any Sale is subject to entry of the Sale Order.

to a sale to a Stalking Horse Purchaser)	
Bid Deadline	September 19, 2019 at 4:00 p.m. (ET)
Auction	September 23, 2019 at 10:00 a.m. (ET)
Deadline to File and Serve Notice of Successful Bidder and Amount of Successful Bid	No later than 1 day following the conclusion of the Auction.
Sale Hearing	September 25, 2019 at: 10:00 a.m. (ET)
Outside Closing Date	September 27, 2019

3. The Debtor reserves the right, and is authorized to, modify the above timeline and the Bidding Procedures (the “Modifications”) in accordance with the provisions of the Bidding Procedures, subject in all instances to the approval of the Stalking Horse Purchaser pursuant to the terms and conditions of the Stalking Horse Contract.

**B. The Bidding Procedures**

4. The Bidding Procedures are approved in their entirety. The Debtor is authorized to take any and all actions reasonably necessary or appropriate to implement the Bidding Procedures in accordance therewith. The failure to specifically include or reference a particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

5. The Debtor shall require prospective bidders to use the Stalking Horse Contract as the form of the contract of sale (the “Contract of Sale”) and shall submit such Contract of Sale along with an outline of any changes from the form of Stalking Horse Contract in its submitted markup of same to reflect the bid (the “Bid”) of such party so as to be received by September 19, 2019 at 4:00 p.m. (prevailing Eastern Time) (the “Bid Deadline”). Bids and the signed Contract of Sale, including specific changes to the Stalking Horse Contract, must be received by the



notice parties set forth in paragraph 24 hereof by the Bid Deadline. The Debtor in consultation with its counsel and financial advisor shall determine which of such Bids shall constitute a “Qualified Bid” as described in the Bidding Procedures.

6. The Bidding Procedures shall make clear that any “Qualified Bidder” shall make a good faith cash deposit (the “Good Faith Deposit”) in the amount of \$200,000, payable to the Debtor in the form of a wire transfer to the Debtor’s counsel’s trust account.

7. Bids must not contain any condition to closing of the sale transaction nor contain any financing or due diligence contingencies. Further, Bids shall remain irrevocable until the fifth (5th) business day following entry of the Sale Order.

8. The process and requirements associated with submitting a Qualified Bid are approved as fair, reasonable, appropriate and designed to maximize recoveries for the benefit of the Debtor’s estate, creditors, and other parties in interest. As further described in the Bidding Procedures, the Bid Deadline shall be September 19, 2019 at 4:00 p.m. (prevailing Eastern Time). Any disputes or objections to the selection of Qualified Bid(s), Successful Bid(s), or Backup Bid(s) (all as defined in the Bidding Procedures) shall be resolved by this Court at the Sale Hearing as set forth herein.

9. The Debtor is authorized to conduct the Auction, if any, in accordance with the Bidding Procedures. The Auction shall take place on September 23, 2019 at 10:00 a.m. (prevailing Eastern Time) at the offices of co-counsel for the Debtor, Dilworth Paxson LLP, 1500 Market Street, 35<sup>th</sup> Floor, Philadelphia, PA 19102 or at such other place and time as the Debtor shall notify all Qualified Bidders.

**C. Stalking Horse Bidder, Related Bidding Protections and Stalking Horse Contract**

10. The Debtor has demonstrated a compelling and sound business justification to (i) enter into the Stalking Horse Contract with the Stalking Horse Purchaser to establish a minimum bidding price for the Acquired Assets and (ii) grant the stalking horse protections to the Stalking Horse Purchaser, including the Break Up Fee of \$175,000<sup>5</sup> and the Expense Reimbursement Fee of \$50,000 (collectively, the "Bid Protections") in the event that the Stalking Horse Purchaser is not the winning bidder at the Auction (the "Successful Bidder") and a sale transaction is consummated with another successful bidder for the Acquired Assets.

11. The Bid Protections are fair and reasonable and provide a benefit to the Debtor's estate and its creditors.

12. VirtuOx shall be the "stalking horse bidder" and shall be entitled to all of the following Bid Protections in exchange for VirtuOx's agreement to pay the Purchase Price (subject to the terms and conditions of the Stalking Horse Contract), subject to higher and better offers pursuant to the terms of the Bidding Procedures: (i) a Break Up Fee equal to \$175,000; (ii) Expense Reimbursement of \$50,000; (iii) that the first bid at the Auction shall be not less than \$5,240,000, which is \$100,000 greater than the minimum estimated Purchase Price, the Break Up Fee, and the Expense Reimbursement; (iv) that all subsequent bids at the Auction shall be in \$100,000 increments; and (iv) that VirtuOx is deemed to be a qualified bidder for all purposes to participate at the Auction.

13. Immediately upon entry of this Bidding Procedures Order, the Stalking Horse Contract shall be binding upon both parties thereto unless and until the Court approves a sale to the Successful Bidder (and, alternatively, to the bidder submitting the second highest and best offer, the "Backup Bidder") -- other than VirtuOx, in which event VirtuOx is a Backup Bidder

---

<sup>5</sup> This figure assumes minimum calculations of the components of the Purchase Price pursuant to the Stalking Horse Contract at Closing and additional consideration post-Closing based on net collections of Eligible and Ineligible

under the Bidding Procedures, Nothing contained herein is intended to override or modify the parties' rights to terminate the Stalking Horse Contract pursuant to the terms thereof.

14. The Bidding Procedures are hereby approved in all respects, as provided in this Bidding Procedures Order, and the Debtor is authorized and directed to act in accordance therewith. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

**D. Notice Procedures**

15. The form of Sale Notice substantially in the form attached hereto as Exhibit 2 is approved.

16. Within three (3) business days after the entry of this Bidding Procedures Order or as soon as reasonably practicable thereafter, the Debtor shall serve the Sale Notice and this Bidding Procedures Order, including the Bidding Procedures, by first-class mail, postage prepaid, upon (i) all entities reasonably known to have expressed an interest in a transaction with respect to all or part of the Acquired Assets within the past two (2) years; (ii) all entities known to have asserted any lien, claim, interest, or encumbrance in or upon any of the Acquired Assets; (iii) counsel to the Stalking Horse Purchaser; (iv) counsel for the creditors' committee, if any; (v) counsel to the Debtor's secured lenders (including any and all equipment financing lenders); and (vi) the U.S. Trustee; provided, however, that to the extent email addresses are available for any of the foregoing parties, such parties may be served by email.

17. In addition, within three (3) business days after the entry of the Bidding Procedures Order or as soon as reasonably practicable thereafter, the Debtor shall serve the Sale Notice by first-class mail, postage prepaid or, for those parties who have consented to receive

---

Accounts Receivable (in each case as more fully described in the Stalking Horse Contract).

notice by the ECF system, by ECF, upon (i) all federal, state, and local regulatory or taxing authorities or recording offices which have a reasonably known interest in the relief granted herein; (ii) the United States Attorney's Offices for the District of Delaware; (iii) the Internal Revenue Service; (iv) all parties entitled to notice pursuant to Local Rule 2002-l(b); and (v) all known creditors of the Debtor, including its contract counterparties.

18. Service of the Sale Notice as described above shall be sufficient and proper notice of the Sale with respect to known interested parties.

19. The Debtor is directed to publish a notice of the Sale, as modified for publication, in The Wall Street Journal as soon as is reasonably practicable. In addition, the Debtor is authorized, but not directed, to (i) publish a notice of the Sale in additional publications as the Debtor deems appropriate and (ii) cause the Sale Notice to be posted on its case information website (the "Case Website").

20. Publication of a notice of the Sale as described above shall be sufficient and proper notice of the Sale Transaction with respect to all unknown parties.

**E. Assumption and Assignment Procedures**

21. The Assumption and Assignment Procedures, as detailed in the Sale Motion and incorporated herein by reference as if fully set forth in this Bidding Procedures Order, are approved.

22. The Notice of Potential Assumption and Assignment, substantially in the form attached hereto as Exhibit 3, is approved.

23. On or before August 21, 2019 (any such date, the "Assumption and Assignment Service Date"), the Debtor shall file with the Court and post on the Case Website the Notice of Potential Assumption and Assignment and a list of Assumed Executory Contracts. If no Cure

Cost is listed with respect to an Assumed Executory Contract, the Debtor believes that there is no Cure Cost as of the date of such notice. On the Assumption and Assignment Service Date, the Debtor shall serve, via first-class mail, a customized version of the Notice of Potential Assumption and Assignment on all counterparties to the Assumed Executory Contracts.

24. Any objection by a counterparty to an Assumed Executory Contract (a “Contract Objection”) must (i) be to the proposed assumption and assignment of the applicable Assumed Executory Contract or Cure Costs, if any; (ii) state, with specificity, the legal and factual basis thereof as well as what Cure Costs such objecting party believes are required, if any; and (iii) include appropriate documentation in support thereof. All Contract Objections must be filed and served on (i) counsel to the Debtor, (a) Jeffrey Kurtzman, Esquire, Kurtzman | Steady, LLC, 401 S. 2<sup>nd</sup> Street, Suite 200, Philadelphia, PA 19147, [kurtzman@kurtzmansteady.com](mailto:kurtzman@kurtzmansteady.com); (ii) Peter C. Hughes, Esquire, Dilworth Paxson, LLC, One Customs House, 704 King Street, Suite 500, Wilmington, DE 19801, [phughes@dilworthlaw.com](mailto:phughes@dilworthlaw.com); (iii) David Weitman, Esquire, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, TX 75201, [david.weitman@klgates.com](mailto:david.weitman@klgates.com); (iv) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, Delaware, 19801, Attn: Richard Schepacarter, Esquire, [richard.schepacarter@usdoj.gov](mailto:richard.schepacarter@usdoj.gov); (v) all parties that have requested notice in this Chapter 11 case (collectively (i)-(v), the “Objection Recipients”), no later than August 30, 2019 at 4:00 p.m. (prevailing Eastern Time) with respect to objection relating to Cure Costs and September 23, 2019 at 4:00 p.m. (prevailing Eastern Time) with respect to any other issues, including adequate assurance of future performance (the “Assumption and Assignment Objection Deadline”).

25. If a Contract Objection is not consensually resolved before the Sale Hearing, the amount to be paid or reserved with respect to such objection shall be determined at the Sale

Hearing, such later hearing date that the Debtor determines in its discretion, or such other date determined by this Court.

26. Any time after the Assumption and Assignment Service Date and before the closing of a Sale, the Debtor reserves the right, and is authorized but not directed, to (i) supplement the Assumed Executory Contracts List with previously omitted Assumed Executory Contracts in accordance with the definitive agreement for a Sale, (ii) remove an Assumed Executory Contract from the list of contracts that a Successful Bidder proposes be assumed and assigned to it in connection with a Sale, or (iii) modify the previously stated Cure Cost associated with any Assumed Executory Contract.

27. In the event the Debtor exercises any of the rights listed above, the Debtor shall promptly serve a Supplemental Notice of Assumption and Assignment by electronic transmission, hand delivery, or overnight mail on the counterparty (and its attorney, if known) to each Assumed Executory Contract listed on the Supplemental Notice of Assumption and Assignment at the last known address available to the Debtor. Each Supplemental Notice of Assumption and Assignment shall set forth (i) the name and address of the counterparty to the Assumed Executory Contract listed thereon; (ii) the proposed effective date of the assignment (subject to the right of the applicable Successful Bidder, if any, to withdraw such request for assumption and assignment of that Assumed Executory Contract prior to the closing of the applicable Sale); (iii) sufficient information to identify the Assumed Executory Contract; (iv) the Cure Costs, if any; and (v) proposed adequate assurance, if known on the Assumption and Assignment Service Date. The Debtor is authorized, but not directed, to modify the Supplemental Notice of Assumption and Assignment as necessary and appropriate to provide customized individual notice to each Assumed Executory Contract counterparty. In addition, the

Debtor is authorized, but not directed, to supplement the Assumed Executory Contract List on the Case Website with any additional Assumed Executory Contracts as the Debtor deems appropriate in its discretion. Service of such Supplemental Notice of Assumption and Assignment as set forth herein shall be deemed proper, due, timely, good and sufficient notice of, among other things, the proposed assumption and assignment of the Assumed Executory Contracts and rights thereunder, the Cure Costs, and the procedures for objecting thereto, and no other or further notice is necessary.

28. Any objection by a counterparty to an Assumed Executory Contract listed on a Supplemental Notice of Assumption and Assignment (a “Supplemental Assumed Executory Contract Objection”) must (i) be to the proposed assumption and assignment of the applicable Assumed Executory Contract or the proposed Cure Costs, if any; (ii) state, with specificity, the legal and factual basis thereof as well as what Cure Costs such objecting party believes are required, if any; (iii) include appropriate documentation in support of the objection; and (iv) be filed and served on the Objection Recipients no later than seven (7) days from the date of service of such Supplemental Notice of Assumption and Assignment.

29. If a Supplemental Assumed Executory Contract Objection is not consensually resolved by the proposed effective date of assignment of the Assumed Executory Contract that is the subject of a Supplemental Assumed Executory Contract Objection, the Debtor shall seek an expedited hearing before the Court (a “Supplemental Assumed Executory Contract Hearing”) to determine the Cure Costs, if any, and approve the assumption of the relevant Assumed Executory Contracts. If there is no such objection, then the Debtor shall obtain an order of this Court, including by filing a certification of no objection (a “Supplemental Assumed Executory Contract

Order”), fixing the Cure Costs and approving the assumption of any Assumed Executory Contract listed on a Supplemental Notice of Assumption and Assignment.

30. Absent the filing of an Assumed Executory Contract Objection or Supplemental Assumed Executory Contract Objection and a subsequent order of the Court establishing an alternative Cure Cost, the Cure Costs, if any, set forth in the Notice of Assumption and Assignment (or Supplemental Notice of Assumption and Assignment) shall be controlling, notwithstanding anything to the contrary in any Assumed Executory Contract or any other document, and the counterparty to the Assumed Executory Contract will be deemed to have consented to the assumption, assignment, and sale of the Assumed Executory Contract and the Cure Costs, if any, and will be forever barred from asserting any other claims related to such Assumed Executory Contract against the Debtor or the applicable Successful Bidder, or the property of any of them, except with respect to adequate assurance of future performance by such Successful Bidder.

31. The inclusion of an Assumed Executory Contract on the Notice of Assumption and Assignment (or Supplemental Notice of Assumption and Assignment) will not (a) obligate the Debtor to assume any Assumed Executory Contract listed thereon nor the Successful Bidder(s) to take assignment of such Assumed Executory Contract or (b) constitute any admission or agreement of the Debtor that such Assumed Executory Contract is an “executory” contract. Only those Assumed Executory Contracts that are included on a schedule of assumed and assigned contracts attached to the final Purchase Agreement with the Successful Bidder(s) (each, an “Acquired Contract”) will be assumed and assigned to the Successful Bidder.

**F. The Sale Hearing**



32. A Sale Hearing to (i) approve a sale of the Acquired Assets to the Successful Bidder(s) and (ii) authorize the assumption and assignment of certain executory contracts and unexpired leases shall be held on September 25, 2019 at 10:00 a.m. (prevailing Eastern Time), and may be adjourned or rescheduled without prior notice. At the Sale Hearing, the Debtor will seek Bankruptcy Court approval of the Successful Bid(s) and the Backup Bid(s). Unless the Bankruptcy Court orders otherwise, the Sale Hearing shall be an evidentiary hearing on matters relating to the Sale and there will be no further bidding at the Sale Hearing. In the event that the Successful Bidder cannot or refuses to consummate the Sale because of the breach or failure on the part of such Successful Bidder, the Debtor may, in accordance with the Bidding Procedures, designate the Backup Bid to be the new Successful Bid and the Backup Bidder to be the new Successful Bidder, and the Debtor shall be authorized, but not required, to consummate the applicable transaction with the Backup Bidder without further order of the Bankruptcy Court.

33. Any and all objections, if any, to the Sale must be filed no later than September 23, 2019 at 4:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline"). Any and all such objections must be served on the Objection Recipients and counsel to any Successful Bidder, if known on the Sale Objection Deadline.

**G. Other Provisions**

34. The Debtor is authorized and empowered to take such action as may be necessary to implement and effect the terms and requirements established under this Bidding Procedures Order.

35. This Bidding Procedures Order shall be binding on and inure to the benefit of the Debtor, including any chapter 7 or chapter 11 trustee or other fiduciary appointed for the estate of the Debtor.

36. This Bidding Procedures Order shall constitute the findings of fact and conclusions of law and shall take immediate effect upon execution hereof.

37. The Debtor is authorized to pay to VirtuOx the Break Up Fee and the Expense Reimbursement provided, however, such amounts shall only be paid in the event that VirtuOx (a) is not the Successful Bidder at the Auction, and (b) the sale transaction is consummated with another Successful Bidder for the Acquired Assets. The Debtor is authorized and directed without further Bankruptcy Court notice, action or order to pay the Break Up Fee and the Expense Reimbursement to the extent payable to VirtuOx pursuant to the Stalking Horse Contract; provided, however, that if the sale transaction is consummated with another Successful Bidder for the Acquired Assets the Break Up Fee and the Expense Reimbursement shall be paid directly at the Closing of such transaction from the first sales proceeds from the sale transaction. The Break Up Fee and the Expense Reimbursement (in the amount of \$50,000) shall be immediately payable when due, and shall be entitled to administrative status.

38. To the extent this Bidding Procedures Order is inconsistent with any prior order or pleading with respect to the Sale Motion (with respect to the bid procedures only), the terms of this Bidding Procedures Order shall govern.

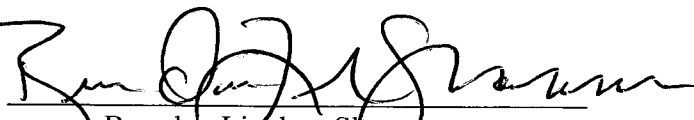
39. The Court reserves jurisdiction to determine whether (A) any bidder subject to confidentiality or non-disclosure agreements with the Debtor, executed in connection with such bidder's due diligence, has engaged in any wrongful conduct, including, but not limited to: (i) soliciting present or former employees, managers, or representatives of the Debtor, to join such bidder's company; (ii) using or exploiting the confidential proprietary and/or trade secret information of the Debtor to such bidder's benefit and use; (iii) causing or encouraging such present or former employees, managers, or representatives to use or exploit confidential

proprietary and/or trade secret information of the Debtor, or (iv) causing or encouraging such present or former employees, managers, or representatives to breach or threaten to breach any restrictive covenants and/or misappropriate trade secrets in violation of any contractual or statutory obligations owed to the Debtor, and (B) such bidder should be disqualified from participating at the Auction or otherwise acquiring the Assets of the Debtor at the Sale Hearing.

40. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014, or otherwise, this Court, for good cause shown, orders that the terms and conditions of this Bidding Procedures Order shall be immediately effective and enforceable upon its entry.

41. This Court shall retain jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Bidding Procedures Order, including, but not limited to, any matter, claim, or dispute arising from or relating to the Bidding Procedures, the Stalking Horse Contract, and the implementation of this Bidding Procedures Order.

Dated: Wilmington, Delaware  
August 23, 2019

  
Brendan Linehan Shannon,  
United States Bankruptcy Judge

**EXHIBIT 1**

[Bidding Procedures]

**Exhibit 1****BIDDING PROCEDURES**

On August 2, 2019 (“Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor is operating its business and managing its properties as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in this Chapter 11 case.

On August 23, 2019, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [D.I. No. \_\_\_\_] (the “Bidding Procedures Order”), which, among other things, authorized the Debtor to solicit bids and approved the procedures (collectively, the “Bidding Procedures”), which are to be employed by the Debtor in connection with the sale of substantially all of its assets (“Sale”) free and clear of all liens, claims, encumbrances and other interests (collectively, the “Encumbrances”). Capitalized terms used but not defined herein shall have the meanings ascribed to them in the Bidding Procedures Order.

If, and to the extent that, prior to the Bid Deadline (as defined below), the Debtor receives a Qualifying Offer to purchase the Debtor’s assets (the “Assets”) pursuant to a Contract of Sale between the Debtor and such offeror in accordance with the procedures set forth in the Bidding Procedures Order, the Debtor will conduct an Auction. Notwithstanding the selection of the Stalking Horse Purchaser, the Debtor will continue to solicit bids and accept bids through the Bid Deadline (as defined below).

**ANY PARTY INTERESTED IN BIDDING ON THE ASSETS SHOULD  
CONTACT:**

David Johnson  
Sherwood Partners  
[djohnson@sherwoodpartners.com](mailto:djohnson@sherwoodpartners.com)

**Summary of Important Dates**

<b>Milestones</b>	<b>Proposed Dates</b>
Bidding Procedures Hearing	August 23, 2019 at 10:00 a.m. (ET)
Deadline to Serve Assumption Notice	August 29, 2019
Deadline to Object to Assumption Notice (other than adequate assurance)	September 13, 2019 at 4:00 p.m. (ET)

Supplemental Cure Objection Deadline	7 days after service of a Supplemental Assumption Notice
Sale Objection Deadline (including objections to a sale to a Stalking Horse Purchaser)	September 23, 2019 at 4:00 p.m. (ET)
Bid Deadline	September 19, 2019 at 4:00 p.m. (ET)
Auction	September 23, 2019 at 10:00 a.m. (ET)
Deadline to File and Serve Notice of Successful Bidder and Amount of Successful Bid	No later than 1 day following the conclusion of the Auction.
Sale Hearing	September 25, 2019 at <sup>10</sup> a.m./ <del>6</del> p.m. (ET)
Outside Closing Date	September 27, 2019

**1. Assets to be Sold**

All of the Debtor's right, title, and interest in and to its inventory, parts, equipment, accounts receivable, intellectual property and other personal property.

**2. Participation Requirements**

Any person or entity that wishes to conduct due diligence and gain access to the Debtor's confidential electronic data room concerning the Assets (the "Data Room" each such person or entity, a "Potential Bidder") must submit to the Debtor and its advisors an executed confidentiality agreement in form and substance reasonably satisfactory to the Debtor.

Any Potential Bidder that wishes to participate in the bidding process for the Assets must first become a "Qualifying Bidder." Except for the Stalking Horse Purchaser, parties may be qualified as a Qualifying Bidder up to the Bid Deadline (i.e., September 19, 2019 at 4:00 p.m. (ET)), but parties interested in submitting a bid for any of the Assets are encouraged to qualify as soon as possible because the Bidding Procedures do not permit any due diligence or financing conditions in Qualifying Bids. To become a Qualifying Bidder, Potential Bidders must submit sufficient information, as determined by the Debtor, to allow the Debtor to determine that the interested party (i) has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction, including, but not limited to, current audited financial statements of the interested party (or such other form of financial disclosure acceptable to the Debtor in its discretion) and (ii) can provide adequate assurance of future performance under any executory contracts and unexpired leases to be assumed by the Debtor and assigned to such bidder pursuant to section 365 of the Bankruptcy Code in connection with the Sale.

Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtor or its advisors regarding the ability of such Potential Bidder to consummate its contemplated transaction.

Notwithstanding anything to the contrary herein, and for the avoidance of doubt, for all purposes under the Bidding Procedures, the Stalking Horse Purchaser shall be considered a Qualifying Bidder.

To the extent that a bid is proposed by a group or committee to which Bankruptcy Rule 2019 applies, such parties must promptly file the statement required by such rule as a condition to becoming a Qualifying Bidder.

### **3. Bankruptcy Court Jurisdiction**

In conjunction with any actions or proceedings arising from or relating to the Bidding Procedures, the Sale, the Auction (as defined below), the acts or omissions of the Debtor, representatives and/or the construction and enforcement of the contemplated transaction documents of such parties, any Potential Bidders and Qualifying Bidders shall: (a) be deemed to have waived any right to a jury trial and consented and submitted to the exclusive jurisdiction of the Court, (b) bring any such action or proceeding in the Court, and (c) be deemed to have consented to the Court entering a final judgment determining any such action or proceeding and that such final judgment in any such action or proceeding, including all appeals, shall be conclusive and may be enforced in other jurisdictions (including any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

### **4. Form of Agreement**

Each Qualifying Bidder, must include with its bid:

- **Qualification as Bidder**: Any person or entity that wishes to participate in the bidding process for the Acquired Assets (each, a "Potential Bidder") must first become a "Qualifying Bidder." Except for the Stalking Horse Purchaser, parties may be qualified as a Qualifying Bidder up to the Bid Deadline (i.e., September 19, 2019 at 4:00 p.m. (ET)), but parties interested in submitting a bid for the Acquired Assets are encouraged to qualify as soon as possible because the Bidding Procedures do not permit any due diligence or financing conditions in Qualifying Bids. Section 2 of the Bidding Procedures identifies the requirements to be deemed a Qualifying Bidder, which include, among other things, (1) entry into a confidentiality agreement in form and substance reasonably satisfactory to the Debtor, and (2) the provision of sufficient information, as determined by the Debtor, to allow the Debtor to determine that the interested party has, or can obtain, the financial wherewithal and any required internal corporate, legal or other authorizations to close a sale transaction and to provide adequate assurance of future performance as required under section 365 of the Bankruptcy Code. Each Potential Bidder shall comply with all reasonable requests for information and due diligence access by the Debtor or its advisors regarding the ability of such Potential Bidder to consummate its contemplated transaction.

• **Qualifying Bid.** Other than in the case of the Stalking Horse Purchaser, to be deemed a “Qualifying Bid,” a bid must be received from a Qualifying Bidder on or before the Bid Deadline and satisfy each of the requirements set forth in the Bidding Procedures (each, a “Bid Requirement”). These requirements include, but are not limited to, the requirements that the bids contain:

(a) an executed asset purchase agreement or other agreement for the applicable Sale (each a “Contract of Sale”), clean and marked against the Stalking Horse Contract, which must include the following:

(i) identification of the specific Acquired Assets to be acquired either in the Contract of Sale itself or as a schedule to the Contract of Sale;

(ii) full disclosure of the identity of the bidder and whether such party is an insider (as defined in section 101 of the Bankruptcy Code) of any Debtor, along with the contact information of the specific person(s) whom the Debtor or its advisors should contact in the event that the Debtor wishes to discuss the bid submitted by the Qualifying Bidder;

(iii) the purchase price to be paid by such Qualifying Bidder, including what amount is being paid as cash and what amount, if any, constitutes a credit bid, as well as any liabilities proposed to be paid or assumed by such Qualifying Bidder;

(iv) identify whether the Qualifying Bidder or the Debtor shall be responsible for (a) any transfer or similar taxes that arise from the Sale and any cure costs required to be paid to assume and assign executory contracts and unexpired leases that are included in the bid;

(v) a commitment to close the transactions contemplated by the Transaction Agreement promptly upon entry of the Sale Order;

(vi) contain a written acknowledgement and representation that the bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its bid, (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale, and (iv) has not entered into any agreement with any other potential bidder concerning the Auction or the Sale or discloses any agreement with any other potential bidder concerning the Auction or Sale;



(vii) a statement that the Contract of Sale is not subject to contingencies of any kind, including, including without limitation, contingencies related to financing, due diligence or third party, regulatory or internal approval; and

(viii) a statement that the Qualifying Bidder has obtained any required internal corporate, legal or other authorizations to close a sale transaction and to provide adequate assurance of future performance as required under section 365 of the Bankruptcy Code.

## **5. Due Diligence**

Subject to the execution of a confidentiality agreement by a Potential Bidder or Qualifying Bidder, the Debtor will provide any Potential Bidder or Qualifying Bidder with reasonable access to the Data Room and any other additional information that the Debtor believes to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed as provided in the contact information set forth above.

All due diligence materials provided to Potential Bidders and Qualifying Bidders shall be subject to the limitations on use and disclosure included in any confidentiality agreement entered into pursuant to the Bidding Procedures.

Notwithstanding any limitations provided for in any due diligence materials in the Debtor's possession, including, without limitation, any non-disclosure, confidentiality or similar provisions, the Debtor and its estate shall be authorized to provide due diligence information to Potential Bidders that have executed a confidentiality agreement.

## **6. Bid Requirements**

To be deemed a "Qualifying Bid," a bid must be received from a Qualifying Bidder on or before the Bid Deadline and must satisfy each of the following requirements (each, a "Bid Requirement"):

- a. be in writing;
- b. fully disclose the identity of the Qualifying Bidder and whether such party is an insider (as defined in section 101 of the Bankruptcy Code) of the Debtor, and provide the contact information of the specific person(s) whom the Debtor or its advisors should contact in the event that the Debtor wishes to discuss the bid submitted by the Qualifying Bidder;
- c. set forth the purchase price to be paid by such Qualifying Bidder, including what amount is being paid as cash and what amount constitutes a credit bid, and identify the liabilities proposed to be paid or assumed by such Qualifying Bidder;

d. specify the Acquired Assets that are included in the bid and state that such Qualifying Bidder offers to purchase those Assets included in the APA upon substantially the same terms as, or terms more favorable to the Debtor and its estate than, the terms set forth in the applicable Contract of Sale;

e. be accompanied by a clean and marked modified Contract of Sale that reflects any variations from the Stalking Horse Contract and a Good Faith Deposit;

f. state that such Qualifying Bidder's offer is formal, binding and unconditional and is irrevocable until the conclusion of the Sale Hearing unless such party is the Successful Bidder or Back-Up Bidder (both as defined below), in which case such offer is formal, binding and unconditional and is irrevocable until two (2) business days after the closing of the Sale;

g. state that such Qualifying Bidder is financially capable of consummating the transactions contemplated by the Transaction Agreement and provide written evidence in support thereof;

h. contain such financial and other information to allow the Debtor to make a reasonable determination as to the Qualifying Bidder's financial and other capabilities to close the transactions contemplated by its proposed Transaction Agreement, including, without limitation, such financial and other information supporting the Qualifying Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) of the Bankruptcy Code, including the Qualifying Bidder's financial wherewithal and willingness to perform under any contracts that are assumed and assigned to the Qualifying Bidder, in a form that allows the Debtor, within one (1) business day after receipt, to make such information available to any counterparties to any contracts or leases being assumed and assigned in connection with the Sale ("Counterparties") that have requested, in writing, such information, provided, however, that such information may be provided on a confidential basis;

i. identify with particularity each and every executory contract, unexpired lease and unexpired sublease the assumption and assignment of which is a condition to close the transactions contemplated by the proposed Transaction Agreement;

j. a commitment to close the transactions contemplated by the Transaction Agreement promptly upon entry of the order approving the sale;

k. not request or entitle such Qualifying Bidder (other than a Stalking Horse Purchaser) to any break-up fee, termination fee, expense reimbursement or similar type of fee or payment;

l. the aggregate consideration proposed by the Qualifying Bidder must equal or exceed the sum of the amount of (A) the purchase price under the Stalking Horse Contract, plus (B) any break-up fee, expense reimbursement, or other bid protection

provided under the Stalking Horse Contract and approved by the Bidding Procedures Order, plus (C) \$100,000.00;

m. not contain any contingencies of any kind, including, without limitation, contingencies related to financing, due diligence, or third party regulatory or internal approval;

n. contain written evidence satisfactory to the Debtor that the Qualifying Bidder has a commitment for financing or other evidence of the ability to close the transactions contemplated by the Contract of Sale;

o. contain a written acknowledgement and representation that the Qualifying Bidder (i) has had an opportunity to conduct any and all due diligence regarding the Assets, (ii) has relied solely upon its own independent review, investigation and/or inspection of any documents and other information in making its Qualifying Bid, and (iii) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Acquired Assets, or the completeness of any documents or other information provided in connection with the Bidding Procedures and the Sale, and (iv) has not entered into any agreement with any other potential bidder concerning the Auction or the Sale or discloses any agreement with any other potential bidder concerning the Auction or Sale;

p. provides for the Qualifying Bidder to serve as a backup bidder (the "Back-Up Bidder") if the Qualifying Bidder's bid is the next highest and best bid (the "Back-Up Bid") after the Successful Bid (as defined below), in accordance with the terms of the Transaction Agreement;

q. includes written evidence of authorization and approval from the Qualifying Bidder's board of directors (or comparable governing body) with respect to the submission, execution, and delivery of the Transaction Agreement;

r. provides a good faith cash deposit (the "Good Faith Deposit") in the amount of \$200,000, payable to the Debtor in the form of a wire transfer to the Debtor's counsel's trust account in accordance with the Bidding Procedures; and

s. provides for liquidated damages in the event of the Qualifying Bidder's breach of, or failure to perform under, the Contract of Sale equal to the amount of the Good Faith Deposit.

## **7. Credit Bidding**

Any party that wishes to submit a credit bid either as a component or as the entirety of the consideration for its bid shall identify the amount of the claim and the nature, extent and priority of the lien upon which its credit bid is premised.

Any party submitting a credit bid must include in its bid either (i) provisions for the satisfaction of any secured claims that are senior to the secured claim that forms the basis of the credit bid (a "Senior Secured Claim") or (ii) evidence that the holder of any Senior Secured Claim has affirmatively consented to any other treatment of its Senior Secured Claim.

Parties entitled to credit bid shall not be required to provide a Deposit.

**8. Bid Deadline**

A Qualifying Bidder, other than the Stalking Horse Purchaser, that desires to make a bid shall deliver a written and electronic copy of its bid in both PDF and MS-WORD format to the Debtor so as to be received on or before September 19, 2019 at 4:00 p.m. (ET) (the "Bid Deadline"); provided that the Debtor may extend the Bid Deadline without further order of the Court. Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction.

**Any party that does not submit a bid by the Bid Deadline will not be allowed to (a) submit any offer after the Bid Deadline, or (b) participate in the Auction. Consistent with the terms of any confidentiality agreements executed by them, all Potential Bidders and Qualifying Bidders shall maintain as confidential, up until the Auction, the fact that they have submitted a bid and the terms and conditions of such bid.**

**9. Auction**

**Auction and Auction Procedures:** In the event that the Debtor timely receives one or more Qualifying Bids, the Debtor shall conduct an Auction. The Auction shall be held on **September 23, 2019 at 10:00 a.m. (ET)** at the offices of Dilworth Paxson LLP, 1500 Market Street, 35<sup>th</sup> Floor, Philadelphia, PA 19102.

**EXHIBIT 2**

[Sale Notice]

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

_____	:	
In re:	:	Chapter 11
	:	
NOVASOM, INC.,	:	Case No. 19-11734 (BLS)
	:	
Debtor.	:	Re: D.I. 7, 30
_____	:	

**NOTICE OF PROPOSED SALE, BIDDING PROCEDURES,  
AUCTION, AND SALE HEARING**

PLEASE TAKE NOTICE that on August 2, 2019, the debtor and debtor-in-possession in the above-captioned Chapter 11 case (the “Debtor”) filed a voluntary petition for reorganization under Chapter 11 of the Bankruptcy Code.

PLEASE TAKE FURTHER NOTICE that on August 2, 2019, the Debtor filed a motion (the “Motion”) [D.I. 7], as amended on August 6, 2019 [D.I. 30], with the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) seeking, among other things, the entry of an order (the “Bidding Procedures Order”) (i) approving proposed bidding procedures (the “Bidding Procedures”) by which the Debtor will solicit and select the highest or otherwise best offer for the sale of substantially all of its assets (the “Acquired Assets”) under the Stalking Horse Contract (defined below) (each, a “Sale”), (ii) approving the form and manner of notice with respect to certain procedures for the assumption and assignment of executory contracts and unexpired leases, including notice of proposed cure amounts (the “Assumption and Assignment Procedures”), (iii) approving the form and manner of notice with respect to certain procedures, protections and agreements, including bid protections for the VirtuOx, Inc. (the “Stalking Horse Purchaser”), (iv) scheduling an auction (the “Auction”) if the Debtor receives one or more timely and acceptable Qualified Bids, and (v) scheduling a final hearing (the “Sale Hearing”) to approve the sale of the Assets.

PLEASE TAKE FURTHER NOTICE that on August 23, 2019, the Bankruptcy Court entered the Bidding Procedures Order [D.I. \_\_\_\_], which authorizes the Debtor to solicit higher, better or competing offers for the Acquired Assets.

PLEASE TAKE FURTHER NOTICE that, pursuant to the Bidding Procedures Order, if the Debtor receives one or more Qualified Bids for the Acquired Assets, the Debtor will conduct the Auction on **September 23, 2019 at 10:00 a.m.** (prevailing Eastern time) at the offices of Dilworth Paxson, LLP, 1500 Market Street, Suite 3500E, Philadelphia, PA 19102. Any party that wishes to submit a bid for all Acquired Assets must do so in accordance with the Bidding Procedures by **September 19, 2019 at 4:00 p.m.** (the “Bid Deadline”). All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.

PLEASE TAKE FURTHER NOTICE that the Sale Hearing to consider approval of the sale of the Acquired Assets, free and clear of liens, claims, encumbrances and interests pursuant to Bankruptcy Code section 363(b) and (f) shall be held before the Honorable Brendan L. Shannon, United States Bankruptcy Judge for the District of Delaware, at the Bankruptcy Court, 824 N. Market Street, 6<sup>th</sup> Floor, Courtroom #1, Wilmington, Delaware 19081 on September 25, 2019 at 10:00 a.m. (prevailing Eastern time). The Sale Hearing may be adjourned from time without further notice to creditors or other interested parties other than by announcement of the adjournment in open court or by notice filed on the docket of the Debtor's Chapter 11 case.

PLEASE TAKE NOTICE that objections to the Sale (other than objections to proposed cure amounts relating to Assumed Executory Contracts) must be filed and served so as to be actually received no later than September 23, 2019 at 4:00 p.m. (prevailing Eastern Time) (the "Objection Deadline") by the following parties: (i) Jeffrey Kurtzman, Esquire, Kurtzman | Steady, LLC, 401 S. 2<sup>nd</sup> Street, Suite 200, Philadelphia, PA 19147, [kurtzman@kurtzmansteady.com](mailto:kurtzman@kurtzmansteady.com); (ii) Peter Hughes, Esquire, Dilworth Paxson LLP, One Customs House, 704 King Street, Suite 500, Wilmington, DE 19801, [phughes@dilworthlaw.com](mailto:phughes@dilworthlaw.com), (iii) Office of the United States Trustee, 844 N. King Street, Suite 2207, Wilmington, DE 19801, (iv) David Weitman, Esquire, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, TX 75201, [david.weitman@klgates.com](mailto:david.weitman@klgates.com).

PLEASE TAKE FURTHER NOTICE that any objections to adequate assurance of future performance must be filed by the Objection Deadline.

### **CONSEQUENCES OF FAILING TIMELY TO ASSERT AN OBJECTION**

**ANY PART OR ENTITY WHICH FAILS TIMELY TO FILE AND SERVE AN OBJECTION ON OR BEFORE THE OBJECTION DEADLINE IN ACCORDANCE WITH THE BIDDING PROCEDURES MAY BE FOREVER BARRED FROM ASSERTING AN OBJECTION TO THE SALE, INCLUDING THE CONVEYANCE OF THE ASSETS FREE AND CLEAR OF LIENS, CLAIMS, ENCUMBRANCES AND INTERESTS.**

PLEASE TAKE FURTHER NOTICE that this Notice is subject to the terms and conditions of the Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict, and the Debtor encourages interested parties to review such documents in their entirety. Parties interested in obtaining additional information concerning the Sale and/or the Assets may make a written request to the Debtor's financial consultant, Sherwood Partners, Attn: David Johnson, Email: [djohnson@sherwoodpartners.com](mailto:djohnson@sherwoodpartners.com).

Dated: August 23, 2019

**DILWORTH PAXSON LLP**

By: \_\_\_\_\_

Peter C. Hughes (Del. Bar No. 4180)  
One Customs House  
704 King Street, Suite 500  
Wilmington, DE 19801  
Telephone: (302) 571-98  
Email: [phughes@dilworthlaw.com](mailto:phughes@dilworthlaw.com)

-and-

Jeffrey Kurtzman, Esquire  
**KURTZMAN | STEADY, LLC**  
401 S. 2<sup>nd</sup> Street, Suite 200  
Philadelphia, PA 19147  
Telephone: (215) 839-1222  
Email: [kurtzman@kurtzmansteady.com](mailto:kurtzman@kurtzmansteady.com)

*Proposed Attorneys for Debtor and  
Debtor-in-Possession*



**EXHIBIT 3**

[Assumption Notice]

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

In re:	:	Chapter 11
	:	
NOVASOM, INC.,	:	Case No. 19-11734 (BLS)
	:	
Debtor.	:	Re: D.I. 7, 30
	:	

**NOTICE OF CONTRACT PARTIES TO POTENTIALLY  
ASSUMED 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 THE DEBTOR AS SET  
FORTH IN EXHIBIT A ATTACHED HERETO.**

PLEASE TAKE NOTICE that on August 23, 2019, the United States Bankruptcy Court for the District of Delaware (the "Court") entered an order [D.I. \_\_\_\_] (the "Bidding Procedures Order")<sup>1</sup>, authorizing, among other things (i) the Debtor to conduct an auction (the "Auction") to select the party to purchase the Debtor's assets and (ii) procedures to determine Cure Amounts and deadlines for objections to such amounts and the potential assumption and assignment of Assigned Contracts. The Auction will be governed by the bidding procedures approved pursuant to the Bidding Procedures Order (which are 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 Debtor may assume and assign to the Successful Bidder the contracts, leases or agreements listed on Exhibit A upon approval of the Sale (collectively, the "Assigned Contracts"). The Debtor has conducted a review of its books and records and has determined that the cure amounts for unpaid monetary obligations under such 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 VirtuOx, Inc. (the "Stalking Horse Bidder") of any Assigned Contract, or object to the ability of the Stalking Horse Purchaser to provide adequate assurance of future performance with respect to any 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 this chapter 11 case; (iii) state with specificity the nature of the objection and, if the objection pertains to the proposed Cure

<sup>1</sup> All capitalized terms used otherwise defined herein shall have the meaning ascribed to them in the Bidding Procedures Order or the Debtor's motion to approve the Bidding Procedures Order [D.I. 7], as amended [D.I. 30], as applicable.

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 no later than August 30, 2019 at 4:00 p.m. (prevailing Eastern Time)** (the "Cure Objection Deadline") by the Court and the following parties (collectively, the "Objection Notice Parties"): (i) Jeffrey Kurtzman, Esquire, Kurtzman | Steady, LLC, 401 S. 2<sup>nd</sup> Street, Suite 200, Philadelphia, PA 19147, [kurtzman@kurtzmansteady.com](mailto:kurtzman@kurtzmansteady.com); (ii) Peter Hughes, Esquire, Dilworth Paxson LLP, One Customs House, 704 King Street, Suite 500, Wilmington, DE 19801, [phughes@dilworthlaw.com](mailto:phughes@dilworthlaw.com); (iii) Office of the United States Trustee, 844 N. King Street, Suite 2207, Wilmington, DE 19801; (iv) David Weitman, Esquire, K&L Gates LLP, 1717 Main Street, Suite 2800, Dallas, TX 75201, [david.weitman@klgates.com](mailto:david.weitman@klgates.com); and any other party that has filed a notice of appearance in this chapter 11 case.

PLEASE TAKE FURTHER NOTICE that if you object to a proposed assignment of any Assigned Contract to any Bidder that is not the Stalking Horse Bidder or object to the ability of any Bidder other than the Stalking Horse Purchaser to provide adequate assurance of future performance with respect to any 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 this chapter 11 case; (iii) state with specificity the nature of the objection; and (iv) be filed with the Court and served and **actually received no later than September 23, 2019, at 4:00 p.m. (prevailing Eastern Time)** (the "Non-Stalking Horse Adequate Assurance Objection Deadline") by the Court and the Objection Notice Parties.

PLEASE TAKE FURTHER NOTICE that for the avoidance of doubt, all objections to the proposed Cure Amount(s) identified on Exhibit A hereto must be filed with the Court and served as to be actually received by the Objection Notice Parties no later than August 30, 2019 at 4:00 p.m. (prevailing Eastern Time).

PLEASE TAKE FURTHER NOTICE that if no objection to (a) the Cure Amount(s), (b) the proposed assignment and assumption of any Assigned Contract, or (c) adequate assurance of the Successful Bidder's ability to perform is filed by the Cure Objection Deadline or the Non-Stalking Horse Adequate Assurance Objection Deadline, as applicable, then (i) you will be deemed to have stipulated that the Cure Amounts as determined by the Debtors and as identified on Exhibit A hereto are correct, (ii) you may be forever barred, estopped, and enjoined from asserting any additional cure amount under the proposed 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 an 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 at a later date as may be fixed by the Court and/or agreed by the Debtor, the applicable counterparty and the Successful Bidder.

PLEASE TAKE FURTHER NOTICE that, notwithstanding anything herein, the mere

listing of any Assigned Contract on Exhibit A hereto does not require or guarantee that such Assigned Contract will be assumed by the Debtor at any time or assumed and assigned, and all rights of the Debtor and the Successful Bidder with respect to such Executory Contracts and/or Unexpired Leases are reserved. Moreover, the Debtor explicitly reserved its rights, in its reasonable discretion, to seek to reject or assume each Assigned Contract pursuant to section 365(a) of the Bankruptcy Code and in accordance with the procedures allowing the Debtor and/or the Successful Bidder, as applicable, to designate any Assigned Contract as either rejected or assumed on a post-closing basis.

Dated: August 23, 2019

**DILWORTH PAXSON LLP**

By: \_\_\_\_\_

Peter C. Hughes (Del. Bar No. 4180)  
One Customs House  
704 King Street, Suite 500  
Wilmington, DE 19801  
Telephone: (302) 571-98  
Email: [phughes@dilworthlaw.com](mailto:phughes@dilworthlaw.com)

-and-

Jeffrey Kurtzman, Esquire  
**KURTZMAN | STEADY, LLC**  
401 S. 2<sup>nd</sup> Street, Suite 200  
Philadelphia, PA 19147  
Telephone: (215) 839-1222  
Email: [kurtzman@kurtzmansteady.com](mailto:kurtzman@kurtzmansteady.com)

*Proposed Attorneys for Debtor and  
Debtor-in-Possession*

**Exhibit A**

**[Below is the form of Exhibit A that will be completed and sent to each counterparty.]**

**CONTRACT SCHEDULE**

COUNTERPARTY	COUNTERPARTY ADDRESS	CONTRACT/LEASE DESCRIPTION	PROPOSED CURE AMOUNT