

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

In re:

SIO2 MEDICAL PRODUCTS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-10366 (JTD)
)
) (Jointly Administered)
)
) **Re: Docket No. 17**

ORDER (I) ESTABLISHING BIDDING PROCEDURES, (II) SCHEDULING CERTAIN DATES WITH RESPECT THERETO, (III) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (IV) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing and approving Bidding Procedures, attached hereto as **Exhibit 1**, by which the Debtors will solicit and select the highest or otherwise best offer(s) for (i) the New Common Stock, (ii) all or substantially all of, or a subset, of the Debtors’ assets (including, for the avoidance of doubt, any causes of action belonging to the Debtors, rights under leases or other contracts, and intellectual property rights or other intangible assets other than claims causes of action under chapter 5 of the Bankruptcy Code except such claims and causes of action against vendors) (the “Assets”), or (iii) one or more, or any combination of, Assets as that party may desire, (b) scheduling certain dates with respect thereto, (c) approving the form and manner of the notice thereof, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing*

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: SiO2 Medical Products, Inc. (8467); Advanced Bioscience Labware, Inc. (1229); and Advanced Bioscience Consumables, Inc. (2510). The location of the Debtors' principal place of business and service address in these chapter 11 cases is 2250 Riley Street, Auburn, Alabama 36832.

² Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

Order of Reference from the United States District Court for the District of Delaware, dated February 29, 2012; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that this Court may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

2. The Bidding Procedures are fair, reasonable, and appropriate and are designed to promote participation and active bidding and ensure that the highest or otherwise best value is generated for the (a) New Common Stock through a plan of reorganization, (b) all or substantially all of the Assets in a minimum amount that repays the DIP Claims and the First Lien Term Loan

Claims and provides similar or better treatment to all other claims as set forth in the Plan, (c) a subset of the Assets, or (d) as an alternate value maximizing transaction that (i) subject to the consent of the DIP Lenders, First Lien Term Loan Lenders, and the Initial Plan Sponsors, provides alternate treatment of the DIP Claims and First Lien Term Loan Claims, and (ii) that provides similar or better treatment to all other claims as set forth in the Plan Notwithstanding the foregoing, in an exercise of their fiduciary duties, the Debtors will consider, and parties are encouraged to submit, any and all bids for some or all of the Debtors Assets (in any combination), whether or not such bid satisfies the Bid Requirements.

3. The Bidding Procedures were negotiated at arm's length, in good faith, and without collusion. The Bidding Procedures balance the Debtors' interests in emerging expeditiously from the chapter 11 cases while preserving the opportunity to attract value-maximizing proposals beneficial to the Debtors' estate, their creditors, and other parties in interest.

4. The Debtors, with the assistance of their advisors, initiated their marketing and sale process prior to the Petition Date to solicit and develop the highest or otherwise best offer for the New Common Stock. The Bidding Procedures are designed to continue that marketing and sale process.

5. The Debtors have articulated good and sufficient business reasons for this Court to grant the relief requested in the Motion, including, without limitation, to approve the Bidding Procedures. Such compelling and sound business justification, which was set forth in the Motion and on the record at the Hearing, are incorporated herein by reference and, *inter alia*, form the basis for the Court's findings of fact and conclusions of law herein.

6. The Equitization Restructuring represents the highest or otherwise best offer the Debtors have received to date for their New Common Stock. Pursuing the Equitization

Restructuring was and is in the best interests of the Debtors and their estates and reflects a sound exercise of the Debtors' business judgment. The Equitization Restructuring provides the Debtors with the opportunity to sell the New Common Stock in a manner that will maximize value for their estates and stakeholders. The Equitization Restructuring will enable the Debtors to secure a fair and adequate baseline price for the New Common Stock at the Auction (if any) and, accordingly, will provide a clear benefit to the Debtors' estates, their creditors, and all other parties in interest. Without the Equitization Restructuring, the Debtors would likely realize a lower price for the New Common Stock; therefore, the contributions of the Initial Plan Sponsors to the process have indisputably provided a substantial benefit to the Debtors and their estates.

7. The Initial Plan Sponsors and their advisors have acted in good faith within the meaning of section 363(m) of the Bankruptcy Code in connection with the negotiation of the Equitization Restructuring and the Bidding Procedures.

8. The Auction Notice, substantially in the form attached hereto as **Exhibit 2**, and incorporated herein by reference, is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction.

IT IS HEREBY ORDERED THAT:

1. All objections to the relief granted herein that have not been withdrawn with prejudice, waived, or settled, and all reservations of rights and/or statements included in such objections, are overruled and denied on the merits with prejudice, and the Bidding Procedures are approved as set forth herein.

I. Important Dates and Deadlines.

2. The following timeline is hereby approved:

Date and Time (all times in prevailing Eastern Time)	Event or Deadline
May 12, 2023, at 4:00 p.m.	IOI Deadline
June 12, 2023, at 4:00 p.m.	Bid Deadline
June 14, 2023, at 4:00 p.m.	Deadline to notify all Qualified Bidders of the highest or otherwise best Qualified Bid and provide copies of the documents supporting such Bid to all Qualified Bidders.
June 15, 2023, at 10:00 a.m.	Auction (if required)
June 16, 2023, at 4:00 p.m.	Deadline for objections to approval of any Bid (including any credit bid), including objections based on the manner in which the Auction was conducted and the identity of the Winning Bidder, whether submitted prior to, on, or after the Bid Deadline.
June 22, 2023	Sale/Confirmation Hearing

II. Auction, Bidding Procedures, and Related Relief.

3. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are fully incorporated herein and approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Transaction. Any party desiring to bid on either the (a) New Common Stock through a plan of reorganization, (b) all or substantially all of the Assets in a minimum amount that repays the DIP Claims and the First Lien Term Loan Claims and provides similar or better treatment to all other claims as set forth in the Plan, (c) a subset of the Assets, or (d) as an alternate value maximizing transaction that (i) subject to the consent of the DIP Lenders, First Lien Term Loan Lenders, and the Initial Plan Sponsors, provides alternate treatment of the DIP Claims and First Lien Term Loan Claims, and (ii) that provides similar or better treatment to all other claims as set forth in the Plan., shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take all actions as are necessary or appropriate to implement the Bidding Procedures.

4. Each bidder participating at an Auction, if any, shall be required to confirm that it has not engaged in any collusion with respect to the bidding or the Transaction, as set forth in the Bidding Procedures; and an Auction, if any, shall be transcribed or videotaped.

5. Pursuant to the Bidding Procedures, the Debtors may, in consultation with the Consultation Parties, and subject to the consent rights in the Bidding Procedures and the Restructuring Support Agreement, (a) determine which Qualified Bid is the highest or otherwise best offer, (b) reject any Bid that the Debtors determine is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (iii) contrary to the best interests of the Debtors' estates and their creditors, and (c) impose such other terms and conditions upon Qualified Bidders as the Debtors determine to be in the best interests of the Debtors' estates in these Chapter 11 Cases, subject to the terms of the Restructuring Support Agreement.

6. If the Debtors elect, in consultation with the Consultation Parties, not to conduct an Auction, then the Debtors shall file a notice with the Court of such election within two business days of the determination of such election by the Debtors. The deadline to object to the manner in which the Auction was conducted and the identity of the Winning Bidder, including objections to approval of any Bid, whether submitted prior to, on, or after the Bid Deadline, shall be June 16, 2023, at 4:00 p.m. (prevailing Eastern Time).

7. No person or entity shall be entitled to any expense reimbursement, break-up fees, "topping," termination, or other similar fee or payment, and by submitting a Bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature in connection with such Bid, whether by virtue of section 503(b) of the Bankruptcy Code or otherwise.

III. Miscellaneous.

8. Notwithstanding anything to the contrary herein or in the Bidding Procedures, the Debtors may determine in their reasonable business judgment, and subject to the consent of the DIP Lenders and Consenting Stakeholders, and in consultation with the Consultation Parties, to suspend or cancel the marketing and bidding process in favor of the Equitization Restructuring.

9. All persons or entities (whether or not Qualified Bidders) that participate in the bidding process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion to the extent that it is later determined that this Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution, and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

10. For the avoidance of doubt, nothing in the Bidding Procedures or this Order waives, modifies, limits, or otherwise amends the terms of the DIP Order and the DIP Credit Agreement Documents or any of the rights of the DIP Lenders or any of the obligations of the Debtors or other parties thereunder.

11. For the avoidance of doubt and notwithstanding anything to the contrary contained in this Order, this Order does not approve the sale of the (a) New Common Stock, (b) all or substantially all of the Assets, or (c) or a subset of the Assets, or authorize the consummation of the Sale, such approval and authorization (if any) to be considered only at the Sale or Confirmation Hearing and all rights of all parties in interest to object to such approval and authorization are reserved.

12. All parties in interest shall receive or be deemed to have received good and sufficient notice of the Motion and of the Auction, and no further notice of the foregoing shall be

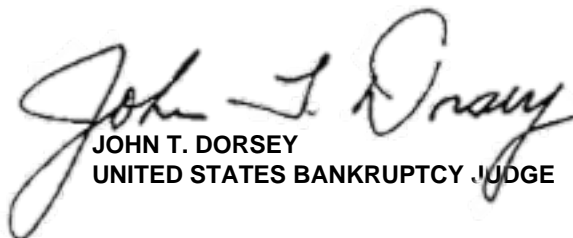
required except as expressly set forth herein.

13. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be immediately effective and enforceable upon entry hereof.

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

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

Dated: April 25th, 2023
Wilmington, Delaware



JOHN T. DORSEY
UNITED STATES BANKRUPTCY JUDGE

Exhibit 1

Bidding Procedures

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

In re:

SIO2 MEDICAL PRODUCTS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-10366 (JTD)
)
) (Jointly Administered)
)

BIDDING PROCEDURES

On March 29, 2023 (the “Petition Date”), SiO2 Medical Products, Inc., and certain of its subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. § 101, *et seq.* (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”).

The Debtors filed these chapter 11 cases after entering into a Restructuring Support Agreement [Docket No. 19, Ex. B] (the “RSA”) with holders representing 100% of the aggregate principal amount of outstanding First Lien Term Loans.² Subject to the terms thereof, the RSA contemplates a chapter 11 plan of reorganization (as modified, amended, or supplemented from time to time, the “Plan”) that provides for the equitization by the First Lien Term Lenders of some or all of their First Lien Term Loan Claims and DIP Claims of the DIP Lenders (in each case, in their discretion) in exchange for 100% of the equity of the Reorganized Debtors (the “New Common Stock”, and such transaction, the “Equitization Restructuring”).

The Equitization Restructuring serves as a baseline restructuring proposal. The Plan contemplates, however, that the Debtors will continue their prepetition marketing and bidding process pursuant to the procedures contained herein (the “Bidding Procedures”). A party may participate in the bidding process by submitting a bid for (a) the New Common Stock, (b) all or substantially all of, or a subset of the Debtors’ assets (including, for the avoidance of doubt, any causes of action belonging to the Debtors, rights under leases or other contracts, and intellectual property rights or other intangible assets other than claims and causes of action under chapter 5 of the Bankruptcy Code except such claims and causes of action against vendors) (the “Assets”), or (c) one or more, or any combination of, Assets as that party may desire. These Bidding Procedures authorize the Debtors to consummate an alternative sale Transaction (as defined herein) in the event that the Debtors receive an offer that, in their reasonable business judgment, and in

¹ Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: SiO2 Medical Products, Inc. (8467); Advanced Bioscience Labware, Inc. (1229); and Advanced Bioscience Consumables, Inc. (2510). The location of the Debtors’ principal place of business and service address in these chapter 11 cases is 2250 Riley Street, Auburn, Alabama 36832.

² Unless otherwise specified herein, terms used but not otherwise defined herein shall have the meanings set forth in the First Day Declarations, Bidding Procedures Motion, Bidding Procedures Order (as defined herein), Plan (as defined herein), and/or Restructuring Support Agreement, as applicable.

consultation with the Consultation Parties, represents a higher or otherwise better bid compared to the value provided by the Equitization Restructuring.

For purposes of these Bidding Procedures, the Initial Plan Sponsors shall not constitute bidders under the Bidding Procedures and have waived all rights to submit any Overbids (as defined herein).

On [●], the Court entered the *Order (I) Establishing Bidding Procedures, (II) Scheduling Certain Dates with Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, and (IV) Granting Related Relief* (the “Bidding Procedures Order”), by which the Court approved these Bidding Procedures, which set forth the process by which the Debtors are authorized to conduct an auction (for all purposes if held, the “Auction”) to solicit bids for a Transaction as a potential alternative to the Equitization Restructuring. These Bidding Procedures do not prohibit the pairing of bids (provided that any communications regarding pairing of the bids must be pre-authorized and facilitated by the Debtors’ Advisors (as defined below) as provided below). Interested parties are encouraged to submit bids (a) for the New Common Stock through a plan of reorganization, (b) for all or substantially all of the Assets in a minimum amount that repays the DIP Claims and the First Lien Term Loan Claims and provides similar or better treatment to all other claims as set forth in the Plan, (c) for a subset of the Assets, or (d) as an alternate value maximizing transaction that (i) subject to the consent of the DIP Lenders, First Lien Term Loan Lenders, and the Initial Plan Sponsors, provides an alternative treatment of the DIP Claims and First Lien Term Loan Claims and (ii) that provides similar or better treatment to all other claims as set forth in the Plan. The Debtors will consider, and parties are encouraged to submit, any and all bids for some or all of the Debtors’ Assets (in any combination), whether or not such bid satisfies the Bid Requirements.

Copies of the Bidding Procedures Order, the Plan, or any other documents in the Debtors’ chapter 11 cases are available upon request to Donlin, Recano & Company, by calling the restructuring hotline at 1-800-591-8236 (toll free) and 212-771-1128 (international) or by visiting the Debtors’ restructuring website at <https://www.donlinrecano.com/smp>.

Marketing Process

A. Description of the Assets to be Auctioned.

The Debtors are seeking to sell or enter into an alternate value-maximizing transaction to sell either the New Common Stock through a plan of reorganization, their Assets, or both (any transaction to be effectuated to acquire the New Common Stock or the Assets a “Transaction”). Notwithstanding the foregoing or anything else to the contrary contained herein, the Debtors will consider any and all bids subject to the qualification requirements set forth herein.

B. Key Dates and Deadlines.

The following table sets forth key dates and deadlines with respect to these Bidding Procedures:

Date and Time³ (all times in prevailing Eastern Time)	Event or Deadline
May 12, 2023, at 4:00 p.m.	IOI Deadline
June 12, 2023, at 4:00 p.m.	Bid Deadline
June 14, 2023, at 4:00 p.m.	Deadline to notify all Qualified Bidders of the highest or otherwise best Qualified Bid and provide copies of the documents supporting such Bid to all Qualified Bidders.
June 15, 2023, at 10:00 a.m.	Auction (if required)
June 16, 2023, at 4:00 p.m.	Deadline for objections to approval of any Bid (including any credit bid), including objections based on the manner in which the Auction was conducted and the identity of the Winning Bidder, whether submitted prior to, on, or after the Bid Deadline.
June 22, 2023	Sale/Confirmation Hearing

C. Participation Requirements and Due Diligence.

(i) Access to Due Diligence.

To receive due diligence information, including full access to the Debtors' electronic data room and additional non-public information regarding the Debtors, a party interested in consummating a Transaction (a "Potential Bidder") should deliver (or have delivered) an executed confidentiality agreement (a "Confidentiality Agreement") in form and substance reasonably acceptable to the Debtors, to the extent not already executed, to each of:

- (a) proposed counsel to the Debtors, Kirkland & Ellis LLP ("Kirkland"), 601 Lexington Avenue, New York, New York 10022, Attn.: Brian Schartz, P.C. (bschartz@kirkland.com), and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Joshua M. Altman (josh.altman@kirkland.com), Dan Latona (dan.latona@kirkland.com), Nicholas Krislov (nick.krislov@kirkland.com), Jhett Nelson, P.C. (jhett.nelson@kirkland.com), and Adam Garmezy (adam.garmezy@kirkland.com);
- (b) proposed co-counsel to the Debtors, Cole Schotz P.C. ("Cole Schotz"), 500 Delaware Avenue, Suite 1410 Wilmington, Delaware 19801 Attn.: Justin R. Alberto (jalberto@coleschotz.com), Patrick J. Reilley (preilley@coleschotz.com), Stacy Newman (snewman@coleschotz.com); and Cole Schotz, 1325 Avenue of the Americas, 19th Floor, New York,

³ All dates and deadlines are subject to Bankruptcy Rule 9006.

New York 10019, Attn.: Seth Van Aalten (svanaalten@coleschotz.com); and

- (c) proposed investment banker to the Debtors, Lazard Freres & Co. LLC (“Lazard”), 30 Rockefeller Plaza, New York, New York 10112, Attn.: Tyler Cowan (tyler.cowan@lazard.com) and Tim Donahue (tim.donahue@lazard.com).

The term “Debtors’ Advisors” as used in these Bidding Procedures shall mean (i) Kirkland, (ii) Cole Schotz, and (iii) Lazard.

Promptly after a Potential Bidder delivers an executed Confidentiality Agreement to the Debtors’ Advisors, such Potential Bidder may submit an Indication of Interest (as defined below). Except as otherwise determined in the Debtors’ business judgment, only those Potential Bidders that have delivered executed Confidentiality Agreements (each, an “Acceptable Bidder”) may submit an Indication of Interest. The Debtors shall consult with the Consultation Parties prior to deeming any Potential Bidder an Acceptable Bidder or not an Acceptable Bidder.

The Debtors shall provide copies of the applicable portions of Indications of Interest and Bids received (excluding, except in the case of the Committee, underlying financial or qualifying documentation) as soon as reasonably practicable, but no later than one business day after receipt thereof, to each of the following parties (each, a “Consultation Party,” and collectively, the “Consultation Parties”): (i) counsel to the Consenting First Lien Term Lenders, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York, 10004, Attn: Benjamin Beller (bellerb@sullcrom.com) and Ari Blaut (blauta@sullcrom.com); (ii) counsel to the DIP Lenders, Sullivan & Cromwell LLP, 125 Broad Street, New York, New York, 10004, Attn: Benjamin Beller (bellerb@sullcrom.com) and Ari Blaut (blauta@sullcrom.com); (iii) counsel to the Second Lien Administrative Agent, Katten Muchin Rosenman LLP, 50 Rockefeller Plaza, New York, New York, 10020, Attn: Steven Reisman (sreisman@katten.com) and Shaya Rochester (srochester@katten.com); and (iv) counsel to the Committee, White & Case LLP, 111 S. Wacker Drive, Suite 5100, Chicago, Illinois 60606, Attn: Gregory F. Pesce (gregory.pesce@whitecase.com), Andrew F. O’Neill (aoneill@whitecase.com), and John Ramirez (john.ramirez@whitecase.com); *provided*, that counsel to the First Lien Term Lenders, Sullivan & Cromwell LLP, shall be a Consultation Party only to the extent the Debtors are considering one or more Bids that are less than the amount of the Baseline Bid (as defined herein) but shall not be a Consultation Party to the extent the Debtors are considering Bids that exceed the Baseline Bid and provide for payment of all Allowed First Lien Term Loan Claims and DIP Claims in full; *provided, however*, that during any period in which a Consultation Party has submitted Indications of Interest and/or Bids, such Consultation Party shall not be considered a Consultation Party; *provided, further, however*, that the Debtors, in their reasonable discretion, may provide redacted copies of the Indications of Interest and Bids with identifying and other potentially sensitive information removed.⁴

⁴ For the avoidance of doubt, the Second Lien Administrative Agent will not be a Consultation Party hereunder until it has irrevocably waived its right to credit bid or otherwise participate in the Auction.

Beginning on or as soon as is reasonably practicable after the Debtors determine that a Potential Bidder is an Acceptable Bidder, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after each such request, and the Debtors shall post all written due diligence provided to any Acceptable Bidder to the Debtors' electronic data room; *provided*, that the Debtors may decline to provide such information to Acceptable Bidders who, at such time and in the Debtors' business judgment, after consultation with the Consultation Parties, have not established, or who have raised doubt, that such Acceptable Bidder intends in good faith to, or has the capacity to, consummate a Transaction. All substantive direct communications, including due diligence requests, must be directed to Lazard at the following email address:

Lazard Freres & Co. LLC (“Lazard”), 30 Rockefeller Plaza, New York, New York, 10112, Attn.: Tyler Cowan (tyler.cowan@lazard.com) and Tim Donahue (tim.donahue@lazard.com).

To the extent reasonably practicable, the Debtors will also facilitate meetings between any Acceptable Bidder and the Debtors' management team, which meetings will proceed in a manner determined by the Debtors, in their reasonable business judgment. The due diligence period will end on the Bid Deadline (as defined below), and, subsequent to the Bid Deadline, the Debtors will have no obligation to furnish any due diligence information.

For any Acceptable Bidder who is a competitor of the Debtors or is affiliated with any competitor of the Debtors, the Debtors reserve the right to withhold, or to delay providing, any diligence materials that the Debtors determine, in their sole discretion, are business-sensitive or otherwise inappropriate for disclosure to such Acceptable Bidder at such time.

Each Acceptable Bidder shall comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Acceptable Bidder and its contemplated Transaction.

(ii) **Preliminary Indication of Interest**

In order to be eligible to submit a Bid, Acceptable Bidders will first be required to submit a non-binding indication of interest (an “Indication of Interest”) not later than 4:00 p.m. (prevailing Eastern Time) on May 12, 2023 (the “IOI Deadline”), to the Debtors and their advisors specified herein; *provided*, that, after consultation with the Consultation Parties, the Debtors may extend the IOI Deadline or waive the requirement of an Indication of Interest for one or more Acceptable Bidders upon request, without further order of the Court. If the Debtors extend the IOI Deadline, the Debtors will promptly notify all Acceptable Bidders and file a notice of such extension on the Court's docket. The Debtors will promptly provide copies of all Indications of Interest received to the Consultation Parties (excluding, except in the case of the Committee, underlying financial or qualifying information). The Debtors, in consultation with the Consultation Parties, will then notify each Acceptable Bidder whether its Indication of Interest satisfies the requirements set forth in this section and that such bidder is qualified to submit a Bid that reflects such Indication of Interest.

Each Indication of Interest must include, except as the Debtors, in consultation with the Consultation Parties, otherwise determine:

- (a) a letter outlining the Acceptable Bidder's offer, form(s) of consideration, any conditions precedent (other than the sufficiency of financing) and stating that the Acceptable Bidder is prepared to work in good faith to acquire either the New Common Stock through a chapter 11 plan, or any other Assets (or such other alternative transaction as proposed) and finalize a binding proposal by the Bid Deadline (as defined below);
 - (b) written evidence acceptable to the Debtors demonstrating financial wherewithal and a description of any corporate or governmental authorizations necessary to consummate the proposed Transaction;
 - (c) the identification of the ultimate beneficial owners of the Acceptable Bidder;
 - (d) a description of all remaining due diligence requirements and any material conditions to be satisfied prior to submission of a Bid; and
 - (e) to the extent known at the time of the Indication of Interest, any obligations related to employees of the Debtors the Acceptable Bidder may assume.
- (iii) **No Communications Among Bidders Without Consent.**

There must be no communications between and amongst Potential Bidders and/or Acceptable Bidders, or between Potential Bidders and the Consultation Parties (with the exception of the Committee), unless the Debtors' Advisors have authorized such communication in writing. The Debtors reserve the right, in their reasonable business judgment, and upon consultation with the Consultation Parties, to disqualify any Potential Bidders and/or Acceptable Bidders that have communications between and amongst themselves without the prior consent of the Debtors' Advisors. For the avoidance of doubt, there will be no prohibition on pairing bids; *provided* that, to the extent any Potential Bidders and/or Acceptable Bidders are interested, the Debtors' Advisors will facilitate the communications between parties and the potential joining of bids.

Bidding and Auction Process

A. Bid Deadline.

An Acceptable Bidder that desires to make an irrevocable and binding offer (each, a "Bid") shall transmit such irrevocable and binding offer via email (in .pdf or similar format) so as to be **actually received** on or before **June 12, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the "Bid Deadline") to:

- (i) proposed counsel to the Debtors, Kirkland, 601 Lexington Avenue, New York, New York 10022, Attn.: Brian Schartz, P.C. (bschartz@kirkland.com), and Kirkland & Ellis LLP, 300 North LaSalle, Chicago, Illinois 60654, Attn.: Joshua M. Altman (josh.altman@kirkland.com), Dan Latona (dan.latona@kirkland.com), Nicholas Krislov (nick.krislov@kirkland.com), Jhett Nelson, P.C.

(jhett.nelson@kirkland.com), and Adam Garmezy (adam.garmezy@kirkland.com);

- (ii) proposed co-counsel to the Debtors, Cole Schotz P.C. (“Cole Schotz”), 500 Delaware Avenue, Suite 1410 Wilmington, Delaware 19801 Attn.: Justin R. Alberto (jalberto@coleschotz.com), Patrick J. Reilley (preilley@coleschotz.com), Stacy Newman (snewman@coleschotz.com); and Cole Schotz, 1325 Avenue of the Americas, 19th Floor, New York, New York 10019, Attn.: Seth Van Aalten (svanaalten@coleschotz.com); and
- (iii) proposed investment banker to the Debtors, Lazard, 30 Rockefeller Plaza, New York, New York 10112, Attn.: Tyler Cowan (tyler.cowan@lazard.com) and Tim Donahue (tim.cowan@lazard.com).

B. Bid Requirements.

In order for a Bid by an Acceptable Bidder, or a combined bid by more than one Acceptable Bidder (the “Combined Bid”), to be deemed qualified for the Auction, such Bid, or Combined Bid, must be submitted in writing and shall satisfy the following requirements (collectively, the “Bid Requirements”):

- (i) **New Common Stock or Assets; Purpose.** Each Acceptable Bidder must submit a Bid for either the New Common Stock or some or all of any other Assets (or such other alternative transaction as proposed) and state that the Bid includes an irrevocable and binding offer by such Acceptable Bidder to purchase the New Common Stock or Assets.
- (ii) **Purchase Price.** Each Bid must clearly set forth the purchase price, in Cash, for the New Common Stock, or any Assets (the “Purchase Price”). For the avoidance of doubt, the Purchase Price of the Bid or Combined Bid must consist of sufficient Cash consideration to satisfy the Qualified Bid requirements set forth below. Each Bid must indicate the share of the Purchase Price allocable to any claims and causes of action against current vendors, customers, and non-insider employees proposed to be acquired pursuant to such Bid.
- (iii) **Good Faith Deposit.** Each Bid must be accompanied by a Cash deposit in the amount equal to 10% of the aggregate Purchase Price to be held in one or more escrow accounts on terms acceptable to the Debtors (the “Deposit”); *provided, however*, that the Debtors may in consultation with the Consultation Parties, elect to waive the Deposit requirement if such Acceptable Bidder otherwise provides sufficient evidence satisfactory to the Debtors, in their reasonable business judgment, that such Acceptable Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Sale transaction and to fully satisfy the Acceptable Bidder’s Purchase Price and other obligations under its Bid.

- (iv) **Transaction Documents.** Each Bid must be accompanied by executed Transaction documents, including (a) if bidding on the New Common Stock, a copy of the Plan (or Purchase Agreement, if applicable), marked to reflect any amendments and modifications thereto, and a plan sponsor agreement (the “Plan Sponsor Agreement”), the form of which will be provided to any Acceptable Bidder by the Debtors prior to the Bid Deadline, including the exhibits, schedules, and ancillary agreements related thereto, and any other related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the proposed transaction, along with copies that are marked to reflect any amendments and modifications to the form Plan Sponsor Agreement provided to such Acceptable Bidder, which amendments and modifications may not be materially more burdensome than the Equitization Restructuring or otherwise inconsistent with these Bidding Procedures, or (b) if bidding on Assets, (i) an asset purchase agreement signed by an authorized representative of the Acceptable Bidder, pursuant to which the Bidder agrees to consummate such proposed Asset sale and (ii) a proposed sale order reflecting the terms of the proposed Asset sale Transaction and asset purchase agreement. The Debtors, in their reasonable business judgment and upon consultation with the Consultation Parties, will determine whether any such amendments and modifications or asset purchase agreements and proposed sale order are materially more burdensome.
- (v) **Proof of Financial Ability to Perform.** A Bid must include written evidence that the Debtors reasonably conclude, in consultation with the Consultation Parties, that the Acceptable Bidder has the necessary financial ability to close (a) if a Bid for New Common Equity, by June 30, 2023 or (b) if a Bid for Assets, a reasonable date determined by the Debtors in their business judgment after consultation with the Consultation Parties, as set forth in the applicable asset purchase agreement (in each case, the “Close Deadline”) and has provided adequate assurances of the future performance under all contracts to be assumed and assigned in such Transaction. Such information must include, among other things, the following:
- (a) contact names and telephone numbers for verification of any third-party financing sources;
 - (b) evidence of the Acceptable Bidder’s requisite financial capacity to consummate the Transaction contemplated by its Bid, and/or equity commitments and, if applicable, proof of unconditional fully executed and effective debt funding commitments from one or more reputable sources in an aggregate amount equal to the cash portion of such Bid (including, if applicable, the Acceptable Bidder’s payment of cure amounts), or the posting of an irrevocable letter of credit from a recognized banking institution issued in favor of the Debtors in such amount, in each case, as are needed to close the Transaction;
 - (c) the Acceptable Bidder’s current financial statements (audited if they exist) or other similar financial information reasonably acceptable to the Debtors;

- (d) a description of the Acceptable Bidder's *pro forma* capital structure; and
- (e) any such other form of financial disclosure or credit-quality support information or enhancement reasonably requested by the Debtors demonstrating that such Acceptable Bidder has the ability to close the Transaction by no later than the Close Deadline.
- (vi) **No Contingencies; No Financing or Diligence Outs.** A Bid shall not be conditioned on (a) the obtaining or the sufficiency of financing, (b) the obtaining of any board of directors or board of managers, equity holder, investment committee or other similar internal approval, or (c) the outcome or review of due diligence. A Bid must identify with particularity each and every condition to the consummation of the Transaction, including the executory contracts and unexpired leases for which assumption and assignment is required.
- (vii) **Purchased Assets and Assumed Liabilities.** Each Bid for Assets must clearly provide which of the Assets the Acceptable Bidder seeks to acquire, and what liabilities the Acceptable Bidder agrees to assume.
- (viii) **Identity.** Each Bid must fully disclose the identity of each entity and each entity's shareholders, partners, investors, and ultimate controlling entities that (a) will directly or indirectly own and/or control five percent or more (individually or collectively) of the equity and/or voting securities of the Potential Bidder, including its full legal name, jurisdiction of incorporation or formation, and its location in the Potential Bidder's corporate structure, that will be bidding for the New Common Stock or any Assets, or otherwise participating in connection with such Bid, (b) will directly or indirectly own and/or control any amount of equity and/or voting securities of the Potential Bidder, (c) for trusts and similar legal arrangements that meet the criteria for subparts (a) and (b) above, (w) each trust's settlor (the provider of funds), (x) each trustee or person or entity exercising control over each trust, (y) any person with the power to remove any trustee and (z) the beneficiaries of such trust(s) or similar legal arrangement, and (d) has a connection or agreement with any Debtor or with any other prospective bidder for the New Common Stock or any Assets, or any officer, director, financial creditor, or equity security holder of any Debtor. Each Bid should also include contact information for the specific person(s) and counsel whom the Debtors (and their advisors) should contact regarding such Bid. Each Bid should contain sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the Transaction on the terms contemplated by the parties. Each Bid should also fully disclose any connections or agreements the Acceptable Bidder has with (x) any of the Debtors, (y) any potential, prospective, or other Acceptable Bidder, or (z) or any officer, director, manager, significant creditor, or equity holder of any Debtor.
- (ix) **Joint Bids.** The Debtors, in consultation with the Consultation Parties, will be authorized to approve joint Bids on a case-by-case basis.

- (x) **Regulatory and Third-Party Approvals.** A Bid must set forth each government, licensing, regulatory, and third-party approval or filing required for the Acceptable Bidder to consummate the Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals, and those actions the Acceptable Bidder will take to ensure receipt of such approval(s) as promptly as possible.
- (xi) **Authorization.** Each Bid must contain evidence acceptable to the Debtors that the Acceptable Bidder has obtained authorization or approval from its board of directors, board of managers, or investment committee (or a comparable governing body) with respect to the submission of its Bid and the consummation of the Transaction contemplated in such Bid.
- (xii) **Management and Employee Obligations.** Each Bid for the New Common Stock must assume management and employee obligations as set forth in the Plan.
- (xiii) **Compliance with Bankruptcy Code and Non-Bankruptcy Law; Acknowledgment.** Each Bid must comply in all respects with the Bankruptcy Code and any applicable non-bankruptcy law. Each Bid must also include a written acknowledgment that the Acceptable Bidder agrees to all of the terms of the Sale set forth in these Bidding Procedures;
- (xiv) **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (a) has had an opportunity to conduct any and all due diligence regarding the Transaction prior to making its offer; (b) has relied solely upon its own independent review, investigation, and/or inspection of any documents in making its Bid; (c) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, by the Debtors or their advisors or other representatives regarding the Transaction or the completeness of any information provided in connection therewith or the Auction; and (d) the Acceptable Bidder did not engage in any collusive conduct and acted in good faith in submitting its Bid.
- (xv) **Back-Up Bid.** Each Bid shall provide that the Acceptable Bidder will serve as a back-up bidder if the Acceptable Bidder's Bid is the next highest or otherwise best bid.
- (xvi) **Irrevocable.** Each Bid must state that in the event a Bid is chosen as the Winning Bid or Back-Up Bid, it shall remain irrevocable subject to the terms and conditions of these Bidding Procedures and, if applicable, the asset purchase agreement. In the case of the Back-Up Bid, it shall remain irrevocable until the Debtors and the Winning Bidder (as defined below) consummate the Transaction.
- (vi) **No Break-Up Fee; No Fees.** Each Bid shall indicate that such Acceptable Bidder will not seek any transaction break-up fee, termination fee, work fee, expense reimbursement, or similar type of payment and expressly waive any right to assert

an administrative expense claim for substantial contribution under section 503(b) of the Bankruptcy Code in connection with bidding and/or participating in the Auction. Each Acceptable Bidder presenting a Bid will bear its own costs and expenses (including legal fees) in connection with the Transaction and Auction), and by submitting its Bid is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code.

- (vii) **Cooperation.** Each Acceptable Bidder agrees to cooperate with the Debtors to provide pertinent factual information regarding such Acceptable Bidder's operations reasonably required to analyze issues arising with respect to any applicable laws or regulatory requirements and to comply with the reasonable diligence requests of the Debtors.
- (viii) **Consent to Jurisdiction.** Each Acceptable Bidder must consent to the jurisdiction of the Court and agree to be bound by the Bidding Procedures.

By submitting its Bid, each Acceptable Bidder is agreeing, and shall be deemed to have agreed, to abide by and honor the terms of these Bidding Procedures and to refrain from submitting a Bid, or seeking to reopen the Auction, after conclusion of the Auction. **The submission of a Bid shall constitute a binding and irrevocable offer to consummate the Transaction reflected in such Bid.**

C. Designation of Qualified Bidders.

Unless otherwise determined by the Debtors with the consent (such consent shall not be unreasonably withheld) of the Consultation Parties, a Bid will be considered a "Qualified Bid," and each Acceptable Bidder that submits a Qualified Bid will be considered a "Qualified Bidder," if the Debtors, in consultation with the Consultation Parties, determine that such Bid:

- (i) satisfies the Bid Requirements set forth above subject to the Debtors' rights in the exercise of their fiduciary duties to waive any such requirement or any part thereof in consultation with the Consultation Parties;
- (ii) is reasonably likely (based on availability of financing, antitrust, or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Winning Bid (as defined below), no later than the Close Deadline; and
- (iii) if a Bid for the New Common Stock or all or substantially all of the Assets, provides for a Transaction value accounting for:
 - (a) payment in full in Cash;
 - (1) the total amount of Allowed DIP Claims as of the Plan Effective Date, plus interest, fees, and expenses as of the Effective Date; *plus*
 - (2) the total amount of Allowed First Lien Term Loan Claims as of the Plan Effective Date, plus interest, fees, and expenses as of the

Effective Date;

- (3) the total amount of the Debtors' Allowed administrative expenses pursuant to section 503(b) of the Bankruptcy Code;
 - (4) the total amount of Allowed priority claims against the Debtors pursuant to section 507 of the Bankruptcy Code; and
 - (5) if a Bid for all or substantially all of the Assets, (a) the total amount of any Allowed secured claims against the Debtors pursuant to section 506 of the Bankruptcy Code (or such other amount agreed to by the holders of such claims other than DIP Claims and Allowed First Lien Term Loan Claims) and (b) an amount sufficient to wind-down the Chapter 11 Cases to be determined by the Debtors and the Committee.
- (b) an initial Overbid (as defined below) providing incremental value in Cash consideration of at least \$1,000,000 or such other amount as determined by the Debtors in consultation with the Consultation Parties; and
 - (c) For the avoidance of doubt, subject to the consent of the Initial Plan Sponsors and the Committee, the Debtors may determine that a bid providing for alternative treatment of the DIP Claims and/or the First Lien Term Loan Claims is a Qualified Bid.

Prior to commencement of the Auction, the Debtors will notify each Acceptable Bidder whether such party is a Qualified Bidder.

If any Bid is determined not to be a Qualified Bid in accordance herewith, the Debtors (i) will refund such Acceptable Bidder's Deposit on the date that is three business days after the Bid Deadline (or as soon as reasonably practicable thereafter, and (ii) promptly inform the Consultation Parties of such determination (and the reasons therefor).

Between the date that the Debtors notify an Acceptable Bidder that it is a Qualified Bidder and the Auction, the Debtors may discuss, negotiate, or seek clarification of any Qualified Bid from a Qualified Bidder. Without the prior written consent of the Debtors, a Qualified Bidder may not modify, amend, or withdraw its Qualified Bid, except for proposed amendments to increase the Purchase Price or otherwise improve the terms of, the Qualified Bid, during the period that such Qualified Bid remains binding as specified in these Bidding Procedures; *provided*, that any Qualified Bid may be improved at the Auction as set forth herein. Any improved Qualified Bid must continue to comply with the requirements for Qualified Bids set forth in these Bidding Procedures, unless the Debtors exercise their fiduciary duties to waive any such requirement or any part thereof in consultation with the Consultation Parties.

Notwithstanding anything herein to the contrary, the Debtors reserve the right to engage, in consultation with the Consultation Parties, with (a) Potential Bidders and Acceptable Bidders to aggregate two or more Bids into a single consolidated Bid prior to the Bid Deadline or (b) Qualified Bidders to aggregate two or more Qualified Bids into a single Qualified Bid prior to the

conclusion of the Auction. The Debtors reserve the right to cooperate with any Acceptable Bidder to cure any deficiencies in a Bid that is not initially deemed to be a Qualified Bid. The Debtors may accept a single Qualified Bid or multiple Bids that, if taken together in the aggregate, would otherwise meet the standards for a single Qualified Bid (in which event those multiple bidders shall be treated as a single Qualified Bidder and their Bid a single Qualified Bid for purposes of the Auction).

Notwithstanding anything to the contrary contained herein, the Debtors shall not accept any Bid (including any combined Bid) that would result in the net Cash proceeds contemplated by such Bid being less than the amount necessary to repay in full in Cash (a) all outstanding Allowed obligations under the DIP Facility and the First Lien Term Loan Facility on the date the sale contemplated by such Bid is consummated, which, for the avoidance of doubt, shall be no later than the Close Deadline or the termination, expiration, or maturity of the DIP Facility (or such other amount or treatment consented to by the DIP Lenders and First Lien Term Loan Lenders, in consultation with the Committee); (b) all of (i) the Debtors' administrative expenses pursuant to section 503(b) of the Bankruptcy Code, and (ii) the priority claims against the Debtors pursuant to section 507 of the Bankruptcy Code; and (c) in the case of a Bid for all or substantially all of the Assets, (x) all Allowed secured claims against the Debtors pursuant to section 506 of the Bankruptcy Code other than Allowed First Lien Term Loan Claims and DIP Claims (or such other amount or treatment as agreed to by the holders of such claims), and (y) the wind-down costs and expenses of the Chapter 11 Cases to be determined by the Debtors and the Committee.

D. Right to Credit Bid.

Any Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided*, that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured, and any such bid must contain a cash component sufficient to repay secured Claims of all senior Secured Creditors. Pursuant to the Bidding Procedures Order, the Second Lien Administrative Agent has a right to credit bid all of the Second Lien Claims with respect to the collateral securing the Second Lien Claims; *provided further*, that any such Bid shall otherwise comply with these Bidding Procedures, any applicable intercreditor agreement, the Bankruptcy Code, the Bidding Procedures Order and any other applicable orders of the Bankruptcy Court, including any challenge rights of the Committee.

E. The Auction.

If the Debtors receive at least two Qualified Bids and determine that each of such Qualified Bids represents a higher or better value than the value available through the Equitization Restructuring, then the Debtors shall conduct an Auction to determine the Winning Bidder (as defined below). If the Debtors do not receive at least two Qualified Bids as of the Bid Deadline, then the Auction will not occur. If the Debtors only receive one Qualified Bid, such Qualified Bid will be designated the Winning Bid and the Debtors will file notice of their election not to conduct an Auction and the designation of the Qualified Bid as the Winning Bid within two business days of the determination of such election by the Debtors. If the Debtors do not receive a Qualified

Bid, the Debtors will file notice of their election not to conduct an Auction within two business days of the determination of such election by the Debtors.

No later than commencement of the Auction, the Debtors will notify all Qualified Bidders of the highest or otherwise best Qualified Bid, as determined in the Debtors' business judgment, in consultation with the Consultation Parties (the "Baseline Bid"), and provide copies of the documents supporting the Baseline Bid to all Qualified Bidders. The determination of which Qualified Bid constitutes the Baseline Bid and which Qualified Bid constitutes the Winning Bid (as defined below) shall take into account any factors the Debtors reasonably deem, in the Debtors' business judgment, and in consultation with the Consultation Parties, relevant to the value of the Qualified Bid to the Debtors' estates, including, among other things: (i) in a Bid for New Common Stock, the number, type, and nature of any changes to the Plan requested by the Qualified Bidder and the certainty of a Qualified Bid leading to a confirmed plan (whether the Plan or some other plan); (ii) the amount and nature of the total consideration; (iii) the likelihood of the Qualified Bidder's ability to consummate a transaction and the timing thereof, as well as other execution risk and availability of financing and financial wherewithal to meet all commitments and required governmental, regulatory and other approvals; (iv) the net economic effect of any changes to the value to be received by the Debtors' estates from the Transaction contemplated by the Baseline Bid, taking into account any rights of the Initial Plan Sponsors to any protections included in the RSA; (v) the tax consequences of such Qualified Bid; (vi) in a Bid for New Common Stock, the proposed changes or modifications to the form purchase agreement delivered in connection with such Qualified Bid and the comparative favorability of the terms set forth in such proposed purchase agreement versus any Baseline Bid, to the extent applicable; (vii) in a Bid for Assets, the form of asset purchase agreement and comparative effect on the estates of selling the Assets rather than the New Common Stock; and (viii) the impact to vendors, landlords, and employees (collectively, the "Bid Assessment Criteria").

Unless otherwise indicated as provided by the Bidding Procedures Order, the Auction shall occur, if necessary, on **June 15, 2023, at 10:00 a.m. (prevailing Eastern Time)**, via remote video or in-person at the Debtors' election.

The Auction shall be conducted according to the following procedures:

- (i) **The Debtors Shall Conduct the Auction.** The Debtors (with the assistance of their professionals) shall direct and preside over the Auction. At the start of the Auction, the Debtors shall describe the terms of the Baseline Bid. All incremental Bids made thereafter shall be Overbids and be made and received on an open basis, and all material terms of each Overbid shall be fully disclosed to all other Qualified Bidders. The Debtors shall maintain a written transcript of all Bids made and announced at the Auction, including the Baseline Bid, all Overbids, and the Winning Bid (as defined below).

Only Qualified Bidders, the Debtors, the DIP Agent, the Consenting First Lien Term Lenders, the Second Lien Administrative Agent, each of their respective legal and financial advisors, the U.S. Trustee, the Committee and its advisors, and any other parties specifically invited or permitted to attend by the Debtors, shall be entitled to attend the Auction, and the Qualified Bidders shall appear at the Auction

in person and may speak or bid themselves or through duly authorized representatives. Except as otherwise permitted by the Debtors, only Qualified Bidders shall be entitled to bid at the Auction.

- (ii) **Terms of Overbids.** “Overbid” means any bid made at the Auction by a Qualified Bidder subsequent to the Debtors’ announcement of the Baseline Bid. Each Overbid must comply with the following conditions:
 - (a) **Minimum Overbid Increment.** Any Overbid following the Baseline Bid or following any subsequent Prevailing Highest Bid (as defined below) shall be in increments of value (including revised treatment under the Plan or under an asset purchase agreement) of \$1,000,000, unless otherwise determined by the Debtors in consultation with the Consultation Parties.
 - (b) **Conclusion of Each Overbid Round.** Upon the solicitation of each round of Overbids, the Debtors may announce a deadline (as the Debtors may, in their business judgment, extend from time to time, the “Overbid Round Deadline”) by which time any Overbids must be submitted to the Debtors.
 - (c) **Overbid Alterations.** An Overbid may contain alterations, modifications, additions, or deletions of any terms of the Bid no less favorable in the aggregate to the Debtors’ estates than any prior Qualified Bid or Overbid, as determined in the Debtors’ business judgment, but shall otherwise comply with the terms of these Bidding Procedures.
 - (d) **Announcing Highest Bid.** Subsequent to each Overbid Round Deadline, the Debtors shall announce whether the Debtors have identified an Overbid as being higher or otherwise better than the Baseline Bid, in the initial Overbid Round, or, in subsequent rounds, the Overbid previously designated by the Debtors as the prevailing highest or otherwise best Bid (the “Prevailing Highest Bid”). The Debtors shall describe to all Qualified Bidders the material terms of any new Overbid designated by the Debtors as the Prevailing Highest Bid, as well as the value attributable by the Debtors to such Prevailing Highest Bid based on, among other things, the Bid Assessment Criteria.
- (iii) **Consideration of Overbids.** The Debtors reserve the right, in their business judgment, and in consultation with the Consultation Parties, to adjourn the Auction one or more times to, among other things (a) facilitate discussions between the Debtors and Acceptable Bidders, (b) allow Qualified Bidders to consider how they wish to proceed, and (c) provide Qualified Bidders the opportunity to provide the Debtors with such additional evidence as the Debtors, in their business judgment and in consultation with the Consultation Parties, may require, that the Qualified Bidder has sufficient internal resources or has received sufficient non-contingent debt and/or equity funding commitments to consummate the proposed Transaction at the prevailing Overbid amount.

- (iv) **No Round-Skipping.** To remain eligible to participate in the Auction, in each round of bidding, each Qualified Bidder must submit an Overbid with respect to such round of bidding and to the extent a Qualified Bidder fails to submit an Overbid with respect to such round of bidding, such Qualified Bidder shall be disqualified from continuing to participate in the Auction; provided that the Debtors may, in consultation with the Consultation Parties, waive such requirement in their business judgment.
- (v) **Closing the Auction.** The Auction shall continue until there is only one Qualified Bid that the Debtors determine, in their business judgment, in consultation with the Consultation Parties, to be the highest or otherwise best Qualified Bid. Such Qualified Bid shall be declared the winning bid (the “Winning Bid”) and such Qualified Bidder, the winning bidder (the “Winning Bidder”), at which point the Auction will be closed. The Auction shall not close unless and until all Qualified Bidders have been given a reasonable opportunity to submit an Overbid at the Auction to the then Prevailing Highest Bid. Such acceptance by the Debtors of the Winning Bid is conditioned upon approval by the Court of the Winning Bid. As soon as reasonably practicable after closing the Auction, the Debtors shall finalize definitive documentation to implement the terms of the Winning Bid, including, as applicable, the Plan, the Plan Supplement (as defined in the Plan), the Confirmation Order (as defined in the Plan), the asset purchase agreement (if applicable), the order approving the sale of Assets (if applicable) and/or other form of definitive documentation, and cause such definitive documentation to be filed with the Court.
- (vi) **No Collusion; Good-Faith *Bona Fide* Offer.** Each Qualified Bidder participating at the Auction will be required to confirm on the record at the Auction that (a) it has not engaged in any collusion with respect to the bidding and (b) its Qualified Bid is a good-faith *bona fide* offer and it intends to consummate the proposed Transaction if selected as the Winning Bidder.
- (vii) **Rejection of Bids.** The Debtors, in their reasonable business judgment, in consultation with the Consultation Parties, may reject, at any time before entry of an order of the Court approving a Winning Bid (or Back-Up Bid, as applicable), any Bid that the Debtors determine is (1) inadequate or insufficient, (2) not in conformity with the requirements of the Bankruptcy Code and/or the Bidding Procedures, or (3) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders.

F. Designation of Back-Up Bidder.

If an Auction is conducted, the Qualified Bidder with the second highest or otherwise best bid or combination of bids (the “Back-Up Bid” and such Qualified Bidder, the “Back-Up Bidder”) will be determined by the Debtors, in consultation with the Consultation Parties, at the conclusion of the Auction and will be announced at that time to all the Qualified Bidders participating in the Auction. The Debtors’ selection of a Back-Up Bid shall be deemed final and the Debtors shall not accept any further bids or offers to submit a bid after such selection. If for any reason a Winning Bidder fails to consummate the Transaction within the time permitted, then the Back-Up

Bidder will automatically be deemed to have submitted the Winning Bid, and the Back-Up Bidder shall be deemed a Winning Bidder and shall be required to consummate the Transaction with the Debtors by no later than the Close Deadline without further order of the Court, provided that the Debtors shall file a notice with the Court.

G. Fiduciary Out.

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor to take any action or to refrain from taking any action related to any Transaction or with respect to these Bidding Procedures, to the extent such Debtor, board of director, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Further, notwithstanding anything to the contrary in these Bidding Procedures, through the date of the Auction, the Debtors and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives shall have the right to: (a) consider, respond to, and facilitate alternate proposals for sales or other restructuring transactions involving the New Common Stock or the Debtors' Assets (each an "Alternate Proposal"); (b) provide access to non-public information concerning the Debtors to any entity or enter into confidentiality agreements or nondisclosure agreements with any entity with respect to Alternative Proposals; (c) maintain or continue discussions or negotiations with respect to Alternate Proposals; and (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiations of Alternate Proposals.

H. "As Is, Where Is."

Consummation of any Transaction will be on an "as is, where is" basis and without representations or warranties of any kind, nature, or description by the Debtors, their advisors, representatives, or estates, except, only with respect to the Debtors and their estates, as specifically accepted or agreed to by the Debtors. Unless otherwise specifically accepted or agreed to by the Debtors, all of the New Common Stock or, the Assets, as applicable, will be transferred to the Winning Bidder free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options, and interests in accordance with sections 363(f) and 1123(a)(5)(D) of the Bankruptcy Code.

By submitting a Bid, each Acceptable Bidder will be deemed to acknowledge and represent that it (i) has had an opportunity to conduct adequate due diligence regarding the Transaction prior to making its Bid, (ii) has relied solely on its own independent review, investigation, and inspection of any document, including executory contracts and unexpired leases, in making its Bid, and (iii) did not rely on or receive from any person or entity (including, without limitation, any of the Debtors or their advisors or other representatives) any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied by operation of law, or otherwise, with respect to the Transaction or the completeness of any information provided in

connection with the Transaction or the Auction, except as may be set in the definitive agreement for the Winning Bid.

I. Commissions.

The Debtors shall be under no obligation to pay commission to any bidder's agent(s), advisor(s), or broker(s). All commissions, fees, or expenses for such agents may be paid by bidders at such bidder's discretion. In no case shall any commissions, fees, or expenses for any bidder's agent(s) be deducted from any proceeds derived from the sale of the New Common Stock or the sale of the Assets, or the agreed Winning Bid.

J. Reservation of Rights.

Subject to the approval rights set forth in the RSA, the Debtors reserve their rights to modify these Bidding Procedures in their business judgment, and in consultation with the Consultation Parties, in any manner that will best promote the goals of these Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including: (i) amending or extending the deadlines set forth in these Bidding Procedures; (ii) adjourning the Auction at the Auction; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (iv) rejecting any or all Bids or Qualified Bids; and (v) adjusting the applicable minimum overbid increment, including by requesting that Qualified Bidders submit last or final bids on a "blind" basis. Nothing in these Bidding Procedures shall abrogate the fiduciary duties of the Debtors.

K. Consent to Jurisdiction.

All Qualified Bidders at the Auction shall be deemed to have consented to the jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction or the construction and enforcement of these Bidding Procedures.

L. Sale/Confirmation Hearing.

A hearing to consider approval of the Transaction and/or confirmation of a plan (the "Sale/Confirmation Hearing") pursuant to which the Debtors and the Winning Bidder intend to consummate the Transaction contemplated by the Winning Bid will be held **on or prior to June 30, 2023**, and otherwise in accordance with any scheduling order entered by the Court regarding approval of the Transaction or confirmation of such plan, if applicable.

M. Return of Deposit.

The Deposit of the Winning Bidder shall be applied to the Purchase Price of such Transaction at closing. The Deposits for each Qualified Bidder shall be held in one or more escrow accounts on terms acceptable to the Debtors and shall be returned (other than with respect to the Winning Bidder and Back-Up Bidder) on the date that is three business days after the Auction, and the Deposit of the Back-Up Bidder will be returned within five business days after the consummation of the Transaction with the Winning Bidder.

If a Winning Bidder or Back-Up Bidder fails to consummate a proposed Transaction because of a breach by such Bidder, the Debtors will not have any obligation to return the Deposit deposited by such Bidder, which may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors and their estates.

N. No Modification of Bidding Procedures.

These Bidding Procedures may not be modified except in accordance with Section J of these Bidding Procedures.

Exhibit 2

Auction Notice

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

In re:

SIO2 MEDICAL PRODUCTS, INC., *et al.*,¹

Debtors.

)
) Chapter 11
)
) Case No. 23-[●] (____)
)
) (Jointly Administered)
)

NOTICE OF AUCTION

PLEASE TAKE NOTICE that on [●], the United States Bankruptcy Court for the District of Delaware (the “Court”) entered the *Order (I) Establishing Bidding Procedures, (II) Scheduling Certain Dates With Respect Thereto, (III) Approving the Form and Manner of Notice Thereof, and (IV) Granting Related Relief* [Docket No. [●]] (the “Bidding Procedures Order”)² authorizing the above-captioned debtors and debtors in possession (collectively, the “Debtors”) to conduct an auction (the “Auction”) regarding the sale or alternate value maximizing transaction with respect to the New Common Stock or the Assets. The Auction will be governed by the bidding procedures attached to the Bidding Procedures Order as Exhibit 1 (the “Bidding Procedures”).

Copies of the Bidding Procedures Order, the Bidding Procedures, or other documents related thereto are available upon request to Donlin, Recano & Company by calling the restructuring hotline at 1-800-591-8236 (toll free) and 212-771-1128 (international) or by visiting the Debtors’ restructuring website at <https://www.donlinrecano.com/smp>.

PLEASE TAKE FURTHER NOTICE that this Auction Notice will be publicized in the *Opelika-Auburn News* and the *New York Times*.

PLEASE TAKE FURTHER NOTICE that the Bid Deadline is **June 12, 2023, at 4:00 p.m. (prevailing Eastern Time)**, and that any person or entity who wishes to participate in the Auction must comply with the participation requirements, bid requirements, and other requirements set forth in the Bidding Procedures.

PLEASE TAKE FURTHER NOTICE that the Debtors intend to conduct the Auction, at which they will consider proposals submitted to the Debtors and their professionals, by and pursuant to the Bidding Procedures as set forth in the Bidding Procedures Order, on **June 15, 2023, at 10:00 a.m. (prevailing Eastern Time)** via remote video or in-person at the Debtors’ election.

¹ Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: SiO2 Medical Products, Inc. (8467); Advanced Bioscience Labware, Inc. (1229); and Advanced Bioscience Consumables, Inc. (2510). The location of the Debtors’ principal place of business and service address in these chapter 11 cases is 2250 Riley Street, Auburn, Alabama 36832.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures Order or the Bidding Procedures (as defined herein), as applicable.

PLEASE TAKE FURTHER NOTICE that the Debtors reserve their rights to modify the Bidding Procedures in their business judgment, in any manner that will best promote the goals of the Bidding Procedures, or impose, at or prior to the Auction, additional customary terms and conditions on a Transaction, including: (i) extending the deadlines set forth in the Bidding Procedures; (ii) adjourning the Auction at the Auction; (iii) adding procedural rules that are reasonably necessary or advisable under the circumstances for conducting the Auction; (iv) canceling the Auction; and (v) rejecting any or all Bids or Qualified Bids.

Dated: [●], 2023

/s/

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Proposed Co-Counsel for the Debtors and Debtors in Possession

April [24], 2023

[Insert Name and Address of Bidder],

On behalf of SiO2 Medical Products, Inc. and its affiliated debtors and debtors in possession (collectively, “SiO2” or the “Company”), Lazard Frères & Co. LLC (“Lazard”), SiO2’s proposed investment banker, is pleased to invite you to submit a preliminary non-binding indication of interest (an “Indication of Interest”) in connection with an acquisition or recapitalization of the Company pursuant to a plan of reorganization under chapter 11 of the U.S. Bankruptcy Code (a “Transaction”).¹ This letter provides a high-level description of the bidding process, including the proposed bidding procedures, which are attached hereto (the “Bidding Procedures”).² We expect the Bidding Procedures to be approved this week and will share the court-approved Bidding Procedures as soon as reasonably practicable after the court’s entry of an order.

As noted below, Indications of Interest for a proposed Transaction should be submitted to the Debtors no later than **[May [12], 2023], at 4:00 pm (ET)**. Instructions for submitting an Indication of Interest are below.

The Company, with the assistance of Lazard and its advisors, intends to evaluate the Indications of Interest submitted by prospective purchasers of the Company (each, a “Potential Bidder”) to determine if such Potential Bidder is qualified to submit a Bid (each such party, an “Acceptable Bidder”). In making such a determination, the Company will consider whether or not the proposed Transaction maximizes value for the benefit of the Company’s stakeholders, provides a high certainty of closing, and can be expeditiously consummated no later than June 30, 2023.

The Company encourages interested parties to submit their highest and best bids through this process for all or a portion of the business (including any bids that may involve licensing) even if such bid does not include a cash price that exceeds \$349 million.

BIDDING PROCEDURES

The Company reserves the right to modify the Bidding Procedures in its business judgement, and in consultation with the Consultation Parties, in any manner that will best promote the goals of the Bidding Procedures. Nothing in the Bidding Procedures shall abrogate the fiduciary duties of the Company.

CONFIDENTIALITY

Based on the confidentiality agreement (the “Confidentiality Agreement”) executed by you and SiO2, you have and will be receiving certain confidential materials. For the avoidance of doubt, this letter, together with all other information provided to you in connection with this process, is “Confidential Information” subject to the Confidentiality Agreement.

TIMING AND PROCEDURES

- **Deadline to Submit Indications of Interest:** [May [12], 2023], at 4:00 pm (ET).
- **Primary Contact for Submission and Questions:** The Indication of Interest should be e-mailed to the Lazard contacts listed below, and all inquiries regarding this process should be directed to such contacts and not the Company. All meetings and confidential information to be provided will be coordinated by Lazard and all contact relating to a Transaction should be made through Lazard. Under no circumstance should the management or employees, or other advisors or representatives of SiO2, its subsidiaries or affiliates, be contacted directly.

¹ As defined in the Bidding Procedures, “Transaction” means: any transaction to be effectuated to acquire the New Common Stock or the Assets.

² Capitalized terms not defined herein shall have the meanings ascribed to such terms in the Bidding Procedures.

Unauthorized contact with any manager, employee, affiliate, advisor or representative of SiO2 is strictly prohibited and may, at the discretion of SiO2, result in the disqualification from this process.

- **Management Presentation:** Potential Bidders are invited to request a timeslot for a presentation with the Company's management team to discuss SiO2's business and this sale process. Management presentations may be held virtually or may be arranged to include a site visit to the Company's manufacturing facilities in Auburn, Alabama. Potential Bidders should contact a member of the Lazard team below at their earliest convenience to schedule a management presentation, if desired.
- **Bids:** SiO2, together with Lazard and its other advisors, in consultation with the Consultation Parties, will evaluate the non-binding Indications of Interest and may invite a selected group of interested parties to submit a Bid. This will include access to additional diligence information and receipt of the draft Transaction Documents. The deadline to submit a Bid is **June 12, 2023, at 4:00 pm (ET)** (the "**Bid Deadline**"). Pursuant to the Bidding Procedures, **a submitted Bid is a binding and irrevocable offer to consummate the Transaction reflected in such Bid.**
- **Reservation of Rights:** The Company expressly reserves the right, in its business judgement, in consultation with the Consultation Parties, to modify the timing and procedures set forth herein, to reject any Indication of Interest or Bid or terminate discussions with you at any time for any reason or no reason at all without prior notice to you or any other person. The Company's interpretation of the procedures, guidelines, and terms of this letter shall be final and binding on all parties submitting an Indication of Interest or Bid. By participating in the process set forth herein, you specifically agree to such procedures, guidelines, and terms.

CHECKLIST FOR INDICATION OF INTEREST³

1. **Identification:** The identification of the ultimate beneficial owners of your bid, including written evidence demonstrating your financial wherewithal and a description of any corporate or governmental authorizations necessary to consummate the proposed transaction.
2. **Offer:** A letter outlining your offer and any conditions precedent (other than the sufficiency of financing) and stating that you are prepared to work in good faith to finalize a binding proposal by the Bid Deadline.
3. **Purchase Price:** Your Indication of Interest must clearly set forth the purchase price, in cash, for either the New Common Stock or Assets (or such other alternative transaction as proposed) that provides for a Transaction value accounting for payment in full in Cash of approximately \$349 million. Notwithstanding the foregoing, the Debtors will consider (A) Indications of Interest with alternative transaction structures, **including, without limitation, Indications of Interest contemplating the sale of all or substantially all of, or any subset of, the Debtors' business assets,** and (B) including Indications of Interest contemplating a cash purchase price of less than \$349 million upfront.
4. **Financing:** The identification of any person or entity who may provide debt or equity financing for the purchase and any material conditions to be satisfied in connection with such financing, if any such financing has been obtained at the time.
5. **Due Diligence Requirements:** A description of all of your remaining due diligence requirements and any material conditions to be satisfied prior to submission of a Bid.
6. **Assumed Liabilities:** To the extent known at the time of your Indication of Interest, any obligations of the Company you may assume, including but not limited to any obligations related to employees.

³ Please review the Bidding Procedures prior to submitting an Indication of Interest to ensure it meets the requirements to be invited to submit a Bid. The above is not an exhaustive list of all terms of the Bidding Procedures.

Neither this letter nor the release of any information to you constitutes an offer to sell or an invitation to purchase or tender for any securities or any of the businesses or assets of SiO2 or any of its affiliates or subsidiaries. SiO2, Lazard and their respective affiliates expressly disclaim any and all liability for all statements or information in this letter, due diligence materials or in any other written materials furnished or information orally transmitted to you or your representatives.

If you have any questions regarding the Transaction, the process outlined in this letter or information to be provided in your Indication of Interest, please do not hesitate to contact the Lazard representatives listed below.

On behalf of the Company, we thank you for your interest.

LAZARD

Lazard Representatives

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