

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

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. )  
 ) (Jointly Administered)  
 )  
 ) **Re: D.I. 16, 98, 99, 100**  
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**NOTICE OF FILING OF REVISED ORDER (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND DESIGNATING LIGAND PHARMACEUTICALS AS A STALKING HORSE BIDDER, (B) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES AND (D) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (II) GRANTING RELATED RELIEF**

**PLEASE TAKE NOTICE** that, on July 17, 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing these chapter 11 cases.

**PLEASE TAKE NOTICE** that on the Petition Date, the Debtors filed the *Motion of the Debtors for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially All of Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and Designating Ligand Pharmaceuticals as a Stalking Horse Bidder, (B) Scheduling an Auction and Approving the Form and Manner of Notice Thereof, (C) Approving Assumption and Assignment Procedures and (D) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof; (II)(A) Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances After the Auction and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases; and (III) in the Alternative, Approving the Sale of the Debtors’ Assets Free and Clear of Liens, Claims, Interests, and Encumbrances to Ligand Pharmaceuticals if Not Approved as the Stalking Horse Bidder* (D.I. 16) (the “Motion”). Attached to the Motion as Exhibit A was a proposed form of order granting the relief requested in the Motion (the “Proposed Order”). The Motion was originally scheduled to be heard at a hearing on August

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.



4, 2023, at 1:00 p.m. (ET) (the “Hearing”). The Motion was noticed with an objection deadline of August 1, 2023, at 4:00 p.m. (ET) (the “Objection Deadline”) for most parties in interest. The Official Committee of Unsecured Creditors (the “Committee”) had an objection deadline at the Hearing.

**PLEASE TAKE FURTHER NOTICE** that after the Hearing, the Court rescheduled the hearing on the Motion for **August 15, 2023, at 10:00 a.m. (ET)**. In addition, the Court extended the Objection Deadline as to all parties until **August 11, 2023, at 10:00 a.m. (ET)** (the “Revised Objection Deadline”).

**PLEASE TAKE FURTHER NOTICE** that prior to the Revised Objection Deadline, Reedy Creek Investments LLC (“Reedy Creek”), the Office of the United States Trustee (the “U.S. Trustee”), and Mayne Pharma Group Limited (“Mayne Pharma,” and together with the U.S. Trustee and Reedy Creek, the “Objecting Parties”) each filed objections to the Motion [D.I. 98, 99, 100]. In addition, the Committee has also provided informal comments to the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Debtors and Ligand Pharmaceuticals have been in active good faith discussions with the Committee. As a result of these extensive discussions, the Debtors have made certain revisions to the Proposed Order as reflected in the revised proposed form of order attached hereto as **Exhibit A** (the “Revised Proposed Order”). The Revised Proposed Order resolves the issues raised by the Committee and addresses certain of the issues raised by the Objecting Parties.

**PLEASE TAKE FURTHER NOTICE** that attached hereto as **Exhibit B** is a redline comparing the Revised Proposed Order against the form of order attached to the Motion.

**PLEASE TAKE FURTHER NOTICE** that the Debtors will seek entry of the Revised Proposed Order at the hearing scheduled for **August 15, 2023, at 10:00 a.m. (ET)**.

*[Remainder of page left intentionally blank]*

Dated: August 14, 2023  
Wilmington, Delaware

Respectfully submitted,

/s/ Daniel B. Butz

**MORRIS, NICHOLS, ARSHT & TUNNEL**

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*Proposed Counsel to the Debtors and Debtors  
in Possession*

**Exhibit A**  
Revised Proposed Order

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

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. )  
 ) (Jointly Administered)  
 ) **RE: D.I. 16**

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**ORDER (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF  
SUBSTANTIALLY ALL OF DEBTORS' ASSETS FREE AND CLEAR OF LIENS,  
CLAIMS, INTERESTS, AND ENCUMBRANCES AND DESIGNATING LIGAND  
PHARMACEUTICALS AS A STALKING HORSE BIDDER, (B) SCHEDULING AN  
AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF,  
(C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES AND (D)  
SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF  
NOTICE THEREOF, AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for the entry of an order: (i) approving bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the "Bidding Procedures"), to be used in connection with one or more sales (each a "Sale") of the Debtors' development and commercialization rights to their research and development portfolio (the "R&D Assets") and to the rights to commercialize the Debtors' commercial portfolio (the "Commercial Assets," and together with the R&D Assets, the "Assets," as more fully defined in the Bidding Procedures) free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the Debtors to designate one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee ("Ligand") as the Stalking Horse Bidder for all of the Assets in

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors' federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion or the Stalking Horse APA.

connection with considering the entry of the Bidding Procedures Order; (iii) scheduling one more auctions (each, an “Auction”), if necessary, and schedule one or more hearings to approve a sale of the Debtors’ Assets (a “Sale Hearing”); (iv) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached hereto as **Exhibit 2** (the “Auction Notice”); (v) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assumed Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”); (vi) approving the form and manner of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of (A) the Debtors’ calculation of the amount necessary to cure any default under the applicable Assumed Contract (the “Cure Amounts”); and (B) certain other information regarding the potential assumption and assignment of Assumed Contracts in connection with a Sale, substantially in the form attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice”); and (vii) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion; and the Bidding Procedures Hearing (as defined herein) having been held; and this Court having found and determined that the relief set forth herein is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the Motion and at the Bidding Procedures Hearing, as

applicable, establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**<sup>3</sup>

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

D. In the Motion and at the hearing on the relief set forth herein (the “Bidding Procedures Hearing”), the Debtors demonstrated that good and sufficient notice of the relief granted by this Bidding Procedures Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Bidding Procedures Order (including, without limitation, with respect to the Bidding Procedures) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

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<sup>3</sup> 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.

E. The Bidding Procedures attached hereto as **Exhibit 1** are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of Sale of the Debtors' Assets. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c) and are reasonably designed to promote active bidding and participation in the Auction to ensure that the highest or otherwise best value is generated for the Assets.

F. The Assumption and Assignment Procedures are fair, reasonable, and appropriate and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the form and manner of Auction Notice; (iii) designation of Ligand as the Stalking Horse Bidder, and the Debtors' entry into the Stalking Horse APA, subject to the procedures set forth herein and entry of the Sale Order; (iv) the form and manner of the Assumption and Assignment Notice; and (v) the Assumption and Assignment Procedures.

H. The Auction Notice, the Assumption and Assignment Notice, and the Notice of Winning Bidder, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the Assumption and Assignment Procedures, the Debtors' proposed Cure Amounts, any proposed assumption of an Assumed Contract in connection with a sale of the Assets, and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auction, the sale of the Assets, or the assumption and assignment of Assumed Contracts in connection therewith shall be required.

I. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the



Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest.

J. Entry of this Order is in the best interests of the Debtors, their estates and creditors, and all other interested parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein. All objections to the relief granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

2. The Bidding Procedures attached hereto as **Exhibit 1** are hereby approved and are incorporated herein by reference. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

3. Ligand is designated as the Stalking Horse Bidder pursuant to the terms of the Stalking Horse APA. The Debtors' entry into the Stalking Horse APA is authorized and approved, and the Stalking Horse APA shall be subject to higher or better Qualified Bids in accordance with the terms and procedures of the Stalking Horse APA, this Bidding Procedures Order, and the Bidding Procedures. The Stalking Horse Bid's \$15 million aggregate Purchase Price (as defined in the Stalking Horse APA) for the Assets is allocated at (i) \$12 million for the R&D Assets and (ii) \$3 million for the Commercial Assets; provided, however, that the Stalking Horse Bidder shall not reallocate any of the initial \$3 million offered for the Commercial Assets

to the initial \$12 million offered for the R&D Assets or vice versa in any subsequent bid without the prior consent of the Debtors and the Committee, but for the avoidance of doubt, the Stalking Horse Bidder may increase the amounts offered for the R&D Assets and/or the Commercial Assets in any subsequent bid with incremental consideration above the aggregate \$15 million Purchase Price. The Stalking Horse Bidder, and the Stalking Horse Bid, shall be deemed a Qualified Bidder and Qualified Bid, respectively, under this Bidding Procedures Order and the Bidding Procedures.

4. Within three (3) business days after the entry of this Bidding Procedures Order, the Debtors shall to serve the Auction Notice, substantially in the form attached to this Bidding Procedures Order, on: (a) the U.S. Trustee; (b) counsel to the Stalking Horse Bidder; (c) counsel to the Official Committee of Unsecured Creditors (the “Creditors’ Committee”); (d) all parties known by the Debtors to assert a lien or encumbrance on any of the Assets; (e) all persons known or reasonably believed to have asserted an interest in or claim to any of the Assets; (f) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets within the one (1) year prior to the Petition Date; (g) the Office of the United States Attorney for the District of Delaware; (h) the Office of the Attorney General in each state in which the Debtors have operated; (i) the Office of the Secretary of State in each state in which the Debtors have operated; (j) the Internal Revenue Service and all state and local taxing authorities in the states in which the Debtors have or may have any tax liability; (k) the Securities and Exchange Commission; (l) the Federal Trade Commission; (m) all of the Debtors’ other known creditors and equity security holders; and (n) all other parties that have filed a notice of appearance and demand for service of papers in these chapter 11 cases (the “Chapter 11 Cases”) as of the service date.

5. The Debtors shall post the Auction Notice and this Bidding Procedures Order on the Debtors' claims and noticing agent's website. Within seven (7) calendar days of the entry of this Bidding Procedures Order, the Debtors shall cause the Auction Notice to be published once in the national edition of USA Today or another nationally circulated newspaper, with any modifications necessary for ease of publication. Publication of the Auction Notice as described in this Bidding Procedures Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008 and is reasonably calculated to provide notice to any affected party, including, without limitation, any potential bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Bidding Procedures Order.

6. Except objections relating to the conduct of the Auction, the Auction results, the selection of any Winning Bid and/or Back-Up Bid, or the terms of any Sale to a Winning Bidder and/or Back-Up Bidder, which may be filed as part of a Winning Bid Objection (as defined below), all objections to the sale of the Assets (each, an "Initial Sale Objection"), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Winning Bidder and/or a Backup Bidder (as applicable), shall be (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court by no later than **August 28, 2023, at 4:00 p.m. (ET)** (the "Initial Sale Objection Deadline"); and (v) served on the Notice Parties (as such term is defined in the Bidding Procedures).

7. Subject to this Bidding Procedures Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right, in consultation with the Notice Parties, to: (a) determine which bidders qualify as Qualified Bidders (except that the Stalking

Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse APA a Qualified Bid, as set forth herein), and which bids qualify as Qualified Bids; (b) make final determinations as to whether the Debtors will conduct an Auction; (c) select Baseline Bid(s); (d) determine the amount of each minimum overbid; (e) determine which Qualified Bid is the highest or otherwise best bid for the Assets, and therefore the Winning Bid, and which Qualified Bid is the next highest and next best bid after the Winning Bid for the Assets, and therefore the Back-Up Bid; (f) reject any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of this Bidding Procedures Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code, or other applicable law; or (iii) contrary to the best interests of the Debtors and their estates; and (g) adjourn or cancel the Auction or the Sale Hearing solely in accordance with the Bidding Procedures; provided, however, that under no circumstance may a bid for the R&D Assets, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Development Funding and Royalties Agreement, dated as of May 4, 2019 (as amended from time to time), to which the Stalking Horse Bidder and Novan, Inc. are parties (the "Royalty Agreement").

8. Subject to this Bidding Procedures Order and the Bidding Procedures, Debtors shall have the right, in their reasonable discretion and in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder. Pursuant to the Bidding Procedures, and notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized to provide due diligence information to Qualified Bidders, *provided* that such Qualified Bidders have delivered an

executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualified Bidders in connection with the Bidding Procedures or the Sale. A bidder that is bidding solely on the Commercial Assets will not be required to assume the Royalty Agreement to be deemed a Qualified Bidder.

9. Except as otherwise provided in the Bidding Procedures, this Bidding Procedures Order, and without prejudice to the rights of the DIP Lender under the DIP Facility (as approved by the DIP Order<sup>4</sup>) or the Stalking Horse Bidder under the Stalking Horse APA, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, in consultation with the Notice Parties, shall have the right to modify the Bidding Procedures, including to (a) extend, modify, adjourn, or waive dates, deadlines or other terms and conditions set forth herein or in the Bidding Procedures; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are reasonably disclosed to Qualified Bidders; and (c) promote competitive bidding for and maximizing the value of the Assets; provided, however, that under no circumstance may (i) any of the forgoing potential modifications and/or additional rules and procedures be materially inconsistent with the existing terms of this Bidding Procedures Order and the Bidding Procedures without the consent of Ligand and the Creditors' Committee; and (ii) a bid for the R&D Assets, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Royalty Agreement.

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<sup>4</sup> "DIP Order" means as of any date of determination (i) that certain *Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* that was entered by the Bankruptcy Court on July 21, 2023 [Dkt. No. 54] (the "Interim Order") or (ii) the Final Order (as defined in the Interim Order), whichever such Order is then in effect.

10. The Stalking Horse Bidder shall be considered a Qualified Bidder for the Assets, and the Stalking Horse Bid shall be considered a Qualified Bid without regard to any of the requirements or conditions set forth in the Bidding Procedures and without any other or further action by the Stalking Horse Bidder. As part of its Stalking Horse Bid, Ligand shall be entitled to pay the Purchase Price under the Stalking Horse APA, and fund Overbids during the Auction if there is competitive bidding, with (i) an offset, on a dollar-for-dollar basis, against the Debtors' Obligations (as defined in the DIP Facility) under the DIP Facility as approved by the DIP Order; and/or (ii) cash. The Stalking Horse Protections forth in the Motion have been waived by Ligand as the Stalking Horse Bidder.

11. A Qualified Bidder, other than a Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format so as to be received via email on or before **August 28, 2023, at 5:00 p.m. (ET)** (the "Bid Deadline"), by: (a) the Debtors' proposed investment banker, Raymond James & Associates (Attn: Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP; and (c) proposed counsel to the Creditors' Committee, Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel ([hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)) and Barry Bazian ([bbazian@goodwinlaw.com](mailto:bbazian@goodwinlaw.com))). The Debtors may extend the Bid Deadline without further order of the Court pursuant to the terms of Paragraph 9 herein and the Bidding Procedures. Any party that does not submit a bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in the Auction.

12. Within one (1) business day after receipt thereof, the Debtors will deliver copies of all bids from Qualifying Bidders to the Notice Parties. The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid. No later than one (1) business day prior to the Auction, the Debtors shall: (a) notify all Qualified Bidders whether their bids have been determined to be a Qualified Bid; and (b) determine, in consultation with the Notice Parties, which of the Qualified Bids, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid of the Auction (a “Baseline Bid” and the Qualifying Bidder submitting such Baseline Bid, a “Baseline Bidder”), and shall promptly notify all Qualified Bidders with Qualified Bids of the Baseline Bid.

13. If the Debtors do not receive a Qualified Bid other than a Stalking Horse Bid, the Stalking Horse Bid shall be deemed the Winning Bid for the Assets, and the Debtors shall request at the Sale Hearing that the Court approve such Winning Bid and the transactions contemplated thereunder for the Assets.

14. The Auction Procedures are hereby approved. If the Debtors timely receive one or more Qualified Bids for the Assets, then the Debtors shall conduct one or more auctions (each, an “Auction”) commencing on **August 31, 2023, at 10:00 a.m. (ET)**, at the offices of Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants. If held, the Auction proceedings shall be transcribed or video recorded.

15. Following the Auction, the Debtors will determine, in consultation with the Notice Parties, which Qualified Bid is the highest or otherwise best bid for the Assets, in whole

or in part, which will be determined by considering, among other things, the following non-binding factors: (a) the number, type, and nature of any changes to the Stalking Horse APA requested by each bidder; (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) the total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including, without limitation, conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors' estates; and (f) any other factors the Debtors may reasonably deem relevant.

16. On or before one (1) business day after the selection of any Winning Bid(s), the Debtors shall file a notice with the Court (the "Notice of Winning Bid") that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

17. The Sale Hearing shall be held in this Court on [\_\_\_\_\_], 2023 at [ ]:[ ] [ ] .m. (ET), unless otherwise determined by this Court. Subject to the terms and conditions of the DIP Facility (as approved by the DIP Order) and the Stalking Horse APA, the Sale Hearing may be adjourned by the Debtors, in consultation with the Notice Parties and the Winning Bidder(s), from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases.



18. Following service of the Notice of Winning Bid, parties may file an objection solely with respect to the conduct of the Auction, the Auction results, the selection of the Winning Bid and/or Back-Up Bid, or the terms of any Sale to the Winning Bidder or the Back-Up Bidder (each, a “Winning Bid Objection”). Any Winning Bid Objection shall be (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court by no later than [ \_\_\_\_\_ ], 2023, at 4:00 p.m. (ET) (the “Winning Bid Objection Deadline”); and (v) served on the Notice Parties. The Debtors and any other entity shall have until **one (1) business day prior to the Sale Hearing, at 12:00 p.m. (ET)**, to file and serve a reply to any Initial Sale Objection or Winning Bid Objection. Any party who fails to file and serve a timely Initial Sale Objection or Winning Bid Objection in accordance with the terms of this Bidding Procedures Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Initial Sale Objection or Winning Bid Objection including any such objection to the relief requested in the Motion or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the applicable Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

19. The Auction Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed Sale of Assets, the Auction, the Sale Hearing, the Initial Sale Objection Deadline, or the Winning Bid Objection Deadline shall be required if the Debtors serve the Auction Notice in the manner provided in the Bidding Procedures and this Bidding Procedures Order.

20. The following assumption and assignment procedures (the “Assumption and Assignment Procedures”) are hereby approved:

1. On July 25, 2023, the Debtors filed and served the Initial Assumption and Assignment Notice, in the form attached hereto as **Exhibit 4**, via overnight delivery, on any counterparty (a “Counterparty”) to the Debtors’ universe of executory contracts and unexpired leases that may be designated Assumed Contracts. This notice included: (a) notice that such Counterparty’s contract may be subject to assumption and assignment in the Sale and thus designed an Assumed Contract; (b) the Cure Amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for such Assumed Contract; and (c) the Adequate Assurance Information of the Stalking Horse Bidder. The inclusion of any executory contract or unexpired commercial real property lease on the Initial Assumption and Assignment Notice shall not constitute an admission that a particular contract is an executory contract or unexpired lease or require or guarantee that such contract will be an Assumed Contract.
2. On or before one (1) business day after the selection of a Winning Bid or a Back-Up Bid, the Debtors shall file with this Court and serve the Additional Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, via overnight delivery, on any Counterparty to the Debtors’ universe of executory contracts and unexpired leases that may be designated as an Assumed Contract that the relevant Winning Bidder or Back-Up Bidder desires to assume as part of its Winning Bid ***that was not already listed on the Initial Assumption and Assignment Notice***. This notice shall include: (a) notice that such Counterparty’s contract may be subject to assumption and assignment in the Sale and thus designed an Assumed Contract as part of the relevant Winning Bid; (b) the cure amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for such Assumed Contract (each, a “Cure Amount”) in the event such Assumed Contract is assumed and assigned by the Debtors; and (c) the Adequate Assurance Information of the relevant Winning Bidder and Back-Up Bidder. The inclusion of any executory contract or unexpired commercial real property lease on the Additional Assumption and Assignment Notice shall not constitute an admission that a particular contract is an executory contract or unexpired lease or require or guarantee that such contract will be an Assumed Contract.
3. ***Objections to the Initial Assumption and Assignment Notice served in accordance with subparagraph 1 hereof were due on August 8, 2023, unless such deadline was extended by the Debtors.*** If a Counterparty objected to (a) the proposed assumption and assignment of its Assumed Contract set forth in the Initial Assumption and Assignment Notice

(including, without limitation, on the basis (i) that the Stalking Horse Bidder cannot provide adequate assurance of future performance; (ii) of the transfer of any related rights or benefits thereunder; or (iii) that Counterparty consent is allegedly required for the assumption, assignment, and transfer of the Assumed Contract), or (b) the Cure Amount set forth in the Initial Assumption and Assignment Notice, the Counterparty was required to file with the Court and serve on the Notice Parties a written objection (an “Initial Contract Objection”) on or before **August 8, 2023 at 4:00 p.m. (ET)** (the “Initial Contract Objection Deadline”).

4. Objections to the Additional Assumption and Assignment Notice to be served in accordance with subparagraph 2 hereof (an “Additional Contract Objection,” and collectively with an Initial Contract Objection, a “Contact Objection”) shall: (i) be in writing; (ii) state with specificity the grounds for such objection (including, without limitation, on the basis (a) that the Stalking Horse Bidder cannot provide adequate assurance of future performance; (b) of the transfer of any related rights or benefits thereunder; (c) that Counterparty consent is allegedly required for the assumption, assignment, and transfer of the Assumed Contract; or (d) the Cure Amount set forth in the Additional Assumption and Assignment Notice); (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court **on or before [\_\_\_\_\_], 2023, at 12:00 p.m. (ET)** (the “Additional Contract Objection Deadline,” and collectively with the Initial Contract Objection Deadline, the “Contact Objection Deadline”); and (v) served on the Notice Parties.
5. With respect to any Contract Objection that is (or was) timely received, the Debtors, the Stalking Horse Bidder or relevant Winning Bidder, and the objecting Counterparty shall first confer in a good faith attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection, the Debtors may request a hearing for the Court to resolve the Contract Objection. In the event a Contract Objection is resolved in a manner unfavorably, the Debtors may withdraw (or the Winning Bidder may cause the Debtor to withdraw) their request to assume and assign such Assumed Contract as part of any Winning Bid. A Contract Objection may be resolved after the closing date of the applicable Sale, subject to the terms of the asset purchase agreement approved in connection with the Sale.
6. If no Contract Objection is timely received with respect to an Assumed Contract: (a) the Counterparty to such Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment or transfer (including the transfer of any related rights and benefits thereunder) to the Stalking Horse Bidder or Winning Bidder, as applicable, of the Assumed Contract, and be forever barred and estopped from asserting or claiming against the Debtors or the Stalking Horse Bidder or the Winning Bidder, as applicable, that any additional defaults

exist or that conditions to assumption, assignment, and transfer must be satisfied under the Assumed Contract (including, without limitation, with respect to adequate assurance of future performance by the Stalking Horse Bidder or Winning Bidder, as applicable), or that any related right or benefit under such Contract cannot and will not be available to the Stalking Horse Bidder or the Winning Bidder, as applicable; (b) any and all defaults under the Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the applicable Cure Amount; and (c) the Cure Amount for such Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Assumed Contract against the Debtors and their estates or the Stalking Horse Bidder or Winning Bidder, as applicable, or the property of any of them, that existed prior to the entry of the Sale Order.

7. The Debtors' decision to assume and assign any Assumed Contract to the Stalking Horse Bidder or a Winning Bidder, as applicable, is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of such Sale, the Assumed Contracts shall not be deemed assumed or assumed and assigned and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with the Chapter 11 Cases.

21. The Debtors shall use reasonable best efforts to timely implement the above Assumption and Assignment Procedures and shall not otherwise hinder or delay the assumption and assignment of executory contracts and/or unexpired leases that the Stalking Horse Bidder or such other Qualified Bidder, as applicable, designate as Assumed Contracts as part of the Stalking Horse Bid or Qualified Bid, respectively.

22. The Stalking Horse Bidder shall designate under the Stalking Horse APA as Assumed Contracts and/or as Assumed Liabilities (as such term is defined in the Stalking Horse APA) the following unexpired real property leases, executory contracts and/or other obligations of the Debtors: (i) the Royalty Agreement; (ii) that certain *Royalty and Milestone Payments Purchase Agreement*, dated as of April 29, 2019 (the "Reedy Creek Royalty Agreement") by and

between Novan, Inc. and Reedy Creek Investments LLC, (“Reedy Creek”); provided, however, Stalking Horse Bidder’s assumption of Debtor Novan’s obligations under the Reedy Creek Royalty Agreement shall be subject to the royalty rate and other economics to which Reedy Creek is entitled under the Reedy Creek Royalty Agreement not being improved in connection with such assumption or the Stalking Horse Bidder’s (or its designee’s) post-assumption actions with respect to the R&D Assets and/or the Royalty Agreement, as it may be amended from time to time; provided further, however, that the Royalty Agreement shall be deemed an approved agreement pursuant to any provision of the Reedy Creek Royalty Agreement, including, without limitation, Section 3.7 (to the extent applicable) therein; and (iii) such other contracts of the Debtors related solely to the R&D Assets to be designated on one or more schedules to the Stalking Horse APA in the Stalking Horse Bidder’s sole and absolute discretion (clauses (i)-(iii) collectively, the “Stalking Horse APA Assumed Contracts”). The Debtors are responsible for the payment of all cure costs (up to the full \$15 million amount of the DIP Facility) at the Debtor Novan entity in connection with the Debtors’ assumption and assignment of the Stalking Horse APA Assumed Contracts to the Stalking Horse Bidder; provided, however, that in the event the Stalking Horse Bidder, and the Stalking Horse APA, is (i) the Winning Bidder and the Winning Bid, respectively, for the Sale of the R&D Assets in accordance with the Bidding Procedures, then Ligand’s prepetition liquidated claim in the amount of the \$1 million on account of an outstanding milestone payment under the Royalty Agreement (the “Ligand Milestone Payment”) shall be deemed an allowed general unsecured claim against the Debtor Novan estate; and (ii) not the Winning Bidder and the Winning Bid, respectively, for the R&D Assets in accordance with the Bidding Procedures, then the Royalty Agreement must be assumed by the Winning Bidder for the R&D Assets as set forth in this Bidding Procedures Order and the Bidding

Procedures and the Ligand Milestone Payment shall be paid in full (in cash) by the Debtors to Ligand on or before the closing of the Sale of the R&D Assets to such Winning Bidder.

23. In the event that a Winning Bidder fails to close a Sale on or before [\_\_\_\_\_], 2023, or such date as may be extended by the Debtors in consultation with the Notice Parties, and a Back-Up Bidder has been previously identified, the Debtors shall file a notice (the “Back-Up Bid Auction Notice”) and serve such Back-Up Bid Auction Notice on the U.S. Trustee, the Notice Parties, and those parties who filed a request to receive notice under Bankruptcy Rule 2002. Three (3) business days following the filing of any Back-Up Bid Auction Notice, the Back-Up Bid subject to such Back-Up Bid Auction Notice will be deemed to be the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

24. Any consultation rights provided to the Notice Parties pursuant to the Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment. In the event that a member of a Creditors’ Committee submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party, or their legal counsel, established under the Bidding Procedures will be waived without further action; provided, however, that the bidding party will have the same rights as any other Qualified Bidder under the Bidding Procedures. Any failure to specifically identify consultation rights in any section of these Bidding Procedures shall not limit or otherwise impair the rights of the Notice Parties to consult with the Debtors. In the event that the Notice Parties disagree with matters for which the Debtors are required to

consult with the Notice Parties, then the Notice Party shall have the right to seek relief from the Court on an expedited basis to resolve the dispute.

25. Effective as of the date of entry of this Bidding Procedures Order, each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits Ligand and its subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof (solely in their capacities as such, and subject to entry of a Final Order that so provides) (collectively, the “Released Parties”), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter may have against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of entry of this Bidding Procedures Order; provided, however, that the release set forth above shall not release (i) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party’s bad faith, fraud, gross negligence, collusion or willful misconduct; (ii) the Committee’s rights to assert a Challenge during the Challenge Period (as such terms are defined in the DIP Order)

pursuant to the terms and conditions of the DIP Order; (iii) Ligand from honoring its obligations to the Debtors under the DIP Facility (as approved by the DIP Order), Stalking Horse APA, this Bidding Procedures Order and the Bidding Procedures.

26. In the event the Stalking Horse Bidder is the Winning Bidder for the R&D Assets, or if the Stalking Horse Bidder is not the Winning Bidder for the R&D Assets but the Royalty Agreement has been assumed by the Winning Bidder for the R&D Assets, and the DIP Obligations (as defined in the DIP Order) are satisfied in full by the Debtors under the DIP Facility (as approved by the DIP Order), then Ligand—in its capacity as the Winning Bidder, the DIP Lender (as defined in the DIP Order), and counterparty to the Royalty Agreement—shall release the Debtors and their estates of all prepetition claims and causes of action pursuant to a mutually agreeable release to be provided in the Sale Order or such other order as agreed by Ligand and the Debtors (in each case subject to Bankruptcy Court approval); provided, however, that the forgoing release shall not release the Ligand Milestone Payment, which shall be treated in accordance with paragraph 22 of this Bidding Procedures Order.

27. The Debtors and the Creditors' Committee acknowledge and agree that they will work to develop one or more chapter 11 plans of liquidation for these Chapter 11 Cases (collectively, the "Chapter 11 Plan") that will incorporate one or more liquidating grantor trusts (as appropriate) formed for the benefit of the Debtors' general unsecured creditors on the effective date of such plans (collectively, the "Liquidating Trust"). The Debtors and the Creditors' Committee agree that the Liquidating Trust, pursuant to a mutually agreeable form of liquidating grantor trust agreement, shall receive assets of the Debtors under the Chapter 11 Plan comprised of (i) Causes of Action<sup>5</sup> owned by Debtor EPI except for Purchased Avoidance

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<sup>5</sup> "**Causes of Action**" means, collectively, any claims, causes of action, demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, defenses, offsets, or setoffs of any kind or character whatsoever, in each case



Actions (as such term is defined in the Stalking Horse APA); (ii) the proceeds of all directors' and officers' liability insurance policies of the Debtors, including any tail insurance policies and rights of the directors and officers thereunder for coverage (i.e., advance of expenses and liability coverage with respect to claims made against such offices and directors); (iii) (a) an amount equal to the accounts receivable owed to or collected by Debtor EPI Health on and after the Petition Date on behalf of prepetition amounts owed; and (b) all proceeds received by the Debtors pursuant to that certain *Motion to Approve Compromise under Rule 9019 // Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding* [D.I. 81], in each case of clause (iii)(a) and (b), solely upon the timely satisfaction of each of the Milestones as defined and set forth in paragraph 20 of the Interim Order or the Final Order approving the DIP Facility, as applicable; (iv) \$450,000 in cash to be paid by the Debtors, which represents the now-waived Stalking Horse Protections of the Stalking Horse Bidder consisting of a 3% break-up fee on account of the \$15 million Purchase Price (as defined in the Stalking Horse APA) under the Stalking Horse APA; (v) such other amounts as agreed by the Debtors and the Creditors' Committee, or as determined by the Bankruptcy Court; provided, however, that the cash elements of the foregoing may be first used to fund the allowed fees and expenses incurred by the professionals retained by the Debtors' estates for the Chapter 11 Plan to become effective. Subject to the terms of the Bidding Procedures Order, including satisfaction of certain Milestones as set forth herein, Ligand acknowledges and agrees that it will not take any position

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whether known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise.

to oppose any acts or omissions with the funding of the Litigation Trust as provided in clauses (i) through (iv) of this Paragraph 27.

28. Ligand and Ligand's counsel shall only be a Notice Party in the Bidding Procedures if Ligand is no longer the Stalking Horse Bidder or is no longer participating in the Auction as a bidder.

29. The Debtors and the Creditors' Committee each acknowledge and agree that the Chapter 11 Plan (or any other chapter 11 plan) shall provide for the release and exculpation of each of the Ligand "Released Parties" (as defined in Paragraph 25 herein) to the fullest extent available under applicable law by (i) the Debtors and their estates, and the Creditors' Committee; and (ii) all parties receiving any distributions from the Debtors and/or their estates under such Chapter 11 Plan (or any other chapter 11 plan), with the form of such releases and exculpation subject to Ligand's agreement and consent.

30. In the event that there is a conflict between this Bidding Procedures Order or the Bidding Procedures, on the one hand, and the Motion or a Qualified Bidder's Proposed APA, on the other hand, this Bidding Procedures Order and the Bidding Procedures shall control and govern. If there is a conflict between this Bidding Procedures Order and the Bidding Procedures, this Bidding Procedures Order shall control and govern. If there is a conflict between this Bidding Procedures Order or the Bidding Procedures, on the one hand, and any notice served in connection with the Motion or this Bidding Procedures Order, on the other hand, this Bidding Procedures Order and the Bidding Procedures shall control and govern.

31. Prior to mailing any of the notices approved hereby, the Debtors may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors,

conform the provisions thereof to the provisions of this Bidding Procedures Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

32. Nothing in this Bidding Procedures Order, or any of the Exhibits hereto, shall prevent the Debtors from exercising their fiduciary duties in consummating or otherwise pursuing alternative transactions.

33. This Bidding Procedures Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this Bidding Procedures Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this Bidding Procedures Order.

34. The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

35. This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this Bidding Procedures Order.

**Exhibit 1**

**Bidding Procedures**

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

In re:	)	
	)	Chapter 11
NOVAN, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-10937 (LSS)
Debtors.	)	
	)	(Jointly Administered)
	)	

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**BIDDING PROCEDURES**

On July 17, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtors are maintaining their business and managing their property as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On July 16, 2023, the Debtors entered into an asset purchase agreement (as amended from time to time, the “Stalking Horse APA”) with Ligand Pharmaceuticals, Incorporated (“Ligand” or the “Stalking Horse Bidder”) pursuant to which Ligand proposes to, among other things, purchase, acquire, and take assignment and delivery of the Assets (as defined below) under the Stalking Horse APA (the “Stalking Horse Bid”). The Stalking Horse Bidder, or an affiliate thereof, has provided the Debtors with postpetition financing as the DIP Lender (the “DIP Facility”), pursuant to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief* [D.I. 15] (“DIP Financing Motion”). On July 21, 2023, the Bankruptcy Court entered that certain *Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* that was entered by the Bankruptcy Court on July 21, 2023 [D.I. 54], which approved the DIP Financing Motion on an interim basis.

On [●], 2023, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [D.I. [●]] (the “Bidding Procedures Order”), granting certain relief requested in the related motion [D.I. 16] (the “Bidding Procedures Motion”),<sup>2</sup> including authorizing the Debtors to solicit bids in accordance with the bidding procedures set forth herein (collectively, the “Bidding Procedures”) to be employed by the Debtors in connection with a proposed sale (the “Sale”) of substantially all of the Debtors’ assets (the “Assets”), free and clear

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not yet defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Motion, the Bidding Procedures Order, or the DIP Financing Motion, as applicable.

of all liens (as defined in section 101(37) of the Bankruptcy Code), encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), charges, mortgages, deeds of trust, options, pledges, security interests or similar interests, title defects, hypothecations, easements, rights of way, rights of use, encroachments, judgments, rights of setoff, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use other than any assumed liabilities or permitted liens referenced in a Winning Bid (as defined below).

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct the Sale of the Assets described more specifically below.

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

Raymond James & Associates, Inc.  
 Geoffrey Richards  
 Simon Wein  
 Telephone: (212) 885-1885  
 (516) 426-8030  
 Email: [geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)  
[simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)

or Morris, Nichols, Arsht & Tunnell LLP  
 Derek C. Abbott (No. 3376)  
 1201 Market Street, 16th Floor  
 Wilmington, Delaware 19801  
 Telephone: (302) 658-9200  
 Facsimile: (302) 658-3989  
 Email: [dabbott@morrisnichols.com](mailto:dabbott@morrisnichols.com)

*Proposed Counsel for the Debtors*

*Proposed Investment Banker for the Debtors*

**Summary of Key Dates Established by Bidding Procedures**

<b>DATE</b>	<b>DEADLINE/EVENT</b>
<b>July 25, 2023</b>	Deadline to serve the Initial Assumption and Assignment Notice
<b>August 8, 2023</b>	Deadline to file Initial Contract Objections and Objections to the Private Sale Order
<b>August 15, 2023</b>	Bidding Procedures Hearing
Three (3) business days after entry of the Bidding Procedures Order	Deadline to serve Notice of Auction
On or before August 28, 2023 (no later than 42 days after the Petition Date)	Deadline for the submission of Qualified Bids (i.e., the Bid Deadline)
August 28, 2023, at 4:00 p.m. (ET)	Deadline to file Initial Sale Objections
One (1) business day prior to the Auction	Deadline for Debtors to designate Qualified Bid(s) and Baseline Bid(s)

August 31, 2023 (no later than 45 days after the Petition Date)	Auction
As soon as practicable and not later than one (1) business day after cancellation or completion of the Auction	Deadline to file and serve Notice of Winning Bid(s)
One (1) business day after selection of Winning Bid	Deadline to file and serve an Additional Assumption and Assignment Notice (if applicable)
Two (2) business days prior to the Sale Hearing	Deadline to file Winning Bid Objection or Additional Contract Objections
One (1) business day prior to the Sale Hearing	Deadline to file reply to any Initial Sale Objection or Winning Bid Objection
_____, 2023 (No later than 55 days after the Petition Date)	Sale Hearing and Entry of Sale Order
On or before September 25, 2023 (no later than 70 days after the Petition Date)	Deadline for Winning Bidder(s) to close the transaction contemplated by its Winning Bid

### 1. Assets to Be Sold

The Debtors seek to sell to the Stalking Horse Bidder—subject to the highest and best Qualified Bids of one or more Qualified Bidders other than the Stalking Horse Bidder, subject to Court approval—substantially all of the tangible and intangible Assets of the Debtors as set forth in Section 2.1 of the Stalking Horse APA and the assumption of (i) the specific liabilities of the Debtors that the Stalking Horse Bidder has listed in Section 2.3 of the Stalking Horse APA, subject to the specific limits set forth therein (the “Assumed Liabilities”), and (ii) the Cure Amounts owing under the Assumed Contracts; provided, however, that the Assets will not include:

(i) any cash, cash equivalents, accounts receivable, or other assets the Stalking Horse Bidder has identified on one or more schedules to the Stalking Horse APA of excluded assets (the “Excluded Assets”) or any liabilities the Stalking Horse Bidder has listed on one or more schedules to the Stalking Horse APA of liabilities (the “Excluded Liabilities”),

(ii) any accounts payable or any debt or debt-like liabilities (with the understanding that, if there are any debt-like liabilities that cannot be retained by the Debtors, such as a capital lease or deferred revenue obligations, such liabilities will be assumed by the Stalking Horse Bidder, but the cash payment to be made by the Stalking Horse Bidder at the closing will be reduced by the amount thereof); or

(iii) to the extent not already provided for in these sections 1(i) and 1(ii), Causes of Action<sup>3</sup> owned by Debtor EPI except for Purchased Avoidance Actions (as such term is defined in the Stalking Horse APA); (ii) the proceeds of all directors' and officers' liability insurance policies of the Debtors, including any tail insurance policies and rights of the directors and officers thereunder for coverage (i.e., advance of expenses and liability coverage with respect to claims made against such offices and directors); and (iii) (a) an amount equal to the accounts receivable owed to or collected by Debtor EPI Health on and after the Petition Date on behalf of prepetition amounts owed; and (b) all proceeds received by the Debtors pursuant to that certain *Motion to Approve Compromise under Rule 9019 // Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding* [D.I. 81], in each case of clause (iii)(a) and (b), solely upon the timely satisfaction of each of the Milestones as defined and set forth in paragraph 20 of the Interim DIP Order or the Final DIP Order approving the DIP Facility, as applicable.

The Assets will be organized in the following two categories for the purpose of determining whether one or more Qualified Bidders have submitted one or more higher Qualified Bids for the Assets after taking into consideration the initial overbid, bid increments, and other requirements in these Bidding Procedures:

Commercial Assets, including, but not limited to, RHOFADÉ, MINOLIRA, and CLODERM, and all related patents and patent rights, other intellectual property, equipment, supplies and materials, regulatory authorizations (including new drug applications), files and records (including clinical and pre-clinical data), and know-how (the "Commercial Assets"); and

R&D Assets, including, but not limited to, Berdazimer gel, Molluscum Contagiosum, including and all related patents and patent rights, other intellectual property, equipment, supplies and materials, regulatory authorizations (including new drug applications), files and records (including clinical and pre-clinical data), and know-how, including the manufacturing assets and leases related to same, and all other Assets that are not included in Commercial Assets (the "R&D Assets").

**The Debtors will treat a bid for the Commercial Assets without the R&D Assets as a Qualified Bid if such bid is for a purchase price of not less than [\$8,000,000]. Similarly, the Debtors will treat a bid for the R&D Assets as a Qualified Bid if the bid is for a purchase price of not less than \$13,100,000, which amount reflects the Stalking Horse Bid in the amount of \$12 million, the \$1 million Ligand Milestone Payment in connection with the Royalty Agreement (as defined below), and the Minimum Continuing Bid of \$100,000. Qualified Bids for the R&D Assets (either with or without the Commercial Assets) must assume the Royalty Agreement. For**

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<sup>3</sup> "**Causes of Action**" means, collectively, any claims, causes of action, demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, defenses, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise.



**the avoidance of doubt, a Winning Bidder of just the Commercial Assets will not be required to assume the Royalty Agreement.**

The sale of the Assets is on an “as is, where is” and “with all faults” basis and without representations, warranties or guarantees, express, implied or statutory, written or oral, of any kind, nature or description, by the Debtors, its affiliates or their respective representatives, except to the extent set forth in the Stalking Horse APA or the purchase agreement of such other Winning Bidder (as defined below) and as approved by the Court. Except as otherwise provided in such approved purchase agreement, all of the Debtors’ right, title and interest in and to each Asset to be acquired shall be sold free and clear of all liens, claims, interests and encumbrances (other than permitted liens), with such liens, claims, interests and encumbrances to attach to the proceeds of the Sale.

**Any general objections to the Sale, including objections to the sale of any Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Winning Bidder or a Back-Up Bidder (an “Initial Sale Objection”), shall be (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties (as defined below) no later than August 28, 2023, at 4:00 p.m. (ET).** For the avoidance of doubt, Initial Sale Objections do not include objections to the conduct at any Auction, the selection of a Winning Bid and/or Back-Up Bid, or the terms of any Sale to a Winning Bidder or the Back-Up Bidder, which need not be filed until after the filing of a Notice of Winning Bid (each term as defined below), or the assignment of any Assumed Contracts, which are governed by different objection deadlines set forth in the Bidding Procedures Order.

The Stalking Horse APA, which includes, among other things, a description of the Assets, customary representations, warranties, and covenants by and from the Debtors and Ligand, is posted in the Data Room (as defined below), and may also be obtained by Interested Parties upon request to the Debtors’ advisors.

**2. Participation Requirements**

A person or entity (an “Interested Party”) that wishes to conduct diligence about the Debtors may request access to the Debtors’ confidential electronic data room concerning the Assets (the “Data Room”). To gain access to the Data Room, and thus be able to conduct due diligence on the Debtors and participate in the bidding process, an Interested Party must first become a “Qualified Bidder.” To become a Qualified Bidder, an Interested Party must submit to the Debtors and their advisors:

- (a) a written disclosure of each entity that will be bidding or otherwise participating in connection with such bid (including each equity holder or other financial backer of the Interested Party, including if such Interested Party is an entity formed for the purpose of consummating the proposed transactions to be set forth in a Proposed APA (as defined below) contemplated by such Interested Party), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with

any Qualified Bid. Each Interested Party must also include the contact information for the specific person(s) and counsel whom the Debtors or their advisors should contact regarding such Qualified Bid;

- (b) a statement and other factual support demonstrating to the Debtors' satisfaction, in consultation with the Notice Parties, in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing some or all of the Assets;
- (c) preliminary proof by the Interested Party of its financial capacity to close the Interested Party's proposed transaction(s) to be set forth in a Proposed APA, which may include financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the desired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors in consultation with their advisors and the Notice Parties; and
- (d) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to an Interested Party) in form and substance satisfactory to the Debtors (without limiting the foregoing, each confidentiality agreement executed by an Interested Party shall contain standard non-solicitation provisions) (each, a "Confidentiality Agreement");

An Interested Party that delivers the documents and information described above or that the Debtors determine, subject to the limitations in these Bidding Procedures, in consultation with the Notice Parties, is able to consummate the Sale, and whose Qualified Bid is received by the Debtors no later than the Bid Deadline (as defined below) is deemed qualified (a "Qualified Bidder").

For all purposes under these Bidding Procedures, the Stalking Horse Bidder will be considered a Qualified Bidder, and the Stalking Horse Bid shall be considered a Qualified Bid without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Bidder.

### **3. Designation of the Stalking Horse Bidder**

The Stalking Horse Bidder has waived its request for a break-up fee of 3% of its \$15 million Purchase Price. The Stalking Horse Bidder shall be considered a Qualified Bidder, and a Stalking Horse Bid shall be considered a Qualified Bid without regard to any of the requirements or conditions set forth in the Bidding Procedures and without any other or further action by the Stalking Horse Bidder.

No bidder or any other party shall be entitled to any termination or "break-up" fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for any Assets, or for otherwise participating in the Auction or the sale process.

#### 4. Notice Parties.

The term “Notice Parties” as used in these Bidding Procedures shall mean: (i) the Debtors; (ii) proposed counsel to the Debtors; (iii) Ligand, but only if Ligand is no longer the Stalking Horse Bidder or is otherwise no longer participating in the Auction; (iv) counsel to Ligand, but only if Ligand is no longer the Stalking Horse Bidder or is otherwise no longer participating in the Auction; and (v) proposed counsel to the official committee of unsecured creditors appointed in the Chapter 11 Cases (the “Creditors’ Committee”).

#### 5. Bankruptcy Court Jurisdiction

Each Qualified Bidder and any other Interested Party that seeks to become a Qualified Bidder in accordance with Section 2 above, shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of such parties; (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, without limitation, all appeals, shall be conclusive and may be enforced in other jurisdictions (including, without limitation, any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

#### 6. Due Diligence

The Debtors will provide, in consultation with the Notice Parties, a Qualified Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: (a) the Debtors’ proposed investment banker, Raymond James & Associates (Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16<sup>th</sup> Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. ([dabbott@morrisonichols.com](mailto:dabbott@morrisonichols.com)); (c) the proposed counsel to the Creditors’ Committee, Goodwin Procter, LLP, The New York times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel ([hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)) and Barry Bazian ([bbazian@goodwinlaw.com](mailto:bbazian@goodwinlaw.com))); and (d) proposed financial advisor to the Creditors’ Committee, Dundon Advisers LLP, proposed financial advisors to the Joshua Nahas, Ten Bank Street, Suite 1100, White Plains, New York 10606, ([jn@dundon.com](mailto:jn@dundon.com)). The due diligence period shall extend through and include the Bid Deadline (as defined below). Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtors in consultation with the Notice Parties. The Debtors reserve the right, in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized, in consultation with the Notice Parties, to provide due diligence information to Qualified Bidders, *provided* that such Qualified Bidders have delivered an

executed Confidentiality Agreement in form and substance acceptable to the Notice Parties. The Debtors and their estates and the Notice Parties are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualified Bidders in connection with the Bidding Procedures and the Sale.

Each Interested Party other than the Stalking Horse Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Interested Party and its contemplated transaction. If the Debtors, after consultation with the Notice Parties, determine at any time in their reasonable discretion that an Interested Party is not reasonably likely to be a Qualified Bidder, then the Debtors' obligation to provide due diligence information to such Interested Party will terminate, and all information provided by the Debtors prior to such time shall be returned to the Debtors in accordance with the terms of the applicable Confidentiality Agreement.

## 7. Bid Requirements

Other than in the case of a Stalking Horse Bid, which shall be considered a Qualified Bid, to be deemed a "Qualified Bid," a bid must be received from a Qualified Bidder on or the Bid Deadline and satisfies each of the following requirements (each, a "Bid Requirement"):

- (a) be in writing and received by the Notice Parties prior to the Bid Deadline;
- (b) fully discloses the identity of the Qualified Bidder (and to the extent that the Qualified Bidder is a newly formed acquisition entity or the like, the identity of the Qualified Bidder's parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualified Bidder;
- (c) states that the applicable Qualified Bidder offers to (a) purchase, in cash, all of the Assets upon the same terms and conditions, and pursuant to the same form and substance of the Stalking Horse APA modified only by scope of purchased assets, purchase price, and identity of the purchaser, that the Debtors, in consultation with the Notice Parties, reasonably determine are higher than those set forth in the Stalking Horse APA (which determination with respect to the Commercial Assets and the R&D Assets may be made by considering bids submitted by more than one Qualified Bidder in combination); and (b) take assignment of all Assumed Contracts under Stalking Horse APA with details of the Qualified Bidder's proposal for the treatment of related Cure Amounts and the provision of adequate assurance of future performance to the counterparties to such Assumed Contracts; provided, however, that if the Stalking Horse Bidder withdraws from the bidding process, any bid made subsequent to such withdrawal will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and if the Debtors determine, in consultation with the Notice Parties, such bid complies with these Bidding Procedures as applicable; provided further, however, that under no circumstances may any bid of any bidder for the R&D Assets, other than the Stalking Horse Bid, be deemed a Qualified Bid if it does not provide for the

unaltered assumption and assignment (the “Royalty Assumption”) to the bidder of that certain Development Funding and Royalties Agreement, dated as of May 4, 2019 (as amended from time to time), to which the Stalking Horse Bidder and Novan, Inc. are each a party (the “Royalty Agreement”) (for the avoidance of doubt, the Royalty Assumption is inapplicable to a Qualified Bid for just the Commercial Assets); provided further, however, that bids for both the R&D Assets and Commercial Assets must include an allocation of the proposed purchase price between such assets;

- (d) includes a signed writing stating that the Qualified Bidder’s offer is irrevocable until the selection of the Winning Bidder; provided, however, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder;
- (e) does not contain any contingencies of any kind including, without limitation, contingencies related to financial, due diligence, or internal or shareholder approvals in connection with the submission of a Qualified Bid, and there is no condition precedent to the Qualified Bidder’s ability to enter into a definitive Sale agreement;
- (f) provides the date by which the Qualified Bidder intends to close the Sale; provided, however, that the proposed closing date is on or before September 25, 2023;
- (g) contains no due diligence or financing contingencies of any kind;
- (h) includes a duly authorized and executed copy of an asset purchase agreement, which includes the purchase price for the Assets, as allocated for each asset category and in the aggregate, expressed in U.S. Dollars that are greater the \$15 million Purchase Price for all of the Assets (or greater than the [\$8 million] Purchase Price for only the Commercial Assets or greater than the \$12 million Purchase Price for only the R&D Assets, as noted above, in the Stalking Hose APA, plus payment of the \$1 million Ligand Milestone Payment in connection with the R&D Assets), plus the Minimum Continuing Bid of \$100,000, together with all exhibits and schedules thereto, together with a blackline copy to show any modifications to the Stalking Horse APA (a “Proposed APA”);
- (i) includes a proposed sale order (each, a “Proposed Sale Order”) based on the Debtors’ proposed sale order, and a Qualified Bid must also include a blackline copy of the Proposed Sale Order to show any proposed modifications to the Debtors’ proposed sale order;
- (j) specifies the liabilities proposed to be paid or assumed by such Qualified Bid;
- (k) includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the purchase price in

cash, such as will allow the Debtors, in consultation with the Notice Parties, to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transaction contemplated by the Proposed APA;

- (l) states or otherwise estimates the types of transition services, if any, the Qualified Bidder would require of and/or provide to the Debtors, including an estimate of the time any such transition services would be required of and/or provided to the Debtors, if the Qualified Bidder's bid were selected as the Winning Bid for the applicable Assets;
- (m) includes an acknowledgement and representation that the bidder: (a) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (b) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (c) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Proposed APA; and (d) is not entitled to any expense reimbursement, break-up fee, or similar type of bid-protections or payments in connection with its bid;
- (n) includes evidence, in form and substance reasonably satisfactory to the Debtors and the Notice Parties, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed APA;
- (o) is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to 10% of the cash portion of the purchase price provided for in the bid (a "Deposit");
- (p) acknowledges in writing (a) that it has not engaged in any collusion with respect to any Qualified Bid, specifying that it did not agree with any other party, including, but not limited to, any other Interested Parties or interested third parties, to control price or exert undue influence over the process; and (b) agree not to engage in any such collusion or undue influence with respect to any Qualified Bids, the Auction, or the Sale process;
- (q) states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;
- (r) contains such financial and other information to allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to close the transactions contemplated by the Proposed APA, including, without limitation, such financial and other information supporting the

Qualified Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualified Bidder's financial wherewithal and willingness to perform under any Assumed Contracts ("Adequate Assurance Information"). By submitting a Bid, the Qualified Bidders agree that the Debtors may disseminate their Adequate Assurance Information to the Creditors' Committee and, upon request, to Counterparties;

- (s) contains such other information as may be reasonably requested by the Debtors, in consultation with the Notice Parties;
- (t) sets forth (i) a statement or evidence that the Qualified Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings, and (ii) any regulatory and third-party approvals required for the Qualified Bidder to close the transactions contemplated by the Proposed APA, and the time period within which the Qualified Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualified Bidder's Proposed APA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualified Bidder agrees that its legal counsel will coordinate in good faith with the Debtors' legal counsel to discuss and explain Qualified Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Proposed APA; provided, further that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;
- (u) provides for the Qualified Bidder to serve as the Back-Up Bidder (as defined below) if the Qualified Bidder's bid is the Back-Up Bid (as defined below), in accordance with the terms of the Proposed APA as submitted or modified at the Auction; and
- (v) provides that in the event of the Qualified Bidder's breach of, or failure to perform under, the Proposed APA, the Qualified Bidder shall forfeit its Deposit to the Debtors, and the Debtors shall be entitled to pursue all available legal and equitable remedies, including, without limitation, additional damages and/or specific performance.

A bid from a Qualified Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Notice Parties, shall constitute a Qualified Bid. The Debtors reserve the right to work with any Qualified Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. As noted above, the Debtors, in consultation with the Notice Parties, may determine that separate bids for less than

all of the Assets constitute a single Qualified Bid for all, substantially all, or any portion of the Assets; *provided* that such bids must satisfy the Bid Requirements. Each Qualified Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

#### **8. Stalking Horse Bidding**

The Stalking Horse Bidder may increase its bid with cash or credit against obligations owed by the Debtors under the DIP Facility and/or under the Prepetition Credit Agreement. The Stalking Horse Bidder may pay the Purchase Price under the Stalking Horse APA, and fund Overbids during the Auction if there is competitive bidding, with (i) an offset, on a dollar-for-dollar basis, against the Debtors' Obligations (as defined in the DIP Facility) under the DIP Facility; and/or (ii) cash.

Notwithstanding anything to the contrary set forth in these Bidding Procedures, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder and shall not be required to provide any due diligence materials (or any other materials), a Deposit, or satisfy any other Qualified Bidder requirements as a condition to its participation at the Auction and may participate in the Auction with respect to all or any portion of the Assets.

The Stalking Horse Bidder shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the Assets or a portion of the Assets.

#### **9. Bid Deadline**

A Qualified Bidder, other than a Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format so as to be received via email on or before **August 28, 2023 at 5:00 p.m. (ET)** (the "Bid Deadline"), by (a) the Debtors' proposed investment banker, Raymond James & Associates (Attn: Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); (b) the Debtors' proposed counsel, Morris, Nichols, Arsht & Tunnell LLP; and (c) proposed counsel to the Creditors' Committee, Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel ([hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)) and Barry Bazian ([bbazian@goodwinlaw.com](mailto:bbazian@goodwinlaw.com))). The Debtors, in consultation with the Notice Parties, 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 (x) submit any offer after the Bid Deadline or (y) participate in the Auction.**

#### **10. Evaluation of Qualified Bids**

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to the Notice Parties. The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid.



A Qualified Bid, other than the Stalking Horse Bid, will be valued by the Debtors, in consultation with the Consultation Parties, based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such bid, (2) the nature of the consideration provided by such bid, (3) the risks and timing associated with consummating such bid, (4) any proposed revisions to the Stalking Horse APA and/or the Debtors' form of proposed Sale Order, (5) whether any Qualified Bid contains a sufficient cash component to ensure that the Debtors' estates is not rendered administratively insolvent, and (6) any other factors deemed relevant by the Debtors, in consultation with the Notice Parties.

Notwithstanding the foregoing, the only way a Qualified Bid (other than of the Stalking Horse Bid) can be determined to be higher or otherwise better than the value of the Stalking Horse Bid before the commencement of competitive bidding, it must be (a) equal to or higher than the \$15 million Purchase Price in the Stalking Horse APA plus the Minimum Continuing Bid of \$100,000, and provide for the assumption and assignment of the Royalty Agreement if for all of the Assets, (b) equal to or higher than a \$12 million Purchase Price and provide for the assumption and assignment of the Royalty Agreement (including payment of the \$1 million Ligand Milestone Payment) if for only the R&D Assets, or (c) equal to or higher than an [\$8 million] Purchase Price if for only the Commercial Assets.

No later than one (1) business day prior to the Auction, the Debtors shall: (i) notify all Qualified Bidders whether their bids have been determined to be a Qualified Bid; and (ii) determine, in consultation with the Notice Parties, which of the Qualified Bids for the Assets for which a Qualified Bid has been submitted, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid(s) for the applicable Assets at the Auction (each, a "Baseline Bid," and the Qualifying Bidder submitting such Baseline Bid, a "Baseline Bidder"), and promptly notify all Qualified Bidders with Qualified Bids of the Baseline Bids.

#### **11. No Qualified Bids**

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Bid, the Debtors will not conduct the Auction for the Assets, will file with the Court within twenty-four hours after the Bid Deadline, a notice indicating that the Auction for the Assets has been canceled. In such event, the Stalking Horse Bidder will be deemed the Winning Bidder, the Stalking Horse APA will be the Winning Bid, and the Debtors will as expeditiously as possible seek final Court approval of the sale of the Assets to the Stalking Horse Bidder as contemplated by the Stalking Horse APA.

#### **12. Auction**

If the Debtors receive one or more Qualified Bids, the Debtors will conduct the Auction, which shall take place at **10:00 a.m. prevailing Eastern Time on August 31, 2023**, or such other date and time (with the consent of Ligand and the Creditors' Committee) as shall be timely communicated to all entities entitled to attend the Auction. The Auction, which shall be recorded or transcribed, shall run in accordance with the following procedures (the "Auction Procedures"):

- (a) the Auction shall commence, after consulting with the Notice Parties, at the offices of Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below). The Debtors shall file notice of any change in the date, time, or location of the Auction.
- (b) only Qualified Bidders with Qualified Bids, including the Stalking Horse Bidder (collectively, the "Auction Bidders, and each, an "Auction Bidder") shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear at the Auction, or through a duly authorized representative;
- (d) only (i) the Debtors, (ii) the Auction Bidders, (iii) the Notice Parties, (iv) any other creditor of the Debtors who desires to attend the Auction and provides no less than three (3) days' advance written notice, together with the advisors to each of the foregoing parties, may attend the Auction (collectively, the "Auction Participants"). Each Auction Participant shall provide counsel for the Debtors written notice of their intent to attend the Auction no later than 5:00 p.m. (ET), three (3) days prior to the Auction, to proposed counsel for the Debtors, Morris Nichols, Arsht & Tunnell LLP; provided, however, that in the event an Auction Bidder elects not to attend the Auction, such Auction Bidder's Qualified Bid shall nevertheless remain fully enforceable against such Auction Bidder until the selection of the Winning Bidder and Back-Up Bidder at the conclusion of the Auction; provided further, however, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder. Prior to the time scheduled for the commencement of the Auction (as provided in these Bidding Procedures), the Debtors may provide to all Auction Bidders (including the Stalking Horse Bidder) copies of each Qualified Bid and identify to them the Qualified Bid that the Debtors believe, after consultation with the Notice Parties, is the Baseline Bid;
- (e) the Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) prior to start of the Auction, each Auction Bidder shall confirm that it has not engaged in any collusion, within the meaning of Section 363(n) of the Bankruptcy Code, with respect to the Bidding Procedures, the Auction, or the Sale;
- (g) bidding at the Auction will begin with the Baseline Bid and continue in bidding increments (each, a "Subsequent Bid") providing a value to the Debtors' estates of at least \$100,000 in additional cash (the "Minimum Continuing Bid"), or such other amount determined by the Debtors in consultation with the Notice Parties, above the prior bid or collection of bids (each, an "Overbid"); provided, however, that the such cash requirement for Overbids shall not apply to Stalking Horse

Bidder, which may fund Overbids via offsets against the Debtors' obligations under the DIP Facility as provided in Paragraph 8 above. After each round of bidding, the Debtors, after consultation with the Notice Parties, shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise bid (each, the "Leading Bid");

- (h) Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Notice Parties), a Qualified Bidder submitting an Overbid must submit at the Debtors' request (in consultation with the Notice Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Notice Parties) demonstrating such Qualified Bidder's ability to close the transaction at the purchase price contemplated by such Overbid;
- (i) a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid from the previous round, which must include the Overbid;
- (j) except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the Debtors may give effect to any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors;
- (k) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record;
- (l) all material terms of the bid that is deemed to be the highest or otherwise best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any questions that the Auction Bidders may have regarding the Debtors' announcement of the then-current highest or otherwise best bid;
- (m) Subject to Paragraph 18 herein, the Debtors and their advisors, in consultation with the Notice Parties, may employ and announce at the Auction additional or amended procedural rules that are reasonable under the circumstances for conducting the Auction, *provided* that such potential additional modifications and/or procedural rules (i) are not materially inconsistent with existing terms and conditions of the Bidding Procedures Order and these Bidding Procedures, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any order of the Court entered in connection with the Chapter 11 Cases; and (ii) are disclosed to the Auction Bidders;

- (n) the Auction Bidders shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) 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, without limitation, 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;
- (o) a “Winning Bid” shall: (i) if the Auction for the Assets is cancelled because only the Stalking Horse Bid is submitted on or before the Bid Deadline, be the Stalking Horse Bid; or (ii) if the Auction is conducted, be the Qualified Bid(s) that the Debtors determine at the conclusion of the Auction, in consultation with the Notice Parties, and subject to Court approval, is or are the offer or offers for the relevant Assets that is or are the highest or otherwise best from among the Qualified Bids submitted at the Auction. In the case of (ii), in making this decision, the Debtors shall consider, in consultation with the Notice Parties, the amount of the purchase price, the assumption of liabilities, the transaction structure, and execution risk, including, without limitation, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Stalking Horse APA submitted with the Winning Bid, as applicable, requested by each bidder, the total consideration to the Debtors’ estates, and any other factors the Debtors may deem relevant. The bidder submitting the Winning Bid shall become the “Winning Bidder,” and shall have such rights and responsibilities of the purchaser as set forth in such Winning Bid, with all modifications made at the Auction. The Debtors may, in their business judgment and in consultation with the Notice Parties, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the applicable Assets in the event that the applicable Winning Bidder does not close the Sale;
- (p) The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid or collection of Qualified Bids (each, a “Back-Up Bid”), as determined by the Debtors in consultation with the Notice Parties will be required to serve as a back-up bidder (each, a “Back-Up Bidder”) and keep its bid open and irrevocable until the earlier to occur of (i) sixty (60) days after the Sale Hearing and (ii) closing on the Winning Bid with the Winning Bidder. The Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder unless the Stalking Horse Bidder submits a Subsequent Bid at the Auction;
- (q) within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a notice with the Court (a “Notice of Winning Bid”) that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder

have any connections to the Debtors other than those arising from their respective bids;

- (r) in the event a Winning Bid or Back-Up Bid requires the assumption and assignment of any Assumed Contracts, then the Debtors shall comply with the Assumption and Assignment Procedures (as defined below);
- (s) within one (1) business day of the close of the Auction, any Winning Bidder and any Back-Up Bidder, except if the Winning Bidder or Back-Up Bidder is the Stalking Horse Bidder, shall supplement their respective Deposit, if necessary, such that the Deposit shall be equal to an amount that is ten (10%) percent of the purchase price set forth in the applicable Winning Bid and Back-Up Bid; and
- (t) prior to the Sale Hearing, any Winning Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Winning Bid was made.

**EACH QUALIFIED BID THAT IS NOT A WINNING BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.**

### **13. Sale Hearing and Winning Bid Objections**

The Debtors will seek entry of an order from the Court at a hearing (the “Sale Hearing”) to begin on or before \_\_\_\_\_, 2023 at :00 a./p.m (prevailing Eastern Time), subject to the availability of the Court, to approve and authorize the Sale to the Winning Bidder (the “Sale Order”) and approval of the Back-Up Bid. Subject to the terms of the DIP Facility, the Stalking Horse APA, the Bidding Procedures Order and these Bidding Procedures, the Debtors reserve the right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) to achieve the maximum value for the Purchased Assets.

**Any objection relating solely to the conduct of the Auction, the Auction results, the selection of any Winning Bid or Back-Up Bid, or the terms of any Sale to a Winning Bidder or a Back-Up Bidder (each, a “Winning Bid Objection”), must be (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties on or before [•], 2023, at 4:00 p.m. (ET).**

Any party who fails to file and serve a timely Initial Sale Objection or Winning Bid Objection shall be forever barred from asserting, at the Sale Hearing or thereafter, any Initial Sale Objection or Winning Bid Objection, including any such objection to the Bidding Procedures or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the applicable Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

**14. Back-Up Bidder**

Notwithstanding any of the foregoing, in the event that a Winning Bidder fails to close a Sale on or before [•], 2023, or such date as may be extended by the Debtors in consultation with the Notice Parties, and a Back-Up Bidder has been previously identified, the Debtors shall file a notice (the “Back-Up Bid Auction Notice”) and serve such Back-Up Bid Auction Notice on the U.S. Trustee, the Notice Parties, any Counterparties to Assumed Contracts subject to the Back-Up Bid, and those parties who filed a request to receive notice under Bankruptcy Rule 2002. Three (3) business days following the filing of any Back-Up Bid Auction Notice, the Back-Up Bid subject to such Back-Up Bid Auction Notice will be deemed to be the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other parties.

**15. Assumption and Assignment Procedures**

In the event a Winning Bid or Back-Up Bid provides for the assumption and assignment of Assumed Contracts, the Debtors shall follow following assumption and assignment procedures (the “Assumption and Assignment Procedures”) set forth in paragraph 20 of the Bidding Procedures Order.

**16. Return of Deposits**

All Deposits not used as part of the consummation of a Sale or not retained by the Debtors as part of damages shall be returned to each bidder not selected as a Winning Bidder no later than five (5) business days following the closing of the Sale. The Deposit of a Winning Bidder shall be applied to the purchase price for the Sale. If the Winning Bidder for a Sale fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Proposed APA, the Debtors and their estates shall be entitled to retain the Deposit of the Winning Bidder as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors’ retention of a Deposit shall not constitute a waiver of any of the Debtors’ legal or equitable rights relating to a Winning Bidder’s breach or failure to perform, and all such rights and remedies are preserved.

**17. Consultation Rights**

Any consultation rights provided to the Notice Parties by these Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment. In the event that a member of the Creditors’ Committee submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party, or their legal counsel, established under these Bidding Procedures will be waived without further action; *provided* that the bidding party will have the same rights as any other Qualified Bidder set forth herein.

Any failure to specifically identify consultation rights in any section of these Bidding Procedures shall not limit or otherwise impair the rights of the Notice Parties to consult with the Debtors. In the event that the Notice Parties disagree with matters for which the Debtors are required to consult with the Notice Parties, then the Notice Party shall have the right to seek relief from the Court on an expedited basis to resolve the dispute.

**18. Reservation of Rights**

Without prejudice to the rights of the DIP Lender under the DIP Facility or the rights of the Stalking Horse Bidder under the Stalking Horse APA, and except as otherwise provided in these Bidding Procedures, the Bidding Procedures Order or the Debtors' proposed form of Sale Order, the Debtors further reserve the right as they may reasonably determine to be in the best interest of their estates (in consultation with the Notice Parties), to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders other than the Stalking Horse Bidder; (f) modify these Bidding Procedures and/or implement additional procedural rules that the Debtors determine will better promote the goals of the bidding process; and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket; provided, however, that none of the forgoing potential modifications and/or procedural rules shall be materially inconsistent with the existing terms of these Bidding Procedures and the Bidding Procedures Order without the consent of Ligand and the Creditors' Committee.

**Exhibit 2**

**Form of Auction Notice**



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

In re:	)	
	)	Chapter 11
NOVAN, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-10937 (LSS)
Debtors.	)	
	)	(Jointly Administered)
	)	

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**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,  
SALE HEARING, AND OTHER DEADLINES RELATED HERETO**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On July 17, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [D.I. 16] (the “Bidding Procedures Motion”),<sup>2</sup> seeking entry of (a) an order (the “Bidding Procedures Order”): (i) approving bidding procedures (the “Bidding Procedures”) to be used in connection with one or more sales (each a “Sale”) of the Debtors’ assets (the “Assets”) free and clear of all liens, claims, interests, and encumbrances, (ii) authorizing the Debtors to designate Ligand Pharmaceuticals, Incorporated (“Ligand”) as the Stalking Horse Bidder for all of the Assets in connection with considering the entry of the Bidding Procedures Order, (iii) scheduling an auction of the Assets (the “Auction”); (iv) approving the form and manner of service of this Notice of Sale; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, “Assumed Contracts”) in connection with any Sale; (vi) approving the form and manner of service of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of the proposed assumption and assignment of such Counterparty’s Assumed Contract; (vii) scheduling a final hearing to consider approval of the proposed Sale(s) (the “Sale Hearing”); and (vi) granting related relief; and (b) one or more orders (each, a “Sale Order”) (i) authorizing a Sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the approved Sale; and (iii) granting related relief.

On [●], 2023, the Court entered the Bidding Procedures Order [D.I. [●]].

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings given to them in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Notice of Sale and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

## ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of the Assets.

Any Qualified Bidder may submit a bid for the R&D Assets, the Commercial Assets, or all of the Assets, subject to the conditions set forth in the Bidding Procedures. The ability to undertake and consummate a Sale shall be subject to competitive bidding, as set forth herein and in the Bidding Procedures Order, and approval by the Court.

Any party interested in submitting a bid for any of the Debtors' Assets should contact (a) the Debtors' proposed investment banker, Raymond James & Associates (Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); and (b) the Debtors' proposed counsel, Morris, Nichols, Arsht & Tunnell LLP.

## KEY DATES AND DEADLINES

### **A. Bid Deadline**

Any Qualified Bidder that intends to participate in the Auction must submit a Qualified Bid in accordance with Section 8 of the Bidding Procedures, on or before **[•], 2023, at 5:00 p.m. (ET)** (the "Bid Deadline").

### **B. Auction**

If the Debtors timely receive one or more Qualified Bids other than the Stalking Horse Bid for any Assets, then the Debtors shall conduct one or more Auctions. If the Debtors do not receive more than one Qualified Bid other than the Stalking Horse Bid, the Debtors shall cancel the Auction(s) for the Assets, deem the Stalking Horse Bid as the Winning Bid for the Assets, and shall request at the Sale Hearing that the Court approve the Stalking Horse Bid and the transactions contemplated thereunder for the Assets.

The Auction, if required, will commence on **[•], 2023, at [•] (ET)**, at the offices of proposed investment banker for the Debtors, Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below). If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the Auction Participants via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time, or location of any Auction to the relevant Qualified Bidders, and will cause publication of such change to occur on the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC.

Within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a Notice of Winning Bid with the Court that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

### C. Sale Objection Deadlines

- i. Initial Sale Objection Deadline. Objections to a Sale of the Assets, including any general objections to the Sale and objections to the Sale of any Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to the Stalking Horse Bidder, a Winning Bidder or a Back-Up Bidder, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on (i) the Debtors; (ii) proposed counsel to the Debtors; (iii) counsel to Ligand; and (iv) proposed counsel the Creditors' Committee (the "Objection Notice Parties") on or before **[•], 2023, at 4:00 p.m. (ET)**.
- ii. Winning Bid Objection Deadline. Any objection relating solely to the conduct of the Auction, the Auction results, the selection of any Winning Bid or Back-Up Bid, or the terms of any Sale to a Winning Bidder or a Back-Up Bidder, which could not have been raised by the Initial Sale Objection Deadline, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Objection Notice Parties on or before **[•], 2023, at 4:00 p.m. (ET)**.

### D. Sale Hearing

The Sale Hearing shall take place on **[•], 2023, at \_\_:\_\_ .m. (ET)**, before The Honorable **[•]**, United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

### **RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES**

In accordance with and subject to the Bidding Procedures and the Bidding Procedures Order, and without prejudice to the rights of the DIP Lender under the DIP Facility or the Stalking Horse Bidder under the Stalking Horse APA, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, in consultation with the Notice Parties, shall have the right to modify the Bidding Procedures, including to (a) extend, modify, adjourn, or waive dates, deadlines or other terms and conditions set forth herein or in the Bidding Procedures; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are reasonably disclosed to Qualified Bidders; and (c) promote competitive bidding for and maximizing the value of the Assets; provided, however, that under no circumstance (i) shall any of the forgoing potential modifications and/or procedural rules be materially inconsistent with the existing terms of the Bidding Procedures Order or the Bidding Procedures without the consent of the Creditors' Committee and Ligand; or (ii) may a bid for the R&D Assets, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Royalty Agreement.

**ADDITIONAL INFORMATION**

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, and all other documents filed with the Court may be obtained free of charge by visiting the Kurtzman Carson Consultants LLC Website, or can be requested by calling Kurtzman Carson Consultants LLC at: [ ] (Domestic) or [ ] (International).

**FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER, OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE ASSETS.**

**THE FAILURE OF ANY PERSON OR ENTITY TO TIMELY FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY ASSETS TO A WINNING BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF ANY STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.**

Dated:  
Wilmington, Delaware

Respectfully submitted,

/s/ DRAFT

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

Derek C. Abbott (No. 3376)

Daniel B. Butz (No. 4227)

Tamara K. Mann (No. 5643)

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dbutz@morrisnichols.com

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sjones@morrisnichols.com

*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Exhibit 3**

**Form of Additional Assumption and Assignment Notice**

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

In re: )  
) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
) Ca Case No. 23-10937 (LSS)  
Debtors. )  
) (Jointly Administered)  
) **Objection Deadline:** \_\_\_\_\_, 2023

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**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

**PLEASE TAKE NOTICE** that, on [•], 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing these chapter 11 cases (the “Chapter 11 Cases”).

**PLEASE TAKE FURTHER NOTICE** that, on [•], 2023, the Debtors filed a motion [D.I. [•]] (the “Bidding Procedures Motion”) seeking entry of (a) an order (the “Bidding Procedures Order”), (i) approving bidding procedures (the “Bidding Procedures”) to be used in connection with one or more sales (each a “Sale”) of the Debtors’ assets (the “Assets”) free and clear of all liens, claims, interests, and encumbrances, (ii) authorizing the Debtors to designate one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee (“Ligand”) as the Stalking Horse Bidder for all of the Assets in connection with considering the entry of the Bidding Procedures Order, (iii) scheduling an auction of the Assets (the “Auction”); (iv) approving the form and manner of service of this Notice of Sale; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, “Assumed Contracts”) in connection with any Sale; (vi) approving the form and manner of service of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of the proposed assumption and assignment of such Counterparty’s Assumed Contract; (vii) scheduling a final hearing to consider approval of the proposed Sale(s) (the “Sale Hearing”); and (viii) granting related relief; and (b) one or more orders (each, a “Sale Order”) (i) authorizing a Sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the approved Sale; and (iii) granting related relief; and (b) one or more orders of the Court (collectively, the “Sale Orders”):<sup>2</sup> (i) authorizing the sale of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances, except as provided in the Sale Order; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> A copy of the proposed form of Sale Order(s) will be filed in advance of the Sale Hearing.

the Sale(s); and (iii) granting related relief; or (c) in the event the Bankruptcy Court does not enter the Bidding Procedures Order or the DIP Order on or before 25 calendar days after the Petition Date, a Sale Order, in the form attached hereto as Exhibit B (the “Private Sale Order”) (i) authorizing the sale to Ligand of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances in accordance with the Stalking Horse Agreement (as defined below) attached to the Private Sale Order as Exhibit 1; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the Sale; and (iii) granting related relief.

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2023, the Court entered the Bidding Procedures Order [D.I. [●]], approving, among other things, the Bidding Procedures, which establish key dates and times relating to the Sale and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.

**PLEASE TAKE FURTHER NOTICE** that, upon the closing of the Sale, including a potential Sale to Ligand pursuant to the proposed Private Sale Order, the Debtors intend to assume and assign to such purchaser (the “Purchaser”) certain executory contracts and unexpired leases (the “Assumed Contracts”). A schedule listing the contracts and leases that may potentially be assumed and assigned as part of the Sale is attached hereto as **Exhibit 1** (the “Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at [https://\[●\]](https://[●]), or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC.

**PLEASE TAKE FURTHER NOTICE** that Cure Amounts, if any, for the assumption and assignment of such contracts and leases are also set forth on the Contracts Schedule. Each Cure Amount listed on the Contracts Schedule represents all liabilities of any nature of the Debtors arising under a contract or lease prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF THE SALE.** *The presence of a contract or lease listed on Exhibit 1 attached hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease or that such contract or lease will be assumed and assigned as part of the Sale. The Debtors reserve all their rights, claims and causes of action with respect to the contracts and leases listed on Exhibit 1 attached hereto.*

### **Filing Objections**

Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of a contract or lease on any basis (other than objections related solely to adequate assurance of future performance by a Winning Bidder other than the Stalking Horse Bidder, if any), including, without limitation, on the basis (i) of adequate



assurance of the Stalking Horse Bidder's future ability to perform; (ii) of the transfer of any related rights or benefits thereunder; (iii) that consent is allegedly required from any Counterparty for the assumption, assignment, and transfer of the Assumed Contract; (iv) relating to Cure Amounts, must (1)(a) be in writing; (b) state the basis for such objection; and (c) if such objection is to the Cure Amount, state with specificity what Cure Amount the counterparty believes is required (in all cases, with appropriate documentation in support thereof) and (2) be filed with the Court and served no later than [•], **2023 at 4:00 p.m. (ET)** on the following parties (collectively, the "Objection Notice Parties"): (a) counsel to the Debtors: [•]; (b) counsel to Ligand [•]; (c) counsel to the Creditors' Committee, [•]; (d) the Office of the U.S. Trustee for Region 3, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: [•]; [and (e) any Winning Bidders.]

If not the Stalking Horse Bidder, the Debtors shall file a notice identifying the Winning Bidder(s) and Backup Bidder(s) (if selected) (the "Notice of Winning Bidder") and shall serve the Notice of Winning Bidder on each counterparty to a potential Assumed Contract as soon as reasonably practicable after closing the Auction, if any. Each counterparty to a potential Assumed Contract will then have an opportunity to object to the identity of the Winning Bidder(s) (other than the Stalking Horse Bidder, if any) or adequate assurance of future performance with respect to such counterparty's contract or lease provided by the Winning Bidder(s), which must (i) be in writing, (ii) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (iii) state, with specificity, the legal and factual bases thereof, (iv) be filed with the Court by [•], **2023 at 4:00 p.m. (ET)** (the "Adequate Assurance Objection Deadline"), and (v) be served on the Objection Notice Parties.

The Court will hear and determine any objections to the assumption and assignment of the Assumed Contracts to the Purchaser at the Sale Hearing or at a later hearing, as determined by the Debtors. The Sale Hearing to consider the proposed Sale shall be held before the Honorable [•] on [•] (**prevailing Eastern Time**), or such other date as determined by the Court, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, [•] Floor, Courtroom No. [•], Wilmington, Delaware 19801.

### **Consequences of Failing to Timely Assert an Objection**

**UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE STALKING HORSE BIDDER, IF ANY, OR OTHERWISE WINNING BIDDER(S) THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1 AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT OR TRANSFER (INCLUDING THE TRANSFER OF ANY RELATED RIGHTS AND BENEFITS THEREUNDER) TO THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE, OF THE YOUR CONTRACT OR LEASE AND THE ADEQUACY OF ASSURANCE OF FUTURE PERFORMANCE THEREUNDER,**

**AND BE FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING AGAINST THE DEBTORS OR THE STALKING HORSE BIDDER OR THE WINNING BIDDER, AS APPLICABLE, THAT ANY ADDITIONAL DEFAULTS EXIST OR THAT CONDITIONS TO ASSUMPTION, ASSIGNMENT, AND TRANSFER MUST BE SATISFIED UNDER YOUR CONTRACT OR LEASE (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE), OR THAT ANY RELATED RIGHT OR BENEFIT UNDER SUCH CONTRACT OR LEASE CANNOT AND WILL NOT BE AVAILABLE TO THE STALKING HORSE BIDDER OR THE WINNING BIDDER, AS APPLICABLE.**

**Obtaining Additional Information**

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, the Stalking Horse Agreement, if any, and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at [https:// \[•\]](https://[•]), or can be requested by calling the Debtors' claims and noticing agent, [•].

Adequate assurance of future performance information for the Stalking Horse Bidder is available by contacting counsel to Ligand.

Dated:  
Wilmington, Delaware

Respectfully submitted,

*/s/ DRAFT*

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**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

**Exhibit 4**

**Initial Assumption and Assignment Notice (as Filed on July 25, 2023)**



**Exhibit B**  
Redline

Exhibit A

**Bidding Procedures Order**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:	)
	) Chapter 11
NOVAN, INC., <i>et al.</i> , <sup>1</sup>	)
	) Case No. 23-10937 (LSS)
Debtors.	)
	) <del>(Joint Administration</del>
	) <del>Requested</del> <u>Jointly Administered</u> )
	<u>RE: D.I. 16</u>

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**ORDER (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF SUBSTANTIALLY ALL OF DEBTORS’ ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND DESIGNATING LIGAND PHARMACEUTICALS AS A STALKING HORSE BIDDER, (B) SCHEDULING AN AUCTION AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (C) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES AND (D) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (II) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for the entry of an order: (i) approving bidding procedures, substantially in the form attached hereto as **Exhibit 1** (the “Bidding Procedures”), to be used in connection with one or more sales (each a “Sale”) of the Debtors’ development and commercialization rights to their research and development portfolio (the “R&D Assets”) and to the rights to commercialize the Debtors’ commercial portfolio (the “Commercial Assets,” and together with the R&D Assets, the “Assets,” as more fully defined in the Bidding Procedures) free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the Debtors to

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings given them in the Bidding Procedures (as defined below), or to the extent not defined therein, the Motion or the Stalking Horse APA.

designate one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee (“Ligand”) as the Stalking Horse Bidder for all of the Assets in connection with considering the entry of the Bidding Procedures Order; (iii) scheduling one more auctions (each, an “Auction”), if necessary, and schedule one or more hearings to approve a sale of the Debtors’ Assets (a “Sale Hearing”); (iv) approving the form and manner of notice of the proposed Bidding Procedures, the Auction, and the Sale Hearing, substantially in the form attached hereto as **Exhibit 2** (the “Auction Notice”); (v) authorizing procedures governing the assumption and assignment of certain executory contracts and unexpired leases (the “Assumed Contracts”) in connection with any Sale (the “Assumption and Assignment Procedures”); (vi) approving the form and manner of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of (A) the Debtors’ calculation of the amount necessary to cure any default under the applicable Assumed Contract (the “Cure Amounts”); and (B) certain other information regarding the potential assumption and assignment of Assumed Contracts in connection with a Sale, substantially in the form attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice”); and (vii) granting related relief; and due and proper notice of the Motion having been given; and it appearing that no other or further notice of the Motion is required; and it appearing that this Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order; and it appearing that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and it appearing that venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having reviewed the Motion; and the Bidding Procedures Hearing (as defined herein) having been held; and this Court having found and determined that the relief set forth herein is in the best interests of the Debtors, their estates and creditors, and all parties in interest, and that the legal and factual bases set forth in the



Motion and at the Bidding Procedures Hearing, as applicable, establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, it is hereby

**FOUND AND DETERMINED THAT:**<sup>3</sup>

A. This Court has jurisdiction to consider the Motion in accordance with 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order.

B. Venue of this proceeding and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2).

C. The statutory and legal predicates for the relief requested in the Motion and provided for herein are sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 2002-1 and 6004-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Local Rules”).

D. In the Motion and at the hearing on the relief set forth herein (the “Bidding Procedures Hearing”), the Debtors demonstrated that good and sufficient notice of the relief granted by this [Bidding Procedures](#) Order has been given and no further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this [Bidding Procedures](#) Order (including, without limitation, with respect to the Bidding Procedures) has been afforded to those parties entitled to notice pursuant to Bankruptcy Rule 2002 and all other interested parties.

<sup>3</sup> 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.

E. The Bidding Procedures attached hereto as **Exhibit 1** are fair, reasonable, and appropriate and are designed to maximize the value of the proceeds of Sale of the Debtors' Assets. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c); and are reasonably designed to promote active bidding and participation in the Auction to ensure that the highest or otherwise best value is generated for the Assets.

F. The Assumption and Assignment Procedures are fair, reasonable, and appropriate and comply with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006.

G. The Debtors have articulated good and sufficient business reasons for the Court to approve (i) the Bidding Procedures, (ii) the form and manner of Auction Notice; (iii) designation of Ligand as the Stalking Horse Bidder, [and the Debtors' entry into the Stalking Horse APA, subject to the procedures set forth herein and entry of the Sale Order](#); (iv) the form and manner of the Assumption and Assignment Notice; and (v) the Assumption and Assignment Procedures.

H. The Auction Notice, the Assumption and Assignment Notice, and the Notice of Winning Bidder, are appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, the Assumption and Assignment Procedures, the Debtors' proposed Cure Amounts, any proposed assumption of an Assumed Contract in connection with a sale of the Assets, and all relevant and important dates and deadlines with respect to the foregoing, and no other or further notice of the Auction, the sale of the Assets, or the assumption and assignment of Assumed Contracts in connection therewith shall be required.

I. Good and sufficient notice of the relief sought in the Motion has been provided under the circumstances, and no other or further notice is required except as set forth in the

Bidding Procedures and the Assumption and Assignment Procedures. A reasonable opportunity to object and be heard regarding the relief granted herein has been afforded to all parties in interest.

J. Entry of this Order is in the best interests of the Debtors, their estates and creditors, and all other interested parties.

**NOW, THEREFORE, IT IS HEREBY ORDERED THAT:**

1. The Motion is GRANTED as set forth herein. All objections to the relief granted in this Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby overruled and denied on the merits with prejudice.

2. The Bidding Procedures attached hereto as **Exhibit 1** are hereby approved and are incorporated herein by reference. The failure to specifically include or reference any particular provision of the Bidding Procedures in this Order shall not diminish or otherwise impair the effectiveness of such procedures, it being this Court's intent that the Bidding Procedures are approved in their entirety, as if fully set forth in this Order. The Debtors are authorized to take all actions necessary or appropriate to implement the Bidding Procedures.

3. Ligand is designated as the Stalking Horse Bidder pursuant to the terms of the Stalking Horse APA. The Debtors' entry into the Stalking Horse APA is authorized and approved, and the Stalking Horse APA shall be subject to higher or better Qualified Bids in accordance with the terms and procedures of the Stalking Horse APA, this Bidding Procedures Order, and the Bidding Procedures. The Stalking Horse Bid's \$15 million aggregate Purchase Price (as defined in the Stalking Horse APA) for the Assets is allocated at (i) \$12 million for the R&D Assets and (ii) \$3 million for the Commercial Assets; provided, however, that the Stalking Horse Bidder shall not reallocate any of the initial \$3 million offered for the Commercial Assets

to the initial \$12 million offered for the R&D Assets or vice versa in any subsequent bid without the prior consent of the Debtors and the Committee, but for the avoidance of doubt, the Stalking Horse Bidder may increase the amounts offered for the R&D Assets and/or the Commercial Assets in any subsequent bid with incremental consideration above the aggregate \$15 million Purchase Price. The Stalking Horse Bidder, and the Stalking Horse Bid, shall be deemed a Qualified Bidder and Qualified Bid, respectively, under this Bidding Procedures Order and the Bidding Procedures.

4. ~~3.~~ Within three (3) business days after the entry of ~~the~~this Bidding Procedures Order, the Debtors shall to serve the Auction Notice, substantially in the form attached to ~~the~~this Bidding Procedures Order, on: (a) the U.S. Trustee; (b) counsel to the Stalking Horse Bidder; (c) counsel to ~~any~~the Official Committee of Unsecured Creditors (the “Creditors’ Committee”); (d) all parties known by the Debtors to assert a lien or encumbrance on any of the Assets; (e) all persons known or reasonably believed to have asserted an interest in or claim to any of the Assets; (f) all persons known or reasonably believed to have expressed an interest in acquiring all or a substantial portion of the Assets within the one (1) year prior to the Petition Date; (g) the Office of the United States Attorney for the District of Delaware; (h) the Office of the Attorney General in each state in which the Debtors have operated; (i) the Office of the Secretary of State in each state in which the Debtors have operated; (j) the Internal Revenue Service and all state and local taxing authorities in the states in which the Debtors have or may have any tax liability; (k) the Securities and Exchange Commission; (l) the Federal Trade Commission; (m) all of the Debtors’ other known creditors and equity security holders; and (n) all other parties that have filed a notice of appearance and demand for service of papers in these chapter 11 cases (the “Chapter 11 Cases”) as of the service date.

5. ~~4.~~ The Debtors shall post the Auction Notice and this [Bidding Procedures](#) Order on the Debtors' claims and noticing agent's website. Within seven (7) calendar days of the entry of this [Bidding Procedures](#) Order, the Debtors shall cause the Auction Notice to be published once in the national edition of USA Today or another nationally circulated newspaper, with any modifications necessary for ease of publication. Publication of the Auction Notice as described in this [Bidding Procedures](#) Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008 and is reasonably calculated to provide notice to any affected party, including, without limitation, any potential bidders, and afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this [Bidding Procedures](#) Order.

6. ~~5.~~ Except objections relating to the conduct of the Auction, the Auction results, the selection of any Winning Bid and/or Back-Up Bid, or the terms of any Sale to a Winning Bidder and/or Back-Up Bidder, which may be filed as part of a Winning Bid Objection (as defined below), all objections to the sale of the Assets (each, an "Initial Sale Objection"), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a ~~Successful~~ [Winning](#) Bidder and/or a Backup Bidder (as applicable), shall be (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court by no later than **August 28, 2023, at 4:00 p.m. (ET)** (the "Initial Sale Objection Deadline"); and (v) served on the Notice Parties [\(as such term is defined in the Bidding Procedures\)](#).

7. ~~6.~~ Subject to this [Bidding Procedures](#) Order and the Bidding Procedures, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, shall have the right, in consultation with the Notice

Parties, to: (a) determine which bidders qualify as Qualified Bidders (except that the Stalking Horse Bidder shall be deemed a Qualified Bidder, and the Stalking Horse APA a Qualified Bid, as set forth herein), and which bids qualify as Qualified Bids; (b) make final determinations as to whether the Debtors will conduct an Auction; (c) select Baseline Bid(s); (d) determine the amount of each minimum overbid; (e) determine which Qualified Bid is the highest or otherwise best bid for the Assets, and therefore the Winning Bid, and which Qualified Bid is the next highest and next best bid after the Winning Bid for the Assets, and therefore the Back-Up Bid; (f) reject any bid that is (i) inadequate or insufficient; (ii) not in conformity with the requirements of this Bidding Procedures Order or any other applicable order of the Court, the Bidding Procedures, the Bankruptcy Code, or other applicable law; or (iii) contrary to the best interests of the Debtors and their estates; and (g) adjourn or cancel the Auction or the Sale Hearing solely in accordance with the Bidding Procedures; provided, however, that under no circumstance may a bid for the R&D Assets, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Development Funding and Royalties Agreement, dated as of May 4, 2019 (as amended from time to time), to which the Stalking Horse Bidder and Novan, Inc. are parties (the "Royalty Agreement").

8. ~~7. The~~ Subject to this Bidding Procedures Order and the Bidding Procedures, Debtors shall have the right, in their reasonable discretion and in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder. ~~Notwithstanding~~ Pursuant to the Bidding Procedures, and notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be

authorized to provide due diligence information to Qualified Bidders, *provided* that such Qualified Bidders have delivered an executed confidentiality agreement in form and substance acceptable to the Debtors. The Debtors and their estates are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualified Bidders in connection with the Bidding Procedures or the Sale. A bidder that is bidding solely on the Commercial Assets will not be required to assume the Royalty Agreement to be deemed a Qualified Bidder.

9. ~~8. In accordance with and subject to~~ Except as otherwise provided in the Bidding Procedures ~~and~~, this Bidding Procedures Order, and without prejudice to the rights of the DIP Lender under the DIP Facility (as approved by the DIP Order<sup>4</sup>) or the Stalking Horse Bidder under the Stalking Horse APA, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, in consultation with the Notice Parties, shall have the right to modify the Bidding Procedures, including to (a) extend, modify, adjourn, or waive dates, deadlines or other terms and conditions set forth herein or in the Bidding Procedures; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are reasonably disclosed to Qualified Bidders; and (c) promote competitive bidding for and maximizing the value of the Assets; provided, however, that under no circumstance may (i) any of the forgoing potential modifications and/or additional rules and procedures be materially inconsistent with the existing terms of this Bidding Procedures Order and the Bidding Procedures without the consent of

<sup>4</sup> “DIP Order” means as of any date of determination (i) that certain *Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* that was entered by the Bankruptcy Court on July 21, 2023 [Dkt. No. 54] (the “Interim Order”) or (ii) the Final Order (as defined in the Interim Order), whichever such Order is then in effect.

Ligand and the Creditors' Committee; and (ii) a bid for the R&D Assets, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Royalty Agreement.

10. ~~9.~~The Stalking Horse ~~Protections are hereby approved. Ligand, as the Stalking Horse Bidder, is entitled to a Break-Up Fee of 3% of its \$15 million Purchase Price. The~~ ~~Stalking Horse~~ Bidder shall be considered a Qualified Bidder for the Assets, and at the Stalking Horse Bid shall be considered a Qualified Bid without regard to any of the requirements or conditions set forth in the Bidding Procedures and without any other or further action by the Stalking Horse Bidder. As part of its Stalking Horse Bid, Ligand shall be entitled to pay the Purchase Price under the Stalking Horse APA, and fund Overbids during the Auction if there is competitive bidding, with (i) an offset, on a dollar-for-dollar basis, against the Debtors' Obligations (as defined in the DIP Facility) under the DIP Facility as approved by the DIP Order; and/or (ii) cash. The Stalking Horse Protections forth in the Motion have been waived by Ligand as the Stalking Horse Bidder.

11. ~~10.~~A Qualified Bidder, other than a Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format so as to be received via email on or before **August 28, 2023, at 5:00 p.m. (ET)** (the "Bid Deadline"), by: (a) the Debtors' proposed investment banker, Raymond James; & Associates (Attn: Geoffrey Richards (geoffrey.richards@raymondjames.com) and Simon Wein (simon.wein@raymondjames.com); (b) proposed counsel to the Debtors, Morris, Nichols, Arsht & Tunnell LLP; and (c) proposed counsel to the Creditors' Committee, Goodwin Procter, LLP, The New York Times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel (hsteel@goodwinlaw.com) and Barry Bazian (bbazian@goodwinlaw.com)). The



Debtors may extend the Bid Deadline without further order of the Court [pursuant to the terms of Paragraph 9 herein and the Bidding Procedures](#). Any party that does not submit a bid by the Bid Deadline will not be allowed to (i) submit any offer after the Bid Deadline or (ii) participate in the Auction.

12. ~~11.~~ Within one (1) business day after receipt thereof, the Debtors will deliver copies of all bids from Qualifying Bidders to the Notice Parties. The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid. No later than one (1) business day prior to the ~~Action~~[Auction](#), the Debtors shall: (a) notify all Qualified Bidders whether their bids have been determined to be a Qualified Bid; and (b) determine, in consultation with the Notice Parties, which of the Qualified Bids, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid of the Auction (a "Baseline Bid" and the Qualifying Bidder submitting such Baseline Bid, a "Baseline Bidder"), and shall promptly notify all Qualified Bidders with Qualified Bids of the Baseline Bid.

13. ~~12.~~ If the Debtors do not receive a Qualified Bid other than a Stalking Horse Bid, the Stalking Horse Bid shall be deemed the Winning Bid for the Assets, and the Debtors shall request at the Sale Hearing that the Court approve such Winning Bid and the transactions contemplated thereunder for the Assets.

14. ~~13.~~ The Auction Procedures are hereby approved. If the Debtors timely receive one or more Qualified Bids for ~~any~~[the](#) Assets, then the Debtors shall conduct one or more auctions (each, an "Auction") commencing on ~~August 31, 2023~~ [August 31, 2023](#), at 10:00 a.m. (ET), at the offices of ~~proposed counsel for the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19899~~ [Raymond James &](#)

[Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022](#), or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants. If held, the Auction proceedings shall be transcribed or video recorded.

15. ~~14.~~ Following the Auction, the Debtors will determine, in consultation with the Notice Parties, which Qualified Bid is the highest or otherwise best bid for the Assets, in whole or in part, which will be determined by considering, among other things, the following non-binding factors: (a) the number, type, and nature of any changes to the Stalking Horse APA requested by each bidder; (b) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtors and their estates of such modifications or delay; (c) the total consideration to be received by the Debtors and their estates; (d) the transaction structure and execution risk, including, without limitation, conditions to, timing of and certainty of closing, termination provisions, availability of financing and financial wherewithal to meet all commitments, and required governmental or other approval; (e) the net benefit to the Debtors' estates; and (f) any other factors the Debtors may reasonably deem relevant.

16. ~~15.~~ On or before one (1) business day after the selection of any Winning Bid(s), the Debtors shall file a notice with the Court (the "Notice of Winning Bid") that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

17. ~~16.~~ The Sale Hearing shall be held in this Court on [\_\_\_\_\_], **2023 at [ ]:[ ] [ ] .m. (ET)**, unless otherwise determined by this Court. Subject to [the terms and conditions of](#) the DIP Facility [\(as approved by the DIP Order\)](#) and the Stalking Horse APA,

the Sale Hearing may be adjourned by the Debtors, in consultation with the Notice Parties and the Winning Bidder(s), from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing, or by filing a hearing agenda or notice on the docket of the Chapter 11 Cases.

18. ~~17.~~ Following service of the Notice of Winning Bid, parties may file an objection solely with respect to the conduct of the Auction, the Auction results, the selection of the Winning Bid and/or Back-Up Bid, or the terms of any Sale to the Winning Bidder or the Back-Up Bidder (each, a “Winning Bid Objection”). Any Winning Bid Objection shall be (i) be in writing; (ii) state with specificity the grounds for such objection; (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court by no later than [ \_\_\_\_\_ ], 2023, at 4:00 p.m. (ET) (the “Winning Bid Objection Deadline”); and (v) served on the Notice Parties. The Debtors and any other entity shall have until **one (1) business day prior to the Sale Hearing, at 12:00 p.m. (ET)**, to file and serve a reply to any Initial Sale Objection or Winning Bid Objection. Any party who fails to file and serve a timely Initial Sale Objection or Winning Bid Objection in accordance with the terms of this [Bidding Procedures](#) Order shall be forever barred from asserting, at the Sale Hearing or thereafter, any Initial Sale Objection or Winning Bid Objection including any such objection to the relief requested in the Motion or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the applicable Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

19. ~~18.~~ The Auction Notice, substantially in the form attached hereto as **Exhibit 2**, is approved, and no other or further notice of the proposed Sale of Assets, the Auction, the Sale

Hearing, the Initial Sale Objection Deadline, or the Winning Bid Objection Deadline shall be required if the Debtors serve the Auction Notice in the manner provided in the Bidding Procedures and this [Bidding Procedures](#) Order.

20. ~~19.~~ The following assumption and assignment procedures (the “Assumption and Assignment Procedures”) are hereby approved:

1. On July ~~—25~~, 2023, the Debtors [filed and](#) served the Initial Assumption and Assignment Notice, ~~substantially~~ in the form attached hereto as **Exhibit 34**, via overnight delivery, on any counterparty (a “Counterparty”) to the Debtors’ universe of executory contracts and unexpired leases that may be designated Assumed Contracts. This notice included: (a) notice that such Counterparty’s contract may be subject to assumption and assignment in the Sale and thus designed an Assumed Contract; (b) the Cure Amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for such Assumed Contract; and (c) the Adequate Assurance Information of the Stalking Horse Bidder. The inclusion of any executory contract or unexpired commercial real property lease on the Initial Assumption and Assignment Notice shall not constitute an admission that a particular contract is an executory contract or unexpired lease or require or guarantee that such contract will be an Assumed Contract.
2. On or before one (1) business day after the selection of a Winning Bid or a Back-Up Bid, the Debtors shall file with this Court and serve the Additional Assumption and Assignment Notice, substantially in the form attached hereto as **Exhibit 3**, via overnight delivery, on any Counterparty to the Debtors’ universe of executory contracts and unexpired leases that may be designated as an Assumed Contract that the relevant Winning Bidder or Back-Up Bidder desires to assume as part of its Winning Bid ***that was not already listed on the Initial Assumption and Assignment Notice***. This notice shall include: (a) notice that such Counterparty’s contract may be subject to assumption and assignment in the Sale and thus designed an Assumed Contract as part of the relevant Winning Bid; (b) the cure amount if any, that the Debtors believe is required to be paid to the Counterparty under section 365(b)(1)(A) and (B) of the Bankruptcy Code for such Assumed Contract (each, a “Cure Amount”) in the event such Assumed Contract is assumed and assigned by the Debtors; and (c) the Adequate Assurance Information of the relevant Winning Bidder and Back-Up Bidder. The inclusion of any executory contract or unexpired commercial real property lease on the Additional Assumption and Assignment Notice shall not constitute an admission that a particular contract is an executory contract or unexpired lease or require or guarantee that such contract will be an Assumed Contract.

3. *Objections to the Initial Assumption and Assignment Notice served in accordance with subparagraph 1 hereof were due ~~prior to the entry of this Order~~ on August 8, 2023, unless such deadline was extended by the Debtors.* If a Counterparty ~~objects~~objected to (a) the proposed assumption and assignment of its Assumed Contract set forth in the Initial Assumption and Assignment Notice (including, without limitation, on the basis (i) that the Stalking Horse Bidder cannot provide adequate assurance of future performance; (ii) of the transfer of any related rights or benefits thereunder; or (iii) that Counterparty consent is allegedly required for the assumption, assignment, and transfer of the Assumed Contract), or (b) the Cure Amount set forth in the Initial Assumption and Assignment Notice, the Counterparty ~~must~~was required to file with the Court and serve on the Notice Parties a written objection (~~aan~~ “Initial Contract Objection”) on or before August 8, 2023 at 4:00 p.m. (ET) (the “Initial Contract Objection Deadline”). ~~Any~~
4. Objections to the Additional Assumption and Assignment Notice to be served in accordance with subparagraph 2 hereof (an “Additional Contract Objection,” and collectively with an Initial Contract Objection, a “Contract Objection”) shall: (i) be in writing; (ii) state with specificity the grounds for such objection (including, without limitation, on the basis (a) that the Stalking Horse Bidder cannot provide adequate assurance of future performance; (b) of the transfer of any related rights or benefits thereunder; (c) that Counterparty consent is allegedly required for the assumption, assignment, and transfer of the Assumed Contract; or (d) the Cure Amount set forth in the Additional Assumption and Assignment Notice); (iii) comply with the Bankruptcy Rules and the Local Rules; (iv) be filed with the Court **on or before [\_\_\_\_\_], 2023, at 12:00 p.m. (ET)** (the “Additional Contract Objection Deadline,” and collectively with the Initial Contract Objection Deadline, the “Contract Objection Deadline”); and (v) served on the Notice Parties.
5. ~~4.~~ With respect to any Contract Objection that is (or was) timely received, the Debtors, the Stalking Horse Bidder or relevant Winning Bidder, and the objecting Counterparty shall first confer in a good faith attempt to resolve the Contract Objection without Court intervention. If the parties are unable to consensually resolve the Contract Objection, the Debtors may request a hearing for the Court to resolve the Contract Objection. In the event a Contract Objection is resolved in a manner unfavorably, the Debtors may withdraw (or the Winning Bidder may cause the Debtor to withdraw) their request to assume and assign such Assumed Contract as part of any Winning Bid. A Contract Objection may be resolved after the closing date of the applicable Sale, subject to the terms of the asset purchase agreement approved in connection with the Sale.
6. ~~5.~~ If no Contract Objection is timely received with respect to an Assumed Contract: (a) the Counterparty to such Assumed Contract shall be deemed to have consented to the assumption by the Debtors and assignment or transfer (including the transfer of any related rights and benefits

thereunder) to the Stalking Horse Bidder or Winning Bidder, as applicable, of the Assumed Contract, and be forever barred and estopped from asserting or claiming against the Debtors or the Stalking Horse Bidder or the Winning Bidder, as applicable, that any additional defaults exist or that conditions to assumption, assignment, and transfer must be satisfied under the Assumed Contract (including, without limitation, with respect to adequate assurance of future performance by the Stalking Horse Bidder or Winning Bidder, as applicable), or that any related right or benefit under such Contract cannot and will not be available to the Stalking Horse Bidder or the Winning Bidder, as applicable; (b) any and all defaults under the Assumed Contract and any and all pecuniary losses related thereto shall be deemed cured and compensated pursuant to section 365(b)(1)(A) and (B) of the Bankruptcy Code upon payment of the applicable Cure Amount; and (c) the Cure Amount for such Assumed Contract shall be controlling, notwithstanding anything to the contrary in such Assumed Contract, or any other related document, and the Counterparty shall be deemed to have consented to the Cure Amount and shall be forever barred from asserting any other claims related to such Assumed Contract against the Debtors and their estates or the Stalking Horse Bidder or Winning Bidder, as applicable, or the property of any of them, that existed prior to the entry of the Sale Order.

7. ~~6.~~ The Debtors' decision to assume and assign any Assumed Contract to the Stalking Horse Bidder or a Winning Bidder, as applicable, is subject to this Court's approval and the closing of the Sale. Accordingly, absent this Court's approval and the closing of such Sale, the Assumed Contracts shall not be deemed assumed or assumed and assigned and shall in all respects be subject to further administration by the Debtors and their estates under the Bankruptcy Code in connection with the Chapter 11 Cases.

21. ~~20.~~ The Debtors shall use reasonable best efforts to timely implement the above Assumption and Assignment Procedures; and shall not otherwise hinder or delay the assumption and assignment of executory contracts and/or unexpired leases that the Stalking Horse Bidder or such other Qualified Bidder, as applicable, designate as Assumed Contracts as part of the Stalking Horse Bid or Qualified Bid, respectively.

22. The Stalking Horse Bidder shall designate under the Stalking Horse APA as Assumed Contracts and/or as Assumed Liabilities (as such term is defined in the Stalking Horse APA) the following unexpired real property leases, executory contracts and/or other obligations

of the Debtors: (i) the Royalty Agreement; (ii) that certain *Royalty and Milestone Payments Purchase Agreement*, dated as of April 29, 2019 (the “Reedy Creek Royalty Agreement”) by and between Novan, Inc. and Reedy Creek Investments LLC, (“Reedy Creek”); provided, however, Stalking Horse Bidder’s assumption of Debtor Novan’s obligations under the Reedy Creek Royalty Agreement shall be subject to the royalty rate and other economics to which Reedy Creek is entitled under the Reedy Creek Royalty Agreement not being improved in connection with such assumption or the Stalking Horse Bidder’s (or its designee’s) post-assumption actions with respect to the R&D Assets and/or the Royalty Agreement, as it may be amended from time to time; provided further, however, that the Royalty Agreement shall be deemed an approved agreement pursuant to any provision of the Reedy Creek Royalty Agreement, including, without limitation, Section 3.7 (to the extent applicable) therein; and (iii) such other contracts of the Debtors related solely to the R&D Assets to be designated on one or more schedules to the Stalking Horse APA in the Stalking Horse Bidder’s sole and absolute discretion (clauses (i)-(iii) collectively, the “Stalking Horse APA Assumed Contracts”). The Debtors are responsible for the payment of all cure costs (up to the full \$15 million amount of the DIP Facility) at the Debtor Novan entity in connection with the Debtors’ assumption and assignment of the Stalking Horse APA Assumed Contracts to the Stalking Horse Bidder; provided, however, that in the event the Stalking Horse Bidder, and the Stalking Horse APA, is (i) the Winning Bidder and the Winning Bid, respectively, for the Sale of the R&D Assets in accordance with the Bidding Procedures, then Ligand’s prepetition liquidated claim in the amount of the \$1 million on account of an outstanding milestone payment under the Royalty Agreement (the “Ligand Milestone Payment”) shall be deemed an allowed general unsecured claim against the Debtor Novan estate; and (ii) not the Winning Bidder and the Winning Bid, respectively, for the R&D Assets in accordance

with the Bidding Procedures, then the Royalty Agreement must be assumed by the Winning Bidder for the R&D Assets as set forth in this Bidding Procedures Order and the Bidding Procedures and the Ligand Milestone Payment shall be paid in full (in cash) by the Debtors to Ligand on or before the closing of the Sale of the R&D Assets to such Winning Bidder.

23. ~~21.~~ In the event that a Winning Bidder fails to close a Sale on or before [\_\_\_\_\_], 2023, or such date as may be extended by the Debtors in consultation with the Notice Parties, and a Back-Up Bidder has been previously identified, the Debtors shall file a notice (the “Back-Up Bid Auction Notice”) and serve such Back-Up Bid Auction Notice on the U.S. Trustee, the Notice Parties, and those parties who filed a request to receive notice under Bankruptcy Rule 2002. Three (3) business days following the filing of any Back-Up Bid Auction Notice, the Back-Up Bid subject to such Back-Up Bid Auction Notice will be deemed to be the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any interested parties.

24. ~~22.~~ Any consultation rights provided to the Notice Parties pursuant to the Bidding Procedures shall not limit the Debtors’ discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment. In the event that a member of a Creditors’ Committee submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party, or their legal counsel, established under the Bidding Procedures will be waived without further action; provided, however, that the bidding party will have the same rights as any other Qualified Bidder under the Bidding Procedures. Any failure to specifically identify consultation rights in any section of these Bidding Procedures shall



not limit or otherwise impair the rights of the Notice Parties to consult with the Debtors. In the event that the Notice Parties disagree with matters for which the Debtors are required to consult with the Notice Parties, then the Notice Party shall have the right to seek relief from the Court on an expedited basis to resolve the dispute.

25. Effective as of the date of entry of this Bidding Procedures Order, each of the Debtors and each of their estates, on its own behalf and on behalf of its and their respective predecessors, successors, heirs, and past, present and future subsidiaries and assigns, hereby absolutely, unconditionally and irrevocably releases and forever discharges and acquits Ligand and its subsidiaries, affiliates, officers, directors, managers, principals, employees, agents, financial advisors, attorneys, accountants, investment bankers, consultants, representatives and other professionals and the respective successors and assigns thereof (solely in their capacities as such, and subject to entry of a Final Order that so provides) (collectively, the “Released Parties”), from any and all liability to the Debtors (and their successors and assigns) and from any and all claims, counterclaims, demands, defenses, offsets, debts, accounts, contracts, liabilities, actions and causes of action of any kind, nature and description, whether matured or unmatured, known or unknown, asserted or unasserted, foreseen or unforeseen, accrued or unaccrued, suspected or unsuspected, liquidated or unliquidated, pending or threatened, arising in law or equity, in contract or tort, that the Debtors at any time had, now have or may have, or that their predecessors, successors or assigns at any time had or hereafter may have against any of the Released Parties for or by reason of any act, omission, matter, or cause arising at any time on or prior to the date of entry of this Bidding Procedures Order; provided, however, that the release set forth above shall not release (i) any claims against or liabilities of a Released Party that a court of competent jurisdiction determines has resulted from such Released Party’s bad

faith, fraud, gross negligence, collusion or willful misconduct; (ii) the Committee's rights to assert a Challenge during the Challenge Period (as such terms are defined in the DIP Order) pursuant to the terms and conditions of the DIP Order; (iii) Ligand from honoring its obligations to the Debtors under the DIP Facility (as approved by the DIP Order), Stalking Horse APA, this Bidding Procedures Order and the Bidding Procedures.

26. In the event the Stalking Horse Bidder is the Winning Bidder for the R&D Assets, or if the Stalking Horse Bidder is not the Winning Bidder for the R&D Assets but the Royalty Agreement has been assumed by the Winning Bidder for the R&D Assets, and the DIP Obligations (as defined in the DIP Order) are satisfied in full by the Debtors under the DIP Facility (as approved by the DIP Order), then Ligand—in its capacity as the Winning Bidder, the DIP Lender (as defined in the DIP Order), and counterparty to the Royalty Agreement—shall release the Debtors and their estates of all prepetition claims and causes of action pursuant to a mutually agreeable release to be provided in the Sale Order or such other order as agreed by Ligand and the Debtors (in each case subject to Bankruptcy Court approval); provided, however, that the forgoing release shall not release the Ligand Milestone Payment, which shall be treated in accordance with paragraph 22 of this Bidding Procedures Order.

27. The Debtors and the Creditors' Committee acknowledge and agree that they will work to develop one or more chapter 11 plans of liquidation for these Chapter 11 Cases (collectively, the "Chapter 11 Plan") that will incorporate one or more liquidating grantor trusts (as appropriate) formed for the benefit of the Debtors' general unsecured creditors on the effective date of such plans (collectively, the "Liquidating Trust"). The Debtors and the Creditors' Committee agree that the Liquidating Trust, pursuant to a mutually agreeable form of liquidating grantor trust agreement, shall receive assets of the Debtors under the Chapter 11 Plan

comprised of (i) Causes of Action<sup>5</sup> owned by Debtor EPI except for Purchased Avoidance Actions (as such term is defined in the Stalking Horse APA); (ii) the proceeds of all directors' and officers' liability insurance policies of the Debtors, including any tail insurance policies and rights of the directors and officers thereunder for coverage (i.e., advance of expenses and liability coverage with respect to claims made against such offices and directors); (iii) (a) an amount equal to the accounts receivable owed to or collected by Debtor EPI Health on and after the Petition Date on behalf of prepetition amounts owed; and (b) all proceeds received by the Debtors pursuant to that certain *Motion to Approve Compromise under Rule 9019 // Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding [D.I. 81]*, in each case of clause (iii)(a) and (b), solely upon the timely satisfaction of each of the Milestones as defined and set forth in paragraph 20 of the Interim Order or the Final Order approving the DIP Facility, as applicable; (iv) \$450,000 in cash to be paid by the Debtors, which represents the now-waived Stalking Horse Protections of the Stalking Horse Bidder consisting of a 3% break-up fee on account of the \$15 million Purchase Price (as defined in the Stalking Horse APA) under the Stalking Horse APA; (v) such other amounts as agreed by the Debtors and the Creditors' Committee, or as determined by the Bankruptcy Court; provided, however, that the cash elements of the foregoing may be first used to fund the allowed fees and expenses incurred by the professionals retained by the Debtors' estates for the Chapter 11 Plan to become effective.

<sup>5</sup> "Causes of Action" means, collectively, any claims, causes of action, demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, defenses, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise.

Subject to the terms of the Bidding Procedures Order, including satisfaction of certain Milestones as set forth herein, Ligand acknowledges and agrees that it will not take any position to oppose any acts or omissions with the funding of the Litigation Trust as provided in clauses (i) through (iv) of this Paragraph 27.

28. Ligand and Ligand’s counsel shall only be a Notice Party in the Bidding Procedures if Ligand is no longer the Stalking Horse Bidder or is no longer participating in the Auction as a bidder.

29. The Debtors and the Creditors’ Committee each acknowledge and agree that the Chapter 11 Plan (or any other chapter 11 plan) shall provide for the release and exculpation of each of the Ligand “Released Parties” (as defined in Paragraph 25 herein) to the fullest extent available under applicable law by (i) the Debtors and their estates, and the Creditors’ Committee; and (ii) all parties receiving any distributions from the Debtors and/or their estates under such Chapter 11 Plan (or any other chapter 11 plan), with the form of such releases and exculpation subject to Ligand’s agreement and consent.

30. ~~23.~~ In the event that there is a conflict between this Bidding Procedures Order or the Bidding Procedures, on the one hand, and the Motion or a Qualified Bidder’s Proposed APA, on the other hand, this Bidding Procedures Order and the Bidding Procedures shall control and govern. If there is a conflict between this Bidding Procedures Order and the Bidding Procedures, this Bidding Procedures Order shall control and govern. If there is a conflict between this Bidding Procedures Order or the Bidding Procedures, on the one hand, and any notice served in connection with the Motion or this Bidding Procedures Order, on the other hand, this Bidding Procedures Order and the Bidding Procedures shall control and govern.

31. ~~24.~~ Prior to mailing any of the notices approved hereby, the Debtors may fill in, or cause to be filled in, any missing dates and other information, correct any typographical errors, conform the provisions thereof to the provisions of this [Bidding Procedures](#) Order, and make such other, non-material changes as the Debtors deem necessary or appropriate.

32. ~~25.~~ Nothing in this [Bidding Procedures](#) Order, or any of the Exhibits hereto, shall prevent the Debtors from exercising their fiduciary duties in consummating or otherwise pursuing alternative transactions.

33. ~~26.~~ This [Bidding Procedures](#) Order shall be effective immediately upon entry, and any stay of orders provided for in Bankruptcy Rules 6004(h) or 6006(d) or any other provision of the Bankruptcy Code, the Bankruptcy Rules or the Local Rules is expressly waived. The Debtors are not subject to any stay in the implementation, enforcement or realization of the relief granted in this [Bidding Procedures](#) Order, and may, in their sole discretion and without further delay, take any action and perform any act authorized or approved under this [Bidding Procedures](#) Order.

34. ~~27.~~ The requirements set forth in Local Rules 6004-1, 9006-1, and 9013-1 are hereby satisfied or waived.

35. ~~28.~~ This Court shall retain exclusive jurisdiction with respect to all matters arising from or related to the implementation or interpretation of this [Bidding Procedures](#) Order.

**Exhibit 1**

**Bidding Procedures**

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

In re:	)	
	)	Chapter 11
NOVAN, INC., <i>et al.</i> , <sup>1</sup>	)	
	)	Case No. 23-10937 (LSS)
Debtors.	)	
	)	<del>Joint Administration</del>
	)	<del>Requested</del> <u>Jointly Administered</u>

**BIDDING PROCEDURES**

On ~~+~~July 17, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtors are maintaining their business and managing their property as debtors in possession pursuant to section 1107(a) and 1108 of the Bankruptcy Code.

On ~~+~~July 16, 2023, the Debtors entered into an asset purchase agreement (as amended from time to time, the “Stalking Horse APA”) with Ligand Pharmaceuticals, Incorporated (“Ligand” or the “Stalking Horse Bidder”) pursuant to which Ligand proposes to, among other things, purchase, acquire, and take assignment and delivery of the Assets (as defined below) under the Stalking Horse APA (the “Stalking Horse Bid”). The Stalking Horse Bidder, or an affiliate thereof, has provided the Debtors with postpetition financing as the DIP Lender (the “DIP Facility”), pursuant to the *Debtors’ Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Use Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling Final Hearing, and (IV) Granting Related Relief* [D.I. ~~+~~15] (“DIP Financing Motion”). On July 21, 2023, the Bankruptcy Court entered that certain Interim Order (I) Authorizing Debtors to (A) Obtain Postpetition Financing and (B) Use of Cash Collateral, (II) Granting Adequate Protection to Prepetition Secured Lender, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief that was entered by the Bankruptcy Court on July 21, 2023 [D.I. 54], which approved the DIP Financing Motion on an interim basis.

On [●], 2023, the United States Bankruptcy Court for the District of Delaware (the “Court”) entered an order [D.I. [●]] (the “Bidding Procedures Order”), granting certain relief requested in the related motion [D.I. ~~+~~16] (the “Bidding Procedures Motion”),<sup>2</sup> including authorizing the Debtors to solicit bids in accordance with the bidding procedures set forth herein

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not yet defined herein shall have the meaning ascribed to such terms in the Bidding Procedures Motion, the Bidding Procedures Order, or the DIP Financing Motion, as applicable.

(collectively, the “Bidding Procedures”) to be employed by the Debtors in connection with a proposed sale (the “Sale”) of substantially all of the Debtors’ assets (the “Assets”), free and clear of all liens (as defined in section 101(37) of the Bankruptcy Code), encumbrances, claims (as defined in section 101(5) of the Bankruptcy Code), charges, mortgages, deeds of trust, options, pledges, security interests or similar interests, title defects, hypothecations, easements, rights of way, rights of use, encroachments, judgments, rights of setoff, conditional sale or other title retention agreements and other similar impositions, imperfections or defects of title or restrictions on transfer or use other than any assumed liabilities or permitted liens referenced in a Winning Bid (as defined below).

These Bidding Procedures set forth the process by which the Debtors are authorized to conduct the Sale of the Assets described more specifically below.

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

Raymond James ~~Securities LLC~~ & Associates, Inc.

Geoffrey Richards  
Simon Wein  
Telephone: (212) 885-1885  
(516) 426-8030  
Email:  
geoffrey.richards@raymondjames.com  
simon.wein@raymondjames.com

or Morris, Nichols, Arsht & Tunnell LLP  
 Derek C. Abbott (No. 3376)  
 1201 Market Street, 16th Floor  
 Wilmington, Delaware 19801  
 Telephone: (302) 658-9200  
 Facsimile: (302) 658-3989  
 Email: [dabbott@morrisnichols.com](mailto:dabbott@morrisnichols.com)

*Proposed Counsel for the Debtors*

*Proposed Investment Banker for the Debtors*

**Summary of Key Dates Established by Bidding Procedures**

DATE	DEADLINE/EVENT
<del>Three (3) business days after the filing of this Motion</del> <u>July 25, 2023</u>	Deadline to serve the Initial Assumption and Assignment Notice
<del>Three (3) business days prior to the Bidding Procedures Hearing</del> <u>August 8, 2023</u>	Deadline to file Initial Contract Objections and Objections to the Private Sale Order
<del>On or before August 11, 2023 (No later than 25 days after the Petition Date)</del> <u>August 15, 2023</u>	Bidding Procedures Hearing



Three (3) business days after entry of the Bidding Procedures Order	Deadline to serve Notice of Auction
On or before August 28, 2023 (no later than 42 days after the Petition Date)	Deadline for the submission of Qualified Bids (i.e., the Bid Deadline)
<del>September 8</del> <u>August 28</u> , 2023, at 4:00 p.m. (ET)	Deadline to file Initial Sale Objections
One (1) business day prior to the Auction	Deadline for Debtors to designate Qualified Bid(s) and Baseline Bid(s)
August 31, 2023 (no later than 45 days after the Petition Date)	Auction
As soon as practicable and not later than one (1) business day after cancellation or completion of the Auction	Deadline to file and serve Notice of Winning Bid(s)
One (1) business day after selection of Winning Bid	Deadline to file and serve an Additional Assumption and Assignment Notice (if applicable)
Two (2) business days prior to the Sale Hearing	Deadline to file Winning Bid Objection or Additional Contract Objections
One (1) business day prior to the Sale Hearing	Deadline to file reply to any Initial Sale Objection or Winning Bid Objection
<del>September 8</del> _____, 2023 (No later than 55 days after the Petition Date)	Sale Hearing and Entry of Sale Order
On or before September 25, 2023 (no later than 70 days after the Petition Date)	Deadline for Winning Bidder(s) to close the transaction contemplated by its Winning Bid

### 1. Assets to Be Sold

The Debtors seek to sell to the Stalking Horse Bidder—subject to the highest and best Qualified Bids of one or more Qualified Bidders other than the Stalking Horse Bidder, subject to Court approval—substantially all of the tangible and intangible Assets of the Debtors as set forth in ~~☐~~ [Section 2.1](#) of the Stalking Horse APA and the assumption of (i) the specific liabilities of the Debtors that the Staking Horse Bidder has listed in ~~☐~~ [Section 2.3](#) of the Stalking Horse APA, subject to the specific limits set forth therein (the “Assumed Liabilities”), and (ii) the Cure

Amounts owing under the Assumed Contracts; provided, however, that the Assets will not include:

(i) any cash, cash equivalents, accounts receivable, or other assets the Stalking Horse Bidder has identified on one or more schedules to the Stalking Horse APA of excluded assets (the “Excluded Assets”) or any liabilities the Stalking Horse Bidder has listed on one or more schedules to the Stalking Horse APA of liabilities (the “Excluded Liabilities”), ~~or~~

(ii) any accounts payable or any debt or debt-like liabilities (with the understanding that, if there are any debt-like liabilities that cannot be retained by the Debtors, such as a capital lease or deferred revenue obligations, such liabilities will be assumed by the Stalking Horse Bidder, but the cash payment to be made by the Stalking Horse Bidder at the closing will be reduced by the amount thereof); or

(iii) to the extent not already provided for in these sections 1(i) and 1(ii), Causes of Action<sup>3</sup> owned by Debtor EPI except for Purchased Avoidance Actions (as such term is defined in the Stalking Horse APA); (ii) the proceeds of all directors’ and officers’ liability insurance policies of the Debtors, including any tail insurance policies and rights of the directors and officers thereunder for coverage (i.e., advance of expenses and liability coverage with respect to claims made against such offices and directors); and (iii) (a) an amount equal to the accounts receivable owed to or collected by Debtor EPI Health on and after the Petition Date on behalf of prepetition amounts owed; and (b) all proceeds received by the Debtors pursuant to that certain *Motion to Approve Compromise under Rule 9019 // Debtors Motion for Entry of an Order Pursuant to 11 U.S.C. §§ 105(a) and 363(b) and Fed. R. Bankr. P. 9019 Approving Settlement with CSNK Working Capital Finance Corp. d/b/a Bay View Funding [D.I. 81]*, in each case of clause (iii)(a) and (b), solely upon the timely satisfaction of each of the Milestones as defined and set forth in paragraph 20 of the Interim DIP Order or the Final DIP Order approving the DIP Facility, as applicable.

The Assets will be organized in the following two categories for the purpose of determining whether one or more Qualified Bidders have submitted one or more higher Qualified Bids for the Assets after taking into consideration the initial overbid, bid increments, and other requirements in these Bidding Procedures:

Commercial Assets, including, but not limited to, RHOFADÉ, MINOLIRA, and CLODERM, and all related patents and patent rights, other intellectual property, equipment, supplies and materials, regulatory authorizations (including new drug applications), files and records (including clinical and pre-clinical data), and know-how (the “Commercial Assets”); and

<sup>3</sup> “Causes of Action” means, collectively, any claims, causes of action, demands, actions, suits, obligations, liabilities, cross-claims, counterclaims, defenses, offsets, or setoffs of any kind or character whatsoever, in each case whether known or unknown, contingent or noncontingent, matured or unmatured, suspected or unsuspected, foreseen or unforeseen, direct or indirect, choate or inchoate, existing or hereafter arising, under statute, in contract, in tort, in law, or in equity, or pursuant to any other theory of law, federal or state, whether asserted or assertable directly or derivatively in law or equity or otherwise by way of claim, counterclaim, cross-claim, third party action, action for indemnity or contribution or otherwise.

R&D Assets, including, but not limited to, Berdazimer gel, Molluscum Contagiosum, including and all related patents and patent rights, other intellectual property, equipment, supplies and materials, regulatory authorizations (including new drug applications), files and records (including clinical and pre-clinical data), and know-how, including the manufacturing assets and leases related to same, and all other Assets that are not included in Commercial Assets (the “R&D Assets”).

**The  ~~purchaser of~~ Debtors will treat a bid for the Commercial Assets without the R&D Assets as a Qualified Bid if such bid is for a purchase price of not less than [\$8,000,000]. Similarly, the Debtors will treat a bid for the R&D Assets as a Qualified Bid if the bid is for a purchase price of not less than \$13,100,000, which amount reflects the Stalking Horse Bid in the amount of \$12 million, the \$1 million Ligand Milestone Payment in connection with the Royalty Agreement (as defined below), and the Minimum Continuing Bid of \$100,000. Qualified Bids for the R&D Assets (either with or without the Commercial Assets) must assume the Royalty Agreement ~~(as defined below)~~. For the avoidance of doubt, a Winning Bidder of just the Commercial Assets will not be required to assume the Royalty Agreement.**

The sale of the Assets is on an “as is, where is” and “with all faults” basis and without representations, warranties or guarantees, express, implied or statutory, written or oral, of any kind, nature or description, by the Debtors, its affiliates or their respective representatives, except to the extent set forth in the Stalking Horse APA or the purchase agreement of such other Winning Bidder (as defined below) and as approved by the Court. Except as otherwise provided in such approved purchase agreement, all of the Debtors’ right, title and interest in and to each Asset to be acquired shall be sold free and clear of all liens, claims, interests and encumbrances (other than permitted liens), with such liens, claims, interests and encumbrances to attach to the proceeds of the Sale.

**Any general objections to the Sale, including objections to the sale of any Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to a Winning Bidder or a Back-Up Bidder (an “Initial Sale Objection”), shall be (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties (as defined below) no later than August 28, 2023, at 4:00 p.m. (ET).** For the avoidance of doubt, Initial Sale Objections do not include objections to the conduct at any Auction, the selection of a Winning Bid and/or Back-Up Bid, or the terms of any Sale to a Winning Bidder or the Back-Up Bidder, ~~or the assignment of any Assumed Contracts~~, which need not be filed until after the filing of a Notice of Winning Bid (each term as defined below), or the assignment of any Assumed Contracts, which are governed by different objection deadlines set forth in the Bidding Procedures Order.

The Stalking Horse APA, which includes, among other things, a description of the Assets, customary representations, warranties, and covenants by and from the Debtors and Ligand, is posted in the Data Room (as defined below), and may also be obtained by Interested Parties upon request to the Debtors’ advisors.

## 2. ~~Participation Requirements~~

A person or entity (an “Interested Party”) that wishes to conduct diligence about the Debtors may request access to the Debtors’ confidential electronic data room concerning the Assets (the “Data Room”). To gain access to the Data Room, and thus be able to conduct due diligence on the Debtors and participate in the bidding process, an Interested Party must first become a “Qualified Bidder.” To become a Qualified Bidder, an Interested Party must submit to the Debtors and their advisors:

- (a) a written disclosure of each entity that will be bidding or otherwise participating in connection with such bid (including each equity holder or other financial backer of the Interested Party, including if such Interested Party is an entity formed for the purpose of consummating the proposed transactions to be set forth in a Proposed APA (as defined below) contemplated by such Interested Party), and the complete terms of any such participation. Under no circumstances shall any undisclosed principals, equity holders, or financial backers be associated with any Qualified Bid. Each Interested Party must also include the contact information for the specific person(s) and counsel whom the Debtors or their advisors should contact regarding such Qualified Bid;
- (b) a statement and other factual support demonstrating to the Debtors’ satisfaction, in consultation with the Notice Parties, in the exercise of their reasonable business judgment that the Interested Party has a *bona fide* interest in purchasing some or all of the Assets;
- (c) preliminary proof by the Interested Party of its financial capacity to close the Interested Party’s proposed transaction(s) to be set forth in a Proposed APA, which may include financial statements of, or verified financial commitments obtained by, the Interested Party (or, if the Interested Party is an entity formed for the purpose of acquiring the desired Assets, the party that will bear liability for a breach), the adequacy of which will be assessed by the Debtors in consultation with their advisors and the Notice Parties; and
- (d) an executed confidentiality agreement (to be delivered prior to the distribution of any confidential information by the Debtors to an Interested Party) in form and substance satisfactory to the Debtors (without limiting the foregoing, each confidentiality agreement executed by an Interested Party shall contain standard non-solicitation provisions) (each, a “Confidentiality Agreement”);

An Interested Party that delivers the documents and information described above or that the Debtors determine, subject to the limitations in these Bidding Procedures, in consultation with the Notice Parties, is able to consummate the Sale, and whose Qualified Bid is received by the Debtors no later than the Bid Deadline (as defined below) is deemed qualified (a “Qualified Bidder”).

For all purposes under these Bidding Procedures, the Stalking Horse Bidder will be considered a Qualified Bidder, and the Stalking Horse Bid shall be considered a Qualified Bid

without regard to any of the requirements or conditions set forth herein and without any other or further action by the Stalking Horse Bidder.

**3. Procedures to Designate Designation of the Stalking Horse Bidder**

The Stalking Horse Bidder ~~will be entitled to~~ has waived its request for a break-up fee of 3% of its \$15 million Purchase Price ~~(the “Break Up Fee” or the “Stalking Horse Protections”).~~<sup>3</sup> The Stalking Horse Bidder shall be considered a Qualified Bidder, and a Stalking Horse Bid shall be considered a Qualified Bid without regard to any of the requirements or conditions set forth in the Bidding Procedures and without any other or further action by the Stalking Horse Bidder.

No ~~other~~ bidder or any other party shall be entitled to any termination or “break-up” fee, expense reimbursement, or any other bid protections in connection with the submission of a bid for any Assets, or for otherwise participating in the Auction or the sale process.

**4. Notice Parties.**

The term “Notice Parties” as used in these Bidding Procedures shall mean: (i) the Debtors; (ii) proposed counsel to the Debtors; (iii) Ligand, but only if Ligand is no longer the Stalking Horse Bidder or is otherwise no longer participating in the Auction; (iv) counsel to Ligand, but only if Ligand is no longer the Stalking Horse Bidder or is otherwise no longer participating in the Auction; and (v) proposed counsel to ~~any~~the official committee of unsecured creditors appointed in ~~these~~the Chapter 11 Cases (the “Creditors’ Committee”).

**5. Bankruptcy Court Jurisdiction**

Each Qualified Bidder and any other Interested Party that seeks to become a Qualified Bidder in accordance with Section 2 above, shall: (a) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of such parties; (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, without limitation, all appeals, shall be conclusive and may be enforced in other jurisdictions (including, without limitation, any foreign jurisdictions) by suit on the judgment or in any other manner provided by applicable law.

<sup>3</sup> ~~—The Debtors shall pay the Break Up Fee out of the proceeds of an Alternate Transaction (as defined in the Stalking Horse APA) to the Stalking Horse Bidder by wire transfer of immediately available funds to the account specified by the Stalking Horse Bidder to the Debtors in writing. No Lien of any third party (other than the DIP Lender’s) shall attach to the portion of the sale proceeds representing the Break Up Fee. The Break Up Fee shall be paid three (3) Business Days following the closing of an Alternate Transaction. The Break Up Fee shall constitute an allowed superpriority administrative expense claim against the Debtors’ estates, with priority over any and all administrative expenses of any kind, including as provided in sections 363, 364, 365, 503(b), and 507(a)(2) of the Bankruptcy Code.~~

## 6. Due Diligence

The Debtors will provide, in consultation with the Notice Parties, a Qualified Bidder with reasonable access to the Data Room and any other additional information that the Debtors believe to be reasonable and appropriate under the circumstances. All additional due diligence requests shall be directed to: (a) the Debtors' proposed investment banker, Raymond James ~~Securities LLC~~; & Associates (Geoffrey Richards ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and Simon Wein ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); (b) proposed counsel to the ~~Notice Parties~~ Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 Market Street, 16<sup>th</sup> Floor, Wilmington, Delaware 19801 (Attn: Derek C. Abbott, Esq. ([dabbott@morrisonichols.com](mailto:dabbott@morrisonichols.com)); (c) the proposed counsel to the Creditors' Committee, Goodwin Procter, LLP, The New York times Building, 620 Eighth Avenue, New York, New York 10018 (Attn: Howard Steel ([hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)) and Barry Bazian ([bbazian@goodwinlaw.com](mailto:bbazian@goodwinlaw.com))); and (d) proposed financial advisor to the Creditors' Committee, Dundon Advisers LLP, proposed financial advisors to the Joshua Nahas, Ten Bank Street, Suite 1100, White Plains, New York 10606, ([jn@dundon.com](mailto:jn@dundon.com)). The due diligence period shall extend through and include the Bid Deadline (as defined below). Additional due diligence will not be provided after the Bid Deadline, unless otherwise deemed reasonably appropriate by the Debtors in consultation with the Notice Parties. The Debtors reserve the right, in consultation with the Notice Parties, to withhold or limit access to any due diligence information that the Debtors determine is business-sensitive or otherwise not appropriate for disclosure to a Qualified Bidder. Notwithstanding any prepetition limitations, including, without limitation, any non-disclosure, confidentiality, or similar provisions relating to any due diligence information, the Debtors and their estates shall be authorized, in consultation with the Notice Parties, to provide due diligence information to Qualified Bidders, *provided* that such Qualified Bidders have delivered an executed Confidentiality Agreement in form and substance acceptable to the Notice Parties. The Debtors and their estates and the Notice Parties are not responsible for, and shall have no liability with respect to, any information obtained by, or provided to, any Qualified Bidders in connection with the Bidding Procedures and the Sale.

Each Interested Party other than the Stalking Horse Bidder will comply with all reasonable requests for additional information and due diligence access by the Debtors or their advisors regarding such Interested Party and its contemplated transaction. If the Debtors, after consultation with the Notice Parties, determine at any time in their reasonable discretion that an Interested Party is not reasonably likely to be a Qualified Bidder, then the Debtors' obligation to provide due diligence information to such Interested Party will terminate, and all information provided by the Debtors prior to such time shall be returned to the Debtors in accordance with the terms of the applicable Confidentiality Agreement.

## 7. Bid Requirements

Other than in the case of a Stalking Horse Bid, which shall be considered a Qualified Bid, to be deemed a "Qualified Bid," a bid must be received from a Qualified Bidder on or the Bid Deadline and satisfies each of the following requirements (each, a "Bid Requirement"):

- (a) be in writing and received by the Notice Parties prior to the Bid Deadline;



- (b) fully discloses the identity of the Qualified Bidder (and to the extent that the Qualified Bidder is a newly formed acquisition entity or the like, the identity of the Qualified Bidder's parent company or sponsor), and provide the contact information of the specific person(s) whom the Debtors or their advisors should contact in the event that the Debtors have any questions or wish to discuss the bid submitted by the Qualified Bidder;
- (c) states that the applicable Qualified Bidder offers to (a) purchase, in cash, all of the Assets upon the same terms and conditions, and pursuant to the same form and substance of the Stalking Horse APA modified only by scope of purchased assets, purchase price, and identity of the purchaser, that the Debtors, in consultation with the Notice Parties, reasonably determine are higher than those set forth in the Stalking Horse APA (which determination with respect to the Commercial Assets and the R&D Assets may be made by considering bids submitted by more than one Qualified Bidder in combination); and (b) take assignment of all Assumed Contracts under Stalking Horse APA with details of the Qualified Bidder's proposal for the treatment of related Cure Amounts and the provision of adequate assurance of future performance to the counterparties to such Assumed Contracts; provided, however, that if the Stalking Horse Bidder withdraws from the bidding process, any bid made subsequent to such withdrawal will be considered a Qualified Bid only if the bid is submitted by a Qualified Bidder and if the Debtors determine, in consultation with the Notice Parties, such bid complies with these Bidding Procedures as applicable; provided further, however, that under no circumstances may any bid of any bidder for the R&D Assets, other than the Stalking Horse Bid, be deemed a Qualified Bid if it does not provide for the unaltered assumption and assignment (the "Royalty Assumption") to the bidder of that certain Development Funding and Royalties Agreement, dated as of May 4, 2019 (as amended from time to time), to which the Stalking Horse Bidder and Novan, Inc. are each a party (the "Royalty Agreement") (for the avoidance of doubt, the Royalty Assumption is inapplicable to a Qualified Bid for just the Commercial Assets); provided further, however, that bids for both the R&D Assets and Commercial Assets must include an allocation of the proposed purchase price between such assets;
- (d) includes a signed writing stating that the Qualified Bidder's offer is irrevocable until the selection of the Winning Bidder; provided, however, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder;
- (e) does not contain any contingencies of any kind including, without limitation, contingencies related to financial, due diligence, or internal or shareholder approvals in connection with the submission of a Qualified Bid, and there is no condition precedent to the Qualified Bidder's ability to enter into a definitive Sale agreement;

- (f) provides the date by which the Qualified Bidder intends to close the Sale; provided, however, that the proposed closing date is on or before September ~~15~~25, 2023;
- (g) contains no due diligence or financing contingencies of any kind;
- (h) includes a duly authorized and executed copy of an asset purchase agreement, which includes the purchase price for the Assets, as allocated for each asset category and in the aggregate, expressed in U.S. Dollars that are greater the \$15 million Purchase Price for all of the Assets (or greater than the [\$8 million] Purchase Price for only the Commercial Assets or greater than the \$12 million Purchase Price for only the R&D Assets, as noted above, in the Stalking Horse APA, plus ~~the Stalking Horse Protections~~payment of the \$1 million Ligand Milestone Payment in connection with the R&D Assets), plus the Minimum Continuing Bid of \$100,000, together with all exhibits and schedules thereto, together with a blackline copy to show any modifications to the Stalking Horse APA (a “Proposed APA”);
- (i) includes a proposed sale order (each, a “Proposed Sale Order”) based on the Debtors’ proposed sale order, and a Qualified Bid must also include a blackline copy of the Proposed Sale Order to show any proposed modifications to the Debtors’ proposed sale order;
- (j) specifies the liabilities proposed to be paid or assumed by such Qualified Bid;
- (k) includes financial statements or other written evidence, including (if applicable) a firm, irrevocable commitment for financing, establishing the ability of the Qualified Bidder to consummate the proposed Sale and pay the purchase price in cash, such as will allow the Debtors, in consultation with the Notice Parties, to make a reasonable determination as to the Qualified Bidder’s financial and other capabilities to consummate the transaction contemplated by the Proposed APA;
- (l) states or otherwise estimates the types of transition services, if any, the Qualified Bidder would require of and/or provide to the Debtors, including an estimate of the time any such transition services would be required of and/or provided to the Debtors, if the Qualified Bidder’s bid were selected as the Winning Bid for the applicable Assets;
- (m) includes an acknowledgement and representation that the bidder: (a) has had an opportunity to conduct any and all required due diligence regarding the Assets prior to making its offer; (b) has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid; (c) did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express or implied (by operation of law or otherwise), regarding the Assets or the completeness of any information provided in connection therewith or with the Auction, except as expressly stated in the Proposed APA; and (d) is not entitled to any expense



reimbursement, break-up fee, or similar type of bid-protections or payments in connection with its bid;

- (n) includes evidence, in form and substance reasonably satisfactory to the Debtors and the Notice Parties, of authorization and approval from the Qualified Bidder's board of directors (or comparable governing body) with respect to the submission, execution, delivery and closing of the Proposed APA;
- (o) is accompanied by a good faith deposit in the form of a wire transfer (to a bank account specified by the Debtors), or such other form acceptable to the Debtors, payable to the order of the Debtors (or such other party as the Debtors may determine) in an amount equal to 10% of the cash portion of the purchase price provided for in the bid (a "Deposit");
- (p) acknowledges in writing (a) that it has not engaged in any collusion with respect to any Qualified Bid, specifying that it did not agree with any other party, including, but not limited to, any other Interested Parties or interested third parties, to control price or exert undue influence over the process; and (b) agree not to engage in any such collusion or undue influence with respect to any Qualified Bids, the Auction, or the Sale process;
- (q) states that the Qualified Bidder consents to the jurisdiction of the Bankruptcy Court;
- (r) contains such financial and other information to allow the Debtors to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to close the transactions contemplated by the Proposed APA, including, without limitation, such financial and other information supporting the Qualified Bidder's ability to comply with the requirements of adequate assurance of future performance under section 365(f)(2)(B) and, if applicable, section 365(b)(3) of the Bankruptcy Code, including the Qualified Bidder's financial wherewithal and willingness to perform under any Assumed Contracts ("Adequate Assurance Information"). By submitting a Bid, the Qualified Bidders agree that the Debtors may disseminate their Adequate Assurance Information to ~~any official committee of unsecured creditors appointed in the Chapter 11 Cases~~ (the "the Creditors' Committee") and, upon request, to Counterparties;
- (s) contains such other information as may be reasonably requested by the Debtors, in consultation with the Notice Parties;
- (t) sets forth (i) a statement or evidence that the Qualified Bidder has made or will make in a timely manner all necessary filings under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, as amended, if applicable, and pay the fees associated with such filings, and (ii) any regulatory and third-party approvals required for the Qualified Bidder to close the transactions contemplated by the Proposed APA, and the time period within which the Qualified Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of

any such regulatory or third-party approval is expected to take more than five (5) days following execution and delivery of such Qualified Bidder's Proposed APA, those actions the bidder will take to ensure receipt of such approval(s) as promptly as possible); provided that a Qualified Bidder agrees that its legal counsel will coordinate in good faith with the Debtors' legal counsel to discuss and explain Qualified Bidder's regulatory analysis, strategy, and timeline for securing all such approvals as soon as reasonably practicable, and in no event later than the time period contemplated in the Proposed APA; provided, further that the offer contains a covenant to cooperate with the Debtors to provide pertinent factual information regarding the bidder's operations reasonably required to analyze issues arising with respect to any applicable antitrust laws and other applicable regulatory requirements;

- (u) provides for the Qualified Bidder to serve as the Back-Up Bidder (as defined below) if the Qualified Bidder's bid is the Back-Up Bid (as defined below), in accordance with the terms of the Proposed APA as submitted or modified at the Auction; and
- (v) provides that in the event of the Qualified Bidder's breach of, or failure to perform under, the Proposed APA, the Qualified Bidder shall forfeit its Deposit to the Debtors, and the Debtors shall be entitled to pursue all available legal and equitable remedies, including, without limitation, additional damages and/or specific performance.

A bid from a Qualified Bidder satisfying all of the above requirements, as determined by the Debtors, in consultation with the Notice Parties, shall constitute a Qualified Bid. The Debtors reserve the right to work with any Qualified Bidder in advance of the Auction to cure any deficiencies in a bid that is not initially deemed a Qualified Bid. ~~The~~As noted above, the Debtors, in consultation with the Notice Parties, may determine that separate bids for less than all of the Assets constitute a single Qualified Bid for all, substantially all, or any portion of the Assets; *provided* that such bids must satisfy the Bid Requirements. Each Qualified Bidder submitting a bid shall be deemed to: (a) acknowledge and represent that it is bound by all of the terms and conditions of the Bidding Procedures; and (b) have waived the right to pursue a substantial contribution claim under section 503 of the Bankruptcy Code related in any way to the submission of its bid, the Bidding Procedures, and the Sale.

## **8. Stalking Horse Bidding**

The Stalking Horse Bidder may increase its bid with cash or credit against obligations owed by the Debtors under the DIP Facility and/or under the Prepetition Credit Agreement. The Stalking Horse Bidder may pay the Purchase Price under the Stalking Horse APA, and fund Overbids during the Auction if there is competitive bidding, with (i) an offset, on a dollar-for-dollar basis, against the Debtors' Obligations (as defined in the DIP Facility) under the DIP Facility; and/or (ii) cash.

Notwithstanding anything to the contrary set forth in these Bidding Procedures, the Stalking Horse Bidder shall be deemed to be a Qualified Bidder and shall not be required to provide any due diligence materials (or any other materials), a Deposit, or satisfy any other Qualified Bidder requirements as a condition to its participation at the Auction and may participate in the Auction with respect to all or any portion of the Assets.

The Stalking Horse Bidder shall have the right to designate any person or entity in its sole and absolute discretion that shall take title to the Assets or a portion of the Assets.

## 9. Bid Deadline

A Qualified Bidder, other than a Stalking Horse Bidder, that desires to make a bid shall deliver an electronic copy of its bid in both PDF and MS-WORD format so as to be received via email on or before **August 28, 2023 at 5:00 p.m. (ET)** (the “Bid Deadline”), by (a) the Debtors’ proposed investment banker, Raymond James ~~Securities LLC~~ & Associates (Attn: [Geoffrey Richards](mailto:geoffrey.richards@raymondjames.com) ([geoffrey.richards@raymondjames.com](mailto:geoffrey.richards@raymondjames.com)) and [Simon Wein](mailto:simon.wein@raymondjames.com) ([simon.wein@raymondjames.com](mailto:simon.wein@raymondjames.com)); (b) the Debtors’ proposed counsel, Morris, Nichols, Arsht & Tunnell LLP; and (c) ~~proposed~~ counsel to ~~Ligand, Morgan, Lewis & Boeki~~ ~~the Creditors’ Committee, Goodwin Procter, LLP, 101 Park~~ ~~The New York Times Building, 620 Eighth Avenue, New York, NY 10178-0060~~ ~~New York 10018~~ (Attn: ~~Craig A. Wolfe, Jason R. Alderson and David K. Shim, email: craig.wolfe@morganlewis.com, jason.alderson@morganlewis.com and david.shim@morganlewis.com~~ [Howard Steel](mailto:hsteel@goodwinlaw.com) ([hsteel@goodwinlaw.com](mailto:hsteel@goodwinlaw.com)); and [Barry Bazian](mailto:bbazian@goodwinlaw.com) ([bbazian@goodwinlaw.com](mailto:bbazian@goodwinlaw.com)) ~~if a Committee has been appointed in these Chapter 11 Cases, counsel to the Committee~~). The Debtors, in consultation with the Notice Parties, 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 (x) submit any offer after the Bid Deadline or (y) participate in the Auction.**

## 10. Evaluation of Qualified Bids

The Debtors will deliver, within one (1) business day after receipt thereof, copies of all bids from Qualifying Bidders to the Notice Parties. The Debtors, in consultation with the Notice Parties, shall make a determination regarding whether a timely submitted bid from a Qualified Bidder is a Qualified Bid.

A Qualified Bid, other than the Stalking Horse Bid, will be valued by the Debtors, in consultation with the Consultation Parties, based upon several factors including, without limitation, (1) the amount of the Purchase Price provided by such bid, (2) the nature of the consideration provided by such bid, (3) the risks and timing associated with consummating such bid, (4) any proposed revisions to the Stalking Horse APA and/or the Debtors’ form of proposed Sale Order, (5) whether any Qualified Bid contains a sufficient cash component to ensure that the Debtors’ estates is not rendered administratively insolvent, and (6) any other factors deemed relevant by the Debtors, in consultation with the Notice Parties.

Notwithstanding the foregoing, the only way a Qualified Bid ~~by itself or in combination with one or more other Qualified Bids~~ (other than of the Stalking Horse Bid) can be determined to be higher or otherwise better than the value of the Stalking Horse Bid before the commencement of competitive bidding, it must be (a) equal to or higher than the \$15 million Purchase Price in the Stalking Horse APA, ~~plus the Stalking Horse Protections~~ plus the Minimum Continuing Bid of \$100,000, and provide for the assumption and assignment of the Royalty Agreement if for all of the Assets, (b) equal to or higher than a \$12 million Purchase Price and provide for the assumption and assignment of the Royalty Agreement (including payment of the \$1 million Ligand Milestone Payment) if for only the R&D Assets, or (c) equal to or higher than an [\$8 million] Purchase Price if for only the Commercial Assets.

No later than one (1) business day prior to the Auction, the Debtors shall: (i) notify all Qualified Bidders whether their bids have been determined to be a Qualified Bid; and (ii) determine, in consultation with the Notice Parties, which of the Qualified Bids for the Assets for which a Qualified Bid has been submitted, at such time, is the highest or otherwise best bid for purposes of constituting the opening bid(s) for the applicable Assets at the Auction (each, a “Baseline Bid,” and the Qualifying Bidder submitting such Baseline Bid, a “Baseline Bidder”), and promptly notify all Qualified Bidders with Qualified Bids of the Baseline Bids. ~~For any Qualified Bid of a Qualified Bidder other than the Stalking Horse to be the Baseline Bid, it must (a) contemplate assumption and assignment of Royalty Agreement, (b) have a purchase price that it is equal to or greater than the \$15 million Purchase Price in the Stalking Horse APA, plus the Stalking Horse Protections plus the Minimum Continuing Bid of \$100,000.~~

## 11. No Qualified Bids

If the Debtors do not receive any Qualified Bids other than the Stalking Horse Bid, the Debtors will not conduct the Auction for the Assets, will file with the Court within twenty-four hours after the Bid Deadline, a notice indicating that the Auction for the Assets has been canceled. In such event, the Stalking Horse Bidder will be deemed the Winning Bidder, the Stalking Horse APA will be the Winning Bid, and the Debtors will as expeditiously as possible seek final Court approval of the sale of the Assets to the Stalking Horse Bidder as contemplated by the Stalking Horse APA.

## 12. Auction

If the Debtors receive one or more Qualified Bids, the Debtors will conduct the Auction, which shall take place at **10:00 a.m. prevailing Eastern Time on August 31, 2023**, or such other date and time (with the consent of Ligand and the Creditors’ Committee) as shall be timely communicated to all entities entitled to attend the Auction. The Auction, which shall be recorded or transcribed, shall run in accordance with the following procedures (the “Auction Procedures”):

- (a) the Auction shall commence, after consulting with the Notice Parties, at the offices of ~~proposed counsel for the Debtors, Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, Wilmington, Delaware 19899~~ Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or

virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below). The Debtors shall file notice of any change in the date, time, or location of the Auction.

- (b) only Qualified Bidders with Qualified Bids, including the Stalking Horse Bidder (collectively, the “Auction Bidders,” and each, an “Auction Bidder”) shall be entitled to make any subsequent bids at the Auction;
- (c) the Auction Bidders shall appear at the Auction, or through a duly authorized representative;
- (d) only (i) the Debtors, (ii) the Auction Bidders, (iii) the Notice Parties, (iv) any other creditor of the Debtors who desires to attend the Auction and provides no less than three (3) days’ advance written notice, together with the advisors to each of the foregoing parties, may attend the Auction (collectively, the “Auction Participants”). Each Auction Participant shall provide counsel for the Debtors written notice of their intent to attend the Auction no later than 5:00 p.m. (ET), three (3) days prior to the Auction, to proposed counsel for the Debtors, Morris Nichols, Arsht & Tunnell LLP; provided, however, that in the event an Auction Bidder elects not to attend the Auction, such Auction Bidder’s Qualified Bid shall nevertheless remain fully enforceable against such Auction Bidder until the selection of the Winning Bidder and Back-Up Bidder at the conclusion of the Auction; provided further, however, that if such bidder is selected as the Winning Bidder or the Back-Up Bidder, its offer shall remain irrevocable until the closing of the Sale to the Winning Bidder or the Back-Up Bidder. Prior to the time scheduled for the commencement of the Auction (as provided in these Bidding Procedures), the Debtors may provide to all Auction Bidders (including the Stalking Horse Bidder) copies of each Qualified Bid and identify to them the Qualified Bid that the Debtors believe, after consultation with the Notice Parties, is the Baseline Bid;
- (e) the Debtors and their advisors shall direct and preside over the Auction, which shall be transcribed;
- (f) prior to start of the Auction, each Auction Bidder shall confirm that it has not engaged in any collusion, within the meaning of Section 363(n) of the Bankruptcy Code, with respect to the Bidding Procedures, the Auction, or the Sale;
- (g) bidding at the Auction will begin with the Baseline Bid and continue in bidding increments (each, a “Subsequent Bid”) providing a value to the Debtors’ estates of at least \$100,000 in additional cash (the “Minimum Continuing Bid”), or such other amount determined by the Debtors in consultation with the Notice Parties, above the prior bid or collection of bids (each, an “Overbid”); provided, however, that the such cash requirement for Overbids shall not apply to Stalking Horse Bidder, which may fund Overbids via offsets against the Debtors’ obligations

under the DIP Facility as provided in Paragraph 8 above. After each round of bidding, the Debtors, after consultation with the Notice Parties, shall announce the bid (and the value of such bid) that they believe to be the highest or otherwise bid (each, the “Leading Bid”);

- (h) Any Overbid made from time to time by a Qualified Bidder must remain open and binding on the Qualified Bidder until and unless (i) the Debtors accept a bid submitted by another Qualified Bidder during the Auction as an Overbid and (ii) such prior Overbid is not selected as the Back-Up Bid. To the extent not previously provided (which will be determined by the Debtors in consultation with the Notice Parties), a Qualified Bidder submitting an Overbid must submit at the Debtors’ request (in consultation with the Notice Parties), as part of its Overbid, written evidence (in the form of financial disclosure or credit-quality support information or enhancement reasonably acceptable to the Debtors in consultation with the Notice Parties) demonstrating such Qualified Bidder’s ability to close the transaction at the purchase price contemplated by such Overbid;
- (i) a round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid from the previous round, which must include the Overbid;
- (j) except as specifically set forth herein, for the purpose of evaluating the value of the Purchase Price provided by each Subsequent Bid (including any Subsequent Bid by the Stalking Horse Bidder), the Debtors may give effect to ~~the Break-Up Fee as well as~~ any additional liabilities to be assumed by a Qualified Bidder, and any additional costs which may be imposed on the Debtors;
- (k) the Auction may include individual negotiations with any of the Auction Bidders, but all bids shall be made on the record;
- (l) all material terms of the bid that is deemed to be the highest or otherwise best bid for each round of bidding shall be fully disclosed to the Auction Bidders, and the Debtors shall use reasonable efforts to clarify any questions that the Auction Bidders may have regarding the Debtors’ announcement of the then-current highest or otherwise best bid;
- (m) Subject to Paragraph 18 herein, the Debtors and their advisors, in consultation with the Notice Parties, may employ and announce at the Auction additional or amended procedural rules that are reasonable under the circumstances for conducting the Auction, *provided* that such potential additional modifications and/or procedural rules (i) are not materially inconsistent with existing terms and conditions of the Bidding Procedures Order and these Bidding Procedures, the Bankruptcy Code, the Bankruptcy Rules, the Local Rules, or any order of the Court entered in connection with the Chapter 11 Cases; and (ii) are disclosed to the Auction Bidders;



- (n) the Auction Bidders shall (i) be deemed to have waived any right to a jury trial in connection with, and consented and submitted to the exclusive jurisdiction of the Court over, any actions or proceedings arising from or relating the Bidding Procedures, the Sale, the Auction, and the construction and enforcement of the contemplated transaction documents of the Auction Bidders, (ii) bring any such action or proceeding in the Court, and (iii) 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, without limitation, 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;
- (o) a “Winning Bid” shall: (i) if the Auction for the Assets is cancelled because only the Stalking Horse Bid is submitted on or before the Bid Deadline, be the Stalking Horse Bid; or (ii) if the Auction is conducted, be the Qualified Bid(s) that the Debtors determine at the conclusion of the Auction, in consultation with the Notice Parties, and subject to Court approval, is or are the offer or offers for the relevant Assets that is or are the highest or otherwise best from among the Qualified Bids submitted at the Auction; ~~provided, however, that if the Stalking Horse Bidder withdraws from the bidding process, the Debtors’ selection of the Winning Bid(s) for the Assets from among the other Qualified Bidders at the conclusion of the Auction shall each require the consent of Ligand.~~ In the case of (ii), in making this decision, the Debtors shall consider, in consultation with the Notice Parties ~~(and with the consent of Ligand if the Stalking Horse Bidder withdraws from the bidding process)~~, the amount of the purchase price, the assumption of liabilities, the transaction structure, and execution risk, including, without limitation, the likelihood of the bidder’s ability to close a transaction and the timing thereof, the number, type, and nature of any changes to the Stalking Horse APA submitted with the Winning Bid, as applicable, requested by each bidder, the total consideration to the Debtors’ estates, and any other factors the Debtors may deem relevant. The bidder submitting the Winning Bid shall become the “Winning Bidder,” and shall have such rights and responsibilities of the purchaser as set forth in such Winning Bid, with all modifications made at the Auction. The Debtors may, in their business judgment and in consultation with the Notice Parties, designate the Back-Up Bid (and the corresponding Back-Up Bidder) to purchase the applicable Assets in the event that the applicable Winning Bidder does not close the Sale; ~~provided, however, that if the Stalking Horse Bidder withdraws from the bidding process, the Debtors’ selection of the Back-Up Bidder from the other Qualified Bidders at the conclusion of the Auction shall require the consent of Ligand;~~
- (p) The Qualified Bidder(s) with the next highest or otherwise best Qualified Bid or collection of Qualified Bids (each, a “Back-Up Bid”), as determined by the Debtors in consultation with the Notice Parties will be required to serve as a back-up bidder (each, a “Back-Up Bidder”) and keep its bid open and irrevocable until the earlier to occur of (i) sixty (60) days after the Sale Hearing and (ii)

closing on the Winning Bid with the Winning Bidder. The Stalking Horse Bidder shall not be required to serve as the Back-Up Bidder unless the Stalking Horse Bidder submits a Subsequent Bid at the Auction;

- (q) within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a notice with the Court (a “Notice of Winning Bid”) that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids;
- (r) in the event a Winning Bid or Back-Up Bid requires the assumption and assignment of any Assumed Contracts, then the Debtors shall comply with the Assumption and Assignment Procedures (as defined below);
- (s) within one (1) business day of the close of the Auction, any Winning Bidder and any Back-Up Bidder, except if the Winning Bidder or Back-Up Bidder is the Stalking Horse Bidder, shall supplement their respective Deposit, if necessary, such that the Deposit shall be equal to an amount that is ten (10%) percent of the purchase price set forth in the applicable Winning Bid and Back-Up Bid; and
- (t) prior to the Sale Hearing, any Winning Bidder shall complete and execute all agreements, contracts, instruments and other documents evidencing and containing the terms and conditions upon which the Winning Bid was made.

**EACH QUALIFIED BID THAT IS NOT A WINNING BID OR BACK-UP BID SHALL BE DEEMED WITHDRAWN AND TERMINATED AT THE CONCLUSION OF THE SALE HEARING.**

### **13. Sale Hearing and Winning Bid Objections**

The Debtors will seek entry of an order from the Court at a hearing (the “Sale Hearing”) to begin on or before \_\_\_\_\_, 2023 at :00 a./p.m (prevailing Eastern Time), subject to the availability of the Court, to approve and authorize the Sale to the Winning Bidder (the “Sale Order”) and approval of the Back-Up Bid. Subject to the terms of the DIP Facility ~~and~~ the Stalking Horse APA, the Bidding Procedures Order and these Bidding Procedures, the Debtors reserve the right to change the date and/or time of the Sale Hearing (or any other dates related to the Sale) to achieve the maximum value for the Purchased Assets.

**Any objection relating solely to the conduct of the Auction, the Auction results, the selection of any Winning Bid or Back-Up Bid, or the terms of any Sale to a Winning Bidder or a Back-Up Bidder (each, a “Winning Bid Objection”), must be (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Notice Parties on or before [•], 2023, at 4:00 p.m. (ET).**



Any party who fails to file and serve a timely Initial Sale Objection or Winning Bid Objection shall be forever barred from asserting, at the Sale Hearing or thereafter, any Initial Sale Objection or Winning Bid Objection, including any such objection to the Bidding Procedures or to the consummation or performance of the sale of the Assets, including the transfer of Assets to the applicable Winning Bidder free and clear of liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code, and shall be deemed to consent to such sale for purposes of section 363(f) of the Bankruptcy Code.

**14. Back-Up Bidder**

Notwithstanding any of the foregoing, in the event that a Winning Bidder fails to close a Sale on or before [•], 2023, or such date as may be extended by the Debtors in consultation with the Notice Parties, and a Back-Up Bidder has been previously identified, the Debtors shall file a notice (the “Back-Up Bid Auction Notice”) and serve such Back-Up Bid Auction Notice on the U.S. Trustee, the Notice Parties, any Counterparties to Assumed Contracts subject to the Back-Up Bid, and those parties who filed a request to receive notice under Bankruptcy Rule 2002. Three (3) business days following the filing of any Back-Up Bid Auction Notice, the Back-Up Bid subject to such Back-Up Bid Auction Notice will be deemed to be the Winning Bid, the Back-Up Bidder will be deemed to be the Winning Bidder, and the Debtors shall be authorized, but not directed, to close the Sale to the Back-Up Bidder subject to the terms of the Back-Up Bid without the need for further order of the Court and without the need for further notice to any other parties.

**15. Assumption and Assignment Procedures**

In the event a Winning Bid or Back-Up Bid provides for the assumption and assignment of Assumed Contracts, the Debtors shall follow following assumption and assignment procedures (the “Assumption and Assignment Procedures”) set forth in paragraph ~~19~~20 of the Bidding Procedures Order.

**16. Return of Deposits**

All Deposits not used as part of the consummation of a Sale or not retained by the Debtors as part of damages shall be returned to each bidder not selected as a Winning Bidder no later than five (5) business days following the closing of the Sale. The Deposit of a Winning Bidder shall be applied to the purchase price for the Sale. If the Winning Bidder for a Sale fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the Proposed APA, the Debtors and their estates shall be entitled to retain the Deposit of the Winning Bidder as part of the damages resulting to the Debtors and their estates for such breach or failure to perform. For the avoidance of doubt, the Debtors’ retention of a Deposit shall not constitute a waiver of any of the Debtors’ legal or equitable rights relating to a Winning Bidder’s breach or failure to perform, and all such rights and remedies are preserved.

### 17. Consultation Rights

Any consultation rights provided to the Notice Parties by these Bidding Procedures shall not limit the Debtors' discretion in any way and shall not include the right to veto any decision made by the Debtors in the exercise of their business judgment. In the event that a member of the Creditors' Committee submits a bid that is a Qualified Bid, any obligation of the Debtors to consult with the bidding party, or their legal counsel, established under these Bidding Procedures will be waived without further action; *provided* that the bidding party will have the same rights as any other Qualified Bidder set forth herein.

Any failure to specifically identify consultation rights in any section of these Bidding Procedures shall not limit or otherwise impair the rights of the Notice Parties to consult with the Debtors. In the event that the Notice Parties disagree with matters for which the Debtors are required to consult with the Notice Parties, then the Notice Party shall have the right to seek relief from the Court on an expedited basis to resolve the dispute.

### 18. Reservation of Rights

Without prejudice to the rights of the DIP Lender under the DIP Facility or the rights of the Stalking Horse Bidder under the Stalking Horse APA, and except as otherwise provided in these Bidding Procedures, the Bidding Procedures Order or the Debtors' proposed form of Sale Order, the Debtors further reserve the right as they may reasonably determine to be in the best interest of their estates (in consultation with the Notice Parties), to: (a) determine which bidders are Qualified Bidders; (b) determine which bids are Qualified Bids; (c) determine which Qualified Bid is the highest and best proposal and which is the next highest and best proposal; (d) reject any bid that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of these Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtors and their estates; (e) impose additional terms and conditions with respect to all potential bidders other than the Stalking Horse Bidder; (f) modify these Bidding Procedures and/or implement additional procedural rules that the Debtors determine will better promote the goals of the bidding process; ~~(f) extend the deadlines set forth herein;~~ and (g) continue or cancel the Auction and/or Sale Hearing in open court without further notice or by filing a notice on the docket. ~~Before extending any deadline, the Debtor;~~ provided, however, that none of the forgoing potential modifications and/or procedural rules shall ~~consult~~ be materially inconsistent with the ~~Notice Parties and the DIP Lender~~ existing terms of these Bidding Procedures and the Bidding Procedures Order without the consent of Ligand and the Creditors' Committee.

**Exhibit 2**

**Form of Auction Notice**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Case No. 23-10937 (LSS)  
Debtors. )  
 ) (~~Joint Administration~~  
 ) ~~Requested~~Jointly Administered)

**NOTICE OF SALE, BIDDING PROCEDURES, AUCTION,  
SALE HEARING, AND OTHER DEADLINES RELATED HERETO**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

On ~~+~~July 17, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned chapter 11 cases (the “Chapter 11 Cases”), filed with the United States Bankruptcy Court for the District of Delaware (the “Court”) a motion [D.I. ~~+~~16] (the “Bidding Procedures Motion”),<sup>2</sup> seeking entry of (a) an order (the “Bidding Procedures Order”): (i) approving bidding procedures (the “Bidding Procedures”) to be used in connection with one or more sales (each a “Sale”) of the Debtors’ assets (the “Assets”) free and clear of all liens, claims, interests, and encumbrances, (ii) authorizing the Debtors to designate Ligand Pharmaceuticals, Incorporated (“Ligand”) as the Stalking Horse Bidder for all of the Assets in connection with considering the entry of the Bidding Procedures Order, (iii) scheduling an auction of the Assets (the “Auction”); (iv) approving the form and manner of service of this Notice of Sale; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, “Assumed Contracts”) in connection with any Sale; (vi) approving the form and manner of service of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of the proposed assumption and assignment of such Counterparty’s Assumed Contract; (vii) scheduling a final hearing to consider approval of the proposed Sale(s) (the “Sale Hearing”); and (vi) granting related relief; and (b) one or more orders (each, a “Sale Order”) (i) authorizing a Sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the approved Sale; and (iii) granting related relief.

On [●], 2023, the Court entered the Bidding Procedures Order [D.I. [●]].

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> Capitalized terms used but not defined herein shall have the respective meanings given to them in the Motion or the Bidding Procedures, as applicable. Any summary of the Bidding Procedures or the Bidding Procedures Order (or any provision thereof) contained herein is qualified in its entirety by the actual terms and conditions thereof. To the extent that there is any inconsistency between any summary in this Notice of Sale and the terms and conditions of either of the Bidding Procedures or the Bidding Procedures Order, the actual terms and conditions in those documents shall control.

## ASSETS FOR SALE

The Debtors intend to sell all, substantially all, or a portion of the Assets.

Any Qualified Bidder may submit a bid for the R&D Assets, the Commercial Assets, or all of the Assets, subject to the conditions set forth ~~herein~~ in the Bidding Procedures. The ability to undertake and consummate a Sale shall be subject to competitive bidding, as set forth herein and in the Bidding Procedures Order, and approval by the Court.

Any party interested in submitting a bid for any of the Debtors' Assets should contact (a) the Debtors' proposed investment banker, Raymond James ~~Securities LLC & Associates~~ (Geoffrey Richards (geoffrey.richards@raymondjames.com) and Simon Wein (simon.wein@raymondjames.com)); and (b) the Debtors' proposed counsel, Morris, Nichols, Arsht & Tunnell LLP.

## KEY DATES AND DEADLINES

### **A. Bid Deadline**

Any Qualified Bidder that intends to participate in the Auction must submit a Qualified Bid in accordance with Section 8 of the Bidding Procedures, on or before **[•], 2023, at 5:00 p.m. (ET)** (the "Bid Deadline").

### **B. Auction**

If the Debtors timely receive one or more Qualified Bids other than the Stalking Horse Bid for any Assets, then the Debtors shall conduct one or more Auctions. If the Debtors do not receive more than one Qualified Bid other than the Stalking Horse Bid, the Debtors shall cancel the Auction(s) for the Assets, deem the Stalking Horse Bid as the Winning Bid for the Assets, and shall request at the Sale Hearing that the Court approve the Stalking Horse Bid and the transactions contemplated thereunder for the Assets.

The Auction, if required, will commence on **[•], 2023, at [•] (ET)**, at the offices of proposed ~~counsel investment banker~~ for the Debtors, ~~Morris, Nichols, Arsht & Tunnell LLP, 1201 North Market Street, 16th Floor, Wilmington, Delaware 19899~~ Raymond James & Associates, Inc., 320 Park Avenue, Floor 12, New York, New York 10022, or virtually via telephone or video conference pursuant to information to be timely provided by the Debtors to the Auction Participants (as defined below). If the Debtors conduct the Auction virtually, the Debtors will provide instructions setting forth how to attend the Auction to the Auction Participants via electronic mail. The Debtors will provide notice (via electronic mail or otherwise) of any change in the date, time, or location of any Auction to the relevant Qualified Bidders, and will cause publication of such change to occur on the website of the Debtors' claims and noticing agent, Kurtzman Carson Consultants LLC.

Within one (1) business day of the selection of any Winning Bid(s), the Debtors shall file a Notice of Winning Bid with the Court that sets forth: (i) the identity of the Winning Bidder(s) and any Back-Up Bidder; (ii) the amount of the Winning Bid and any Back-Up Bid; (iii) a summary of the Assets subject to the Winning Bid; and (iv) whether the Winning Bidder or the

Back-Up Bidder have any connections to the Debtors other than those arising from their respective bids.

**C. Sale Objection Deadlines**

- i. Initial Sale Objection Deadline. Objections to a Sale of the Assets, including any general objections to the Sale and objections to the Sale of any Assets free and clear of all liens, claims, interests, and encumbrances pursuant to section 363(f) of the Bankruptcy Code to the Stalking Horse Bidder, a Winning Bidder or a Back-Up Bidder, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on (i) the Debtors; (ii) proposed counsel to the Debtors; (iii) counsel to Ligand; and (iv) proposed counsel ~~to any official committee of unsecured creditors appointed in these Chapter 11 Cases~~the Creditors' Committee (the "Objection Notice Parties") on or before [•], **2023, at 4:00 p.m. (ET).**
- ii. Winning Bid Objection Deadline. Any objection relating solely to the conduct of the Auction, the Auction results, the selection of any Winning Bid or Back-Up Bid, or the terms of any Sale to a Winning Bidder or a Back-Up Bidder, which could not have been raised by the Initial Sale Objection Deadline, must (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state with specificity the grounds for such objection, and (d) be filed with the Court and served on the Objection Notice Parties on or before [•], **2023, at 4:00 p.m. (ET).**

**D. Sale Hearing**

The Sale Hearing shall take place on [•], **2023, at \_\_: \_\_.m. (ET)**, before The Honorable [•], United States Bankruptcy Judge, in the United States Bankruptcy Court for the District of Delaware, located at 824 N. Market Street, Wilmington, Delaware 19801.

**RESERVATION OF RIGHTS TO MODIFY BIDDING PROCEDURES**

In accordance with and subject to the Bidding Procedures and the Bidding Procedures Order, and without prejudice to the rights of the DIP Lender under the DIP Facility or the Stalking Horse Bidder under the Stalking Horse APA, the Debtors, in the exercise of their reasonable business judgment and in a manner consistent with their fiduciary duties and applicable law, in consultation with the Notice Parties, shall have the right to modify the Bidding Procedures, including to (a) extend, modify, adjourn, or waive dates, deadlines or other terms and conditions set forth herein or in the Bidding Procedures; (b) adopt new rules and procedures for conducting the bidding and Auction process so long as any such modifications are reasonably disclosed to Qualified Bidders; and (c) promote competitive bidding for and maximizing the value of the Assets; provided, however, that under no circumstance (i) shall any of the forgoing potential modifications and/or procedural rules be materially inconsistent with the existing terms of the Bidding Procedures Order or the Bidding Procedures without the consent of the Creditors' Committee and Ligand; or (ii) may a bid for the R&D Assets, other than the Stalking Horse Bid, qualify as a Qualified Bidder if it does not provide for the unaltered assumption and assignment of the Royalty Agreement.

**ADDITIONAL INFORMATION**

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, and all other documents filed with the Court may be obtained free of charge by visiting the Kurtzman Carson Consultants LLC Website, or can be requested by calling Kurtzman Carson Consultants LLC at: [ ] (Domestic) or [ ] (International).

**FAILURE TO ABIDE BY THE BIDDING PROCEDURES, THE BIDDING PROCEDURES ORDER, OR ANY OTHER APPLICABLE ORDER OF THE COURT ENTERED IN THESE CHAPTER 11 CASES MAY RESULT IN THE REJECTION OF YOUR BID AND YOUR DISQUALIFICATION FROM PARTICIPATING IN THE BIDDING FOR AND AUCTION OF ANY OF THE ASSETS.**

**THE FAILURE OF ANY PERSON OR ENTITY TO TIMELY FILE AND SERVE AN OBJECTION IN ACCORDANCE WITH THE BIDDING PROCEDURES ORDER, INCLUDING THE FAILURE TO FILE ANY SUCH OBJECTION BY THE APPLICABLE OBJECTION DEADLINE, SHALL FOREVER BAR SUCH PERSON OR ENTITY FROM ASSERTING, AT THE SALE HEARING OR THEREAFTER, ANY SUCH OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, THE CONSUMMATION OF ANY APPLICABLE SALE, INCLUDING THE SALE OF ANY ASSETS TO A **SUCCESSFUL** WINNING BIDDER FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES, PURSUANT TO SECTION 363(f) OF THE BANKRUPTCY CODE OR THE TERMS OF ANY STALKING HORSE AGREEMENT OR OTHER ASSET PURCHASE AGREEMENT EXECUTED BY THE DEBTORS.**

Dated:  
Wilmington, Delaware

Respectfully submitted,

/s/ DRAFT

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

Derek C. Abbott (No. 3376)

Daniel B. Butz (No. 4227)

Tamara K. Mann (No. 5643)

Scott D. Jones (No. 6672)

1201 Market Street, 16th Floor

Wilmington, Delaware 19801

Telephone: (302) 658-9200

Facsimile: (302) 658-3989

Email: [dabbott@morrisnichols.com](mailto:dabbott@morrisnichols.com)

[dbutz@morrisnichols.com](mailto:dbutz@morrisnichols.com)

[tmann@morrisnichols.com](mailto:tmann@morrisnichols.com)

[sjones@morrisnichols.com](mailto:sjones@morrisnichols.com)

*Proposed Counsel to the Debtors and  
Debtors in Possession*



**Exhibit 3**

Form of [Additional](#) Assumption and Assignment Notice

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re: )  
 ) Chapter 11  
NOVAN, INC., *et al.*,<sup>1</sup> )  
 ) Ca Case No. 23-10937 (LSS)  
Debtors. )  
 ) (~~Joint Administration~~  
 ) ~~Requested~~Jointly Administered  
 ) **Objection Deadline:** \_\_\_\_\_, 2023

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT OF  
CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

PLEASE TAKE NOTICE that, on [•], 2023 (the “Petition Date”), the above-captioned debtors and debtors in possession (collectively, the “Debtors”) each filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Court”), commencing these chapter 11 cases (the “Chapter 11 Cases”).

PLEASE TAKE FURTHER NOTICE that, on [•], 2023, the Debtors filed a motion [D.I. [•]] (the “Bidding Procedures Motion”) seeking entry of (a) an order (the “Bidding Procedures Order”), (i) approving bidding procedures (the “Bidding Procedures”) to be used in connection with one or more sales (each a “Sale”) of the Debtors’ assets (the “Assets”) free and clear of all liens, claims, interests, and encumbrances, (ii) authorizing the Debtors to designate one or more affiliates of Ligand Pharmaceuticals, Incorporated or its designee (“Ligand”) as the Stalking Horse Bidder for all of the Assets in connection with considering the entry of the Bidding Procedures Order, (iii) scheduling an auction of the Assets (the “Auction”); (iv) approving the form and manner of service of this Notice of Sale; (v) approving procedures for the assumption and assignment of executory contracts and unexpired leases (collectively, “Assumed Contracts”) in connection with any Sale; (vi) approving the form and manner of service of notice to each relevant non-debtor counterparty to an Assumed Contract (each a “Counterparty”) of the proposed assumption and assignment of such Counterparty’s Assumed Contract; (vii) scheduling a final hearing to consider approval of the proposed Sale(s) (the “Sale Hearing”); and (vi) granting related relief; and (b) one or more orders (each, a “Sale Order”) (i) authorizing a Sale of the Assets free and clear of all liens, claims, interests, and encumbrances; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the approved Sale; and (iii) granting related relief; and (b) one or more orders of the Court (collectively, the “Sale Orders”):<sup>2</sup> (i) authorizing the sale of the Debtors’ Assets free and clear of

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digitals of the Debtors’ federal tax identification number (if applicable), are: Novan, Inc. (7682) and EPI Health, LLC (9118). The corporate headquarters and the mailing address for the Debtors is 4020 Stirrup Creek Drive, Suite 110, Durham, NC 27703.

<sup>2</sup> A copy of the proposed form of Sale Order(s) will be filed in advance of the Sale Hearing.

all liens, claims, interests, and encumbrances, except as provided in the Sale Order; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the Sale(s); and (iii) granting related relief; or (c) in the event the Bankruptcy Court does not enter the Bidding Procedures Order or the DIP Order on or before 25 calendar days after the Petition Date, a Sale Order, in the form attached hereto as Exhibit B (the “Private Sale Order”) (i) authorizing the sale to Ligand of the Debtors’ Assets free and clear of all liens, claims, interests, and encumbrances in accordance with the Stalking Horse Agreement (as defined below) attached to the Private Sale Order as Exhibit 1; (ii) authorizing the assumption and assignment of certain Assumed Contracts in connection with the Sale; and (iii) granting related relief.

**PLEASE TAKE FURTHER NOTICE** that, on [●], 2023, the Court entered the Bidding Procedures Order [D.I. [●]], approving, among other things, the Bidding Procedures, which establish key dates and times relating to the Sale and the Auction. All interested bidders should carefully read the Bidding Procedures Order and the Bidding Procedures in their entirety.

**PLEASE TAKE FURTHER NOTICE** that, upon the closing of the Sale, including a potential Sale to Ligand pursuant to the proposed Private Sale Order, the Debtors intend to assume and assign to such purchaser (the “Purchaser”) certain executory contracts and unexpired leases (the “Assumed Contracts”). A schedule listing the contracts and leases that may potentially be assumed and assigned as part of the Sale is attached hereto as **Exhibit 1** (the “Contracts Schedule”) and may also be viewed free of charge on the Debtors’ case information website, located at [https://\[●\]](https://[●]), or can be requested by calling the Debtors’ claims and noticing agent, Kurtzman Carson Consultants LLC.

**PLEASE TAKE FURTHER NOTICE** that Cure Amounts, if any, for the assumption and assignment of such contracts and leases are also set forth on the Contracts Schedule. Each Cure Amount listed on the Contracts Schedule represents all liabilities of any nature of the Debtors arising under a contract or lease prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease, whether known or unknown, whether due or to become due, whether accrued, absolute, contingent or otherwise, so long as such liabilities arise out of or relate to events occurring prior to the closing of the Sale or other applicable effective date of the assumption and assignment of such contract or lease.

**YOU ARE RECEIVING THIS NOTICE BECAUSE YOU HAVE BEEN IDENTIFIED AS A COUNTERPARTY TO A CONTRACT OR LEASE THAT MAY BE ASSUMED AND ASSIGNED AS PART OF THE SALE.** *The presence of a contract or lease listed on Exhibit 1 attached hereto does not constitute an admission that such contract or lease is an executory contract or unexpired lease or that such contract or lease will be assumed and assigned as part of the Sale. The Debtors reserve all their rights, claims and causes of action with respect to the contracts and leases listed on Exhibit 1 attached hereto.*

**Filing Objections**

Pursuant to the Assumption and Assignment Procedures, objections to the proposed assumption and assignment of a contract or lease on any basis (other than objections related solely to adequate assurance of future performance by a ~~Successful~~Winning Bidder other than the Stalking Horse Bidder, if any), including, without limitation, on the basis (i) of adequate assurance of the Stalking Horse Bidder's future ability to perform; (ii) of the transfer of any related rights or benefits thereunder; (iii) that consent is allegedly required from any Counterparty for the assumption, assignment, and transfer of the Assumed Contract; (iv) relating to Cure Amounts, must (1)(a) be in writing; (b) state the basis for such objection; and (c) if such objection is to the Cure Amount, state with specificity what Cure Amount the counterparty believes is required (in all cases, with appropriate documentation in support thereof) and (2) be filed with the Court and served no later than [•], **2023 at 4:00 p.m. (ET)** on the following parties (collectively, the "Objection Notice Parties"): (a) counsel to the Debtors: [•]; (b) counsel to Ligand [•]; (c) counsel to the Creditors' Committee, [•]; (d) the Office of the U.S. Trustee for Region 3, 844 King Street, Suite 2207, Wilmington, Delaware 19801, Attn: [•]; [and (e) any ~~Successful~~Winning Bidders.]

If not the Stalking Horse Bidder, the Debtors shall file a notice identifying the ~~Successful~~Winning Bidder(s) and Backup Bidder(s) (if selected) (the "Notice of SuccessfulWinning Bidder") and shall serve the Notice of ~~Successful~~Winning Bidder on each counterparty to a potential Assumed Contract as soon as reasonably practicable after closing the Auction, if any. Each counterparty to a potential Assumed Contract will then have an opportunity to object to the identity of the ~~Successful~~Winning Bidder(s) (other than the Stalking Horse Bidder, if any) or adequate assurance of future performance with respect to such counterparty's contract or lease provided by the ~~Successful~~Winning Bidder(s), which must (i) be in writing, (ii) comply with the Bankruptcy Code, Bankruptcy Rules and Local Rules, (iii) state, with specificity, the legal and factual bases thereof, (iv) be filed with the Court by [•], **2023 at 4:00 p.m. (ET)** (the "Adequate Assurance Objection Deadline"), and (v) be served on the Objection Notice Parties.

The Court will hear and determine any objections to the assumption and assignment of the Assumed Contracts to the Purchaser at the Sale Hearing or at a later hearing, as determined by the Debtors. The Sale Hearing to consider the proposed Sale shall be held before the Honorable [•] on [•] (**prevailing Eastern Time**), or such other date as determined by the Court, at the United States Bankruptcy Court for the District of Delaware, 824 North Market Street, [•] Floor, Courtroom No. [•], Wilmington, Delaware 19801.

### **Consequences of Failing to Timely Assert an Objection**

**UNLESS YOU FILE AN OBJECTION TO THE CURE AMOUNT AND/OR THE ASSUMPTION OR ASSIGNMENT OF YOUR CONTRACT OR LEASE IN ACCORDANCE WITH THE INSTRUCTIONS AND DEADLINES SET FORTH HEREIN, YOU SHALL BE (A) BARRED FROM OBJECTING TO THE CURE AMOUNT SET FORTH ON EXHIBIT 1, (B) ESTOPPED FROM ASSERTING OR CLAIMING ANY CURE AMOUNT AGAINST THE DEBTORS, THE STALKING HORSE BIDDER, IF ANY, OR OTHERWISE ~~SUCCESSFUL~~WINNING BIDDER(S)**

THAT IS GREATER THAN THE CURE AMOUNT SET FORTH ON EXHIBIT 1 AND (C) DEEMED TO HAVE CONSENTED TO THE ASSUMPTION BY THE DEBTORS AND ASSIGNMENT OR TRANSFER (INCLUDING THE TRANSFER OF ANY RELATED RIGHTS AND BENEFITS THEREUNDER) TO THE STALKING HORSE BIDDER OR ~~SUCCESSFUL~~WINNING BIDDER, AS APPLICABLE, OF THE YOUR CONTRACT OR LEASE AND THE ADEQUACY OF ASSURANCE OF FUTURE PERFORMANCE THEREUNDER, AND BE FOREVER BARRED AND ESTOPPED FROM ASSERTING OR CLAIMING AGAINST THE DEBTORS OR THE STALKING HORSE BIDDER OR THE ~~SUCCESSFUL~~WINNING BIDDER, AS APPLICABLE, THAT ANY ADDITIONAL DEFAULTS EXIST OR THAT CONDITIONS TO ASSUMPTION, ASSIGNMENT, AND TRANSFER MUST BE SATISFIED UNDER YOUR CONTRACT OR LEASE (INCLUDING, WITHOUT LIMITATION, WITH RESPECT TO ADEQUATE ASSURANCE OF FUTURE PERFORMANCE BY THE STALKING HORSE BIDDER OR WINNING BIDDER, AS APPLICABLE), OR THAT ANY RELATED RIGHT OR BENEFIT UNDER SUCH CONTRACT OR LEASE CANNOT AND WILL NOT BE AVAILABLE TO THE STALKING HORSE BIDDER OR THE ~~SUCCESSFUL~~WINNING BIDDER, AS APPLICABLE.

**Obtaining Additional Information**

Copies of the Bidding Procedures Motion, the Bidding Procedures, the Bidding Procedures Order, the Stalking Horse Agreement, if any, and all other documents filed with the Court, are available free of charge on the Debtors' case information website, located at [https:// \[•\]](https://[•]), or can be requested by calling the Debtors' claims and noticing agent, [•].

Adequate assurance of future performance information for the Stalking Horse Bidder is available by contacting counsel to Ligand.

Dated:  
Wilmington, Delaware

Respectfully submitted,

*/s/ DRAFT*

**MORRIS, NICHOLS, ARSHT & TUNNELL LLP**

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*Proposed Counsel to the Debtors and  
Debtors in Possession*

| Exhibit **B4**

| ~~Private Sale Order~~

| Initial Assumption and Assignment Notice (as Filed on July 25, 2023)

~~{TO BE FILED}~~



**Exhibit 1**

**Stalking Horse APA**

Document comparison by Workshare Compare on Monday, August 14, 2023  
9:47:48 PM

<b>Input:</b>	
Document 1 ID	iManage://WIL-DMS/WILM/17009937/1
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Document 2 ID	iManage://WIL-DMS/WILM/17040502/3
Description	#17040502v3<WILM> - Novan - Bidding Procedures Order (FINAL 8.14.23)
Rendering set	Standard

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<u>Moved to</u>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
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Padding cell	

<b>Statistics:</b>	
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Deletions	142
Moved from	3
Moved to	3
Style changes	0
Format changes	0
Total changes	432

