

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

DEXTERA SURGICAL INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 17-12913 (KJC)

Re: Docket Nos. 11 and 99

**ORDER (A) APPROVING BIDDING PROCEDURES AND SALE PROCEDURES;  
(B) APPROVING FORM AND MANNER OF NOTICES; (C) APPROVING FORM  
OF ASSET PURCHASE AGREEMENT, INCLUDING STALKING HORSE PAYMENT;  
(D) SCHEDULING DATES TO CONDUCT AUCTION AND HEARING TO CONSIDER  
FINAL APPROVAL OF SALE AND RELATED MATTERS; (E) APPROVING  
PROCEDURES FOR THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES, AND (F) GRANTING RELATED RELIEF**

Upon the *Debtor's Motion for Orders (A)(I) Authorizing and Approving Bidding Procedures, and Stalking Horse Payment; (II) Authorizing and Approving the Debtor's Entry into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling an Auction and Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases* [D.I. 11] (the "Motion")<sup>2</sup> filed by the above captioned debtor and debtor-in-possession (the "Debtor"); and having reviewed the Motion, and the record in this case, and having considered the statements of

<sup>1</sup> The last four digits of the Debtor's taxpayer identification number are as follows: 7832. The address of the Debtor's corporate headquarters is 900 Saginaw Drive, Redwood City, CA, 94603.

<sup>2</sup> Reference herein is made to the bidding procedures attached hereto as **Exhibit 1** (the "Bidding Procedures") and that certain Asset Purchase Agreement dated as of December 11, 2017 between Aesculap, Inc. or its permitted assignee as buyer (the "Stalking Horse Bidder"), and the Debtor, as seller (the "Stalking Horse APA"), as applicable. Capitalized terms used but not defined herein shall have the meanings stated in the Motion or the Stalking Horse APA, as applicable.

counsel for the Debtor and the Stalking Horse Bidder the Court finds that establishing bidding procedures and sale procedures in connection with a sale of the Purchased Assets (defined below), in accordance with the provisions contained in this Order, is in the best interests of the Debtor's estate; accordingly,

IT IS HEREBY FOUND AND DETERMINED THAT:

A. The findings and conclusions set forth herein constitute the Court's findings of fact and conclusions of law pursuant to Rule 7052 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any findings of fact herein constitute conclusions of law, they are adopted as such. To the extent any conclusions of law herein constitute findings of fact, they are adopted as such.

B. The Court has jurisdiction over the Motion and the transactions contemplated by the Stalking Horse APA pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware*, dated February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M) and (O). Venue in this district is proper under 28 U.S.C. §§ 1408 and 1409.

C. The statutory bases for the relief requested in the Motion are (i) sections 105, 363, 365, 503, and 507 of the Bankruptcy Code, 11 U.S.C. §§ 101–1532 (the "Bankruptcy Code") and (ii) Bankruptcy Rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014, and (iii) Rules 2002-1, 6004-1 and 9006-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules").

D. Good and sufficient notice of the Motion and the relief sought therein has been given under the circumstances, and no other or further notice is required except as set forth herein with respect to the hearing to be conducted to approve the transactions contemplated by

the Stalking Horse APA (the “Sale Hearing”). A reasonable opportunity to object or be heard regarding the relief provided herein has been afforded to parties in interest.

E. The Debtor’s proposed notice of the Bidding Procedures is appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the sale of substantially all of the Debtor’s assets (the “Purchased Assets”), the auction (the “Auction”) for the Purchased Assets, and the Bidding Procedures to be employed in connection therewith.

F. The Debtor has articulated good and sufficient reasons for the Court to: (i) approve (a) the Bidding Procedures and (b) the Stalking Horse Payment as provided in the Stalking Horse APA and this Order; (ii) authorize, to the extent necessary, the Debtor’s entry into (but not consummation of) the Stalking Horse APA; (iii) schedule the Auction and Sale Hearing; (iv) approve the form and manner of notice of the Motion and the sale of the Purchased Assets (the “Sale Notice”); (iv) approve the procedures for the assumption and assignment of such executory contracts and unexpired leases, including notice of proposed cure amounts; and (v) grant related relief.

G. The entry of this Order is in the best interests of the Debtor, its estate, creditors and other parties in interest.

H. The Bidding Procedures are fair, reasonable, and appropriate, and are designed to maximize the value to be achieved for the Purchased Assets. The Bidding Procedures were negotiated in good faith by the Debtor and the Stalking Horse Bidder.

I. The Debtor has demonstrated a compelling business justification of the payment of the Stalking Horse Payment (defined below) under the circumstances set forth in the Stalking Horse APA. The Stalking Horse Payment (i) is payable as provided herein, (ii) is of substantial benefit to the Debtor’s estate, (iii) is reasonable and appropriate, including in light of the size and

nature of the sale and the efforts that have been or will be expended by the Stalking Horse Bidder notwithstanding that the proposed sale is subject to higher and better offers for the Purchased Assets, (iv) was negotiated by the parties at arm's length and in good faith, and (v) is necessary to ensure that the Stalking Horse Bidder will continue to pursue its proposed acquisition of the Purchased Assets contemplated by the Stalking Horse APA. The Stalking Horse Bidder is unwilling to commit to purchase the Purchased Assets under the terms of the Stalking Horse APA absent approval of the Stalking Horse Payment.

J. The Bidding Procedures comply with the requirements of Local Rule 6004-1(c).

K. The procedures for the assumption and assignment of executory contracts and unexpired leases are fair, reasonable, and appropriate, and comply with the provisions of section 365 of the Bankruptcy Code.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

1. The Motion is GRANTED to the extent set forth herein.

2. Except as provided to the contrary herein, all objections to the Motion or the relief provided herein that have not been withdrawn, waived or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.

3. The Bidding Procedures, attached hereto as Exhibit 1, are hereby approved in their entirety, are incorporated by reference, and shall govern the bids and proceedings related to the sale and the Auction, and the Bidding Procedures Key Dates, attached hereto as Exhibit 2, are hereby approved in their entirety. The Debtor is authorized to take any and all actions necessary to implement the Bidding Procedures.

4. The Debtor may sell the Purchased Assets and enter into the transactions contemplated by the Stalking Horse APA by conducting an Auction in accordance with the Bidding Procedures.

5. The Auction shall take place on January 22, 2018 at 10:00 a.m. (prevailing Eastern Time) at the New York offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036. The Auction shall be conducted in accordance with the Bidding Procedures.

6. The Sale Hearing shall be held before the Court on January 23, 2018 at 10:00 a.m. (prevailing Eastern Time).

7. Objections, if any, to the sale of the Purchased Assets and the transaction contemplated by the Stalking Horse APA, or the relief requested in the Motion must: (a) be in writing; (b) comply with the Bankruptcy Rules and the Local Rules; (c) be filed with the Bankruptcy Court on or before 5:00 p.m. (prevailing Eastern Time) on January 19, 2018 (the "Sale Objection Deadline"); and (d) be served upon: (i) Dextera Surgical, Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), jnikolchev@dexterasurgical.com; (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.), reisenbach@cooley.com, and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) mark.minuti@saul.com ; (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.), rl@stevenslee.commailto:bhall@sgrlaw.com, and (v) the Office of the United States

Trustee, attention David L. Buchbinder, Esq., 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (collectively, the “Objection Notice Parties”), in each case, so as to be received no later than 5:00 p.m. (prevailing Eastern Time) on the Sale Objection Deadline.

8. The notice, substantially in the form attached hereto as **Exhibit 3** (the “Sale Notice”), is hereby approved.

9. On or before three (3) business days after entry of this Order, the Debtor will cause the Motion and the Sale Notice to be sent by first-class mail postage prepaid, to the following: (a) all creditors or their counsel known to the Debtor to assert a lien (including any security interest), claim, right, Interest or encumbrance of record against all or any portion of the Purchased Assets; (b) the Office of the United States Trustee for the District of Delaware, attention David L. Buchbinder, Esq.; (c) counsel to the Stalking Horse Bidder; (d) counsel to Century Medical, Inc.; (e) all parties in interest who have requested notice pursuant to Bankruptcy Rule 2002; (f) the United States of America Internal Revenue Service; (g) the United States Attorney for the District of Delaware; (h) the United States of America Environmental Protection Agency; (i) the United States of America Food and Drug Administration; (j) the Pension Benefit Guaranty Corporation; (k) the State of California Department of Revenue; (l) the State of California Environmental Protection Agency; (m) the Office of the Attorney General for the State of California; (n) the State of California Department of Industrial Relations; (o) all counterparties to any Executory Contract or Lease of the Debtor; (p) all other known creditors of and holders of interests in the Debtor; (q) all potential bidders previously identified or otherwise known to the Debtor within the prior twelve (12) months; (r) counsel to the Official Committee of Unsecured Creditors, if one has been appointed, (s) all parties listed on the mailing matrix filed by the Debtor in this Bankruptcy Case; (t) all purchasers of medical devices from the

Debtor since January 1, 2015; and (u) to the extent known to the Debtor, all persons upon whom any medical devices sold by the Debtor since January 1, 2015 were used.

10. The notice, substantially in the form attached hereto as Exhibit 4 (the “Assumption and Assignment Notice”), of potential assumption and/or assignment of the Debtor’s executory contracts and unexpired leases (individually a “Debtor’s Contract” and collectively, the “Debtor’s Contracts”), is hereby approved.

11. On or before three (3) business days after the entry of this Order, the Debtor shall serve by first-class mail or hand delivery the Assumption and Assignment Notice on all counterparties to the Debtor’s Contracts. The Assumption and Assignment Notice shall identify the Debtor’s Contracts and provide the amounts that the Debtor believes must be paid to each non-debtor counterparty to such Debtor’s Contract to cure any defaults required to be cured as a condition of assumption of such Debtor’s Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (each an “Asserted Cure Amount”).

12. No later than twelve (12) days prior to the Sale Hearing, the Stalking Horse Bidder shall (i) designate in writing to the Debtor which of the Debtor’s Contracts are to be assumed by the Debtor and assigned to the Stalking Horse Bidder if the Stalking Horse Bidder becomes the Successful Bidder (as defined in the Bidding Procedures), and (ii) submit to the Debtor financial and other information about the Stalking Horse Bidder to demonstrate that the Stalking Horse Bidder is able to provide adequate assurance of future performance under Section 365 of the Bankruptcy Code (the “Stalking Horse Bidder Information”). The Debtor may disclose the Stalking Horse Bidder Information to those non-Debtor counterparties to such designated Debtor’s Contracts that make a written request for such information to Debtor’s counsel and who confirm in writing their agreement to keep such information strictly

confidential and to use it solely for the purpose of evaluating whether the Stalking Horse Bidder has provided adequate assurance of future performance under the counterparty's Debtor's Contract; provided, however, that the Stalking Horse Bidder may require such counterparties to execute confidentiality agreements prior to the remittance of any confidential, non-public information.

13. For Qualified Bidders other than the Stalking Horse Bidder, the Debtors shall provide Adequate Assurance Information to counterparties to the Debtor's Contracts and their counsel, if known, as soon as practicable upon receiving a Qualified Bid, but no later than one (1) business day following receipt of such Qualified Bid; provided, however, that Qualified Bidders may require such counterparties, prior to the remittance of any confidential, non-public information, to agree to keep such information confidential. **Any non-Debtor party to a Contract who would like to receive Adequate Assurance Information on an expedited basis may provide the Debtor with an e-mail address or fax number, which the Debtor shall use to provide the Adequate Assurance Information to such party.**

14. No later than the Bid Deadline (defined below), and in connection with submission of a bid, any bidder other than the Stalking Horse Bidder shall designate in writing to the Debtor which of the Debtor's Contracts are to be assumed by the Debtor and assigned to such bidder if such bidder becomes the Successful Bidder.

15. Any objection to the assumption and assignment of a Debtor's Contract or to the Asserted Cure Amount (including, as to the Stalking Horse Bidder, to adequate assurance of future performance by the Stalking Horse Bidder) (collectively, a "Contract Objection"), must be filed with the Court on or before the Sale Objection Deadline, and served so as to be received the same day as the objection is filed, upon the Objection Notice Parties.



16. Any Contract Objection must state the basis for such objection and, if objecting to the Asserted Cure Amount, state with specificity the amount that the counterparty to the applicable Debtor's Contract believes must be paid to it to cure any defaults required to be cured as a condition of assumption of the applicable Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (in all cases with appropriate documentation in support thereof). If no Contract Objection is timely received as to a Debtor's Contract, the Asserted Cure Amount set forth in the Assumption and Assignment Notice applicable to such Debtor's Contract shall be controlling, notwithstanding anything to the contrary in the Debtor's Contract or other documents. The Assumption and Assignment Notice shall also provide that the Contract Objection to any Asserted Cure Amount or assumption and assignment will be heard at the Sale Hearing at a later hearing, as determined by the Debtor provided, however, if the Stalking Horse Bidder is the Successful Bidder any determination by the Debtor to have a Contract Objection related to any issue other than an objection to the Asserted Cure Amount heard at a later hearing shall be subject to the consent of the Stalking Horse Bidder. If a Successful Bidder that is not the Stalking Horse Bidder prevails at the Auction, then the deadline to object to assumption and assignment (solely on the grounds of adequate assurance of future performance) shall be extended to the Sale Hearing, provided, however, that the deadline to object to the Asserted Cure Amount shall not be extended.

17. Unless a non-Debtor counterparty to any Debtor's Contract files an objection to the Asserted Cure Amount by the applicable objection deadline, then such counterparty shall be (a) forever barred from objecting to the Asserted Cure Amount and (b) forever barred and estopped from asserting or claiming against the Debtor, the Stalking Horse Bidder, or any other Successful Bidder or any other assignee of such Debtor's Contract that any amount other than

the Asserted Cure Amount is required to be paid to such non-Debtor counterparty to cure any defaults required to be cured as a condition of assumption of the applicable Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code. Notwithstanding the foregoing, a counterparty to any Debtor's Contract may include in any Contract Objection to the Asserted Cure Amount additional amounts to account for any defaults occurring between the date any such Contract Objection is filed and the assumption of the Debtor's Contract.

18. Unless a non-Debtor counterparty to any Debtor's Contract files a timely objection to the assumption and assignment of such contract to the Stalking Horse Bidder or any other Successful Bidder, then such counterparty shall be deemed to have consented to the assumption and assignment to the Stalking Horse Bidder or other Successful Bidder, as applicable.

19. The Stalking Horse Bidder and any other Successful Bidder may remove any Debtor's Contract from its list of Debtor's Contracts designated for assumption and assignment at any time prior to the conclusion of the Sale Hearing. The Stalking Horse Bidder is entitled to make any bids at the Auction in compliance with the Bidding Procedures.

20. The Sale Hearing may be continued, from time to time, without further notice to creditors or other parties in interest other than by announcement of said continuance before the Court on the date scheduled for such hearing or in the hearing agenda for such hearing provided, however, if the Stalking Horse Bidder is the Successful Bidder any such continuance shall be subject to the consent of the Stalking Horse Bidder.

21. If the Stalking Horse APA has not been terminated by the Debtor based on a breach by the Stalking Horse Bidder, and the Debtor sells all or substantially all of the Purchased Assets in a transaction or series of transactions with one or more persons other than the Stalking

Horse Bidder, upon consummation of such transaction(s), from the proceeds of such sale(s), the Debtor shall pay to the Stalking Horse Bidder Five Hundred Nineteen Thousand Dollars (\$519,000) (the "Stalking Horse Payment"). The Stalking Horse Payment shall be treated as an administrative claim in this case pursuant to §§ 503(b)(1) and 507(a)(2) of the Bankruptcy Code and as a direct cost of such sale(s). No liens or other Interests shall attach to the amounts owed to the Stalking Horse Bidder on account of the Stalking Horse Payment. No further order of this Court shall be required in order to pay the Stalking Horse Payment to the Stalking Horse Bidder.

22. Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement, break-up, termination or similar fee or payment.

23. Except as otherwise provided in this Order, the Debtor further reserves the right as it may reasonably determine to be in the best interests of its estate: (a) to determine which bidders are Qualified Bidders; (b) to determine which bids are Qualified Bids; (c) to determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) to reject any bid, other than the Stalking Horse Bid, that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code, or (iii) contrary to the best interests of the Debtor and its estate; (e) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, to modify the Bidding Procedures, to adopt additional rules or procedures, and to extend the deadlines set forth therein or in this Order (other than to permit the submission of bids after the close of the Auction); (f) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or

terminated, to continue or cancel the Auction; and (g) with the consent of the Stalking Horse Bidder, if the Stalking Horse Bid is the Successful Bid, as long as the Stalking Horse APA has not been terminated, to continue the Sale Hearing in open court, without further notice. As long as the Stalking Horse APA has not been terminated, the Stalking Horse Bidder shall be a party in interest entitled to be heard on any matter relating to the sale process described herein, including any requests to modify the Bidding Procedures.

24. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Purchased Assets, the Auction, and any transaction contemplated herein.

25. To the extent that any chapter 11 plan confirmed in this case or any order confirming any such plan or any other order in this case (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code) alters, conflicts with or derogates from the provisions of this Order, the provisions of this Order shall control. The Debtor's obligations under this Order shall survive conversion of this case to a case under chapter 7 of the Bankruptcy Code, confirmation of any plan of reorganization or discharge of claims thereunder and shall be binding upon the Debtor, a Chapter 7 trustee and the reorganized or reconstituted debtor, as the case may be, after the effective date of a confirmed plan or plans in the Debtor's case (including any order entered after any conversion of this case to a case under chapter 7 of the Bankruptcy Code).

26. Notwithstanding the possible applicability of Bankruptcy Rules 6004(h), 6006(d), 7062, 9014 or any other provisions of the Bankruptcy Rules or the Local Rules stating the

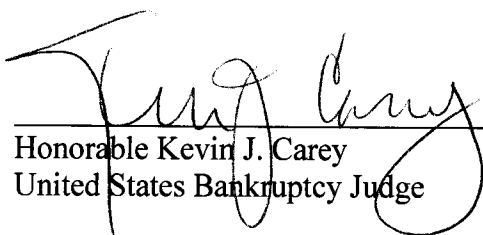
contrary, the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

27. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

28. The Debtor is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

29. The Court shall retain jurisdiction over any matters related to or arising from the implementation of this Order.

Dated: Jan 5, 2018

  
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Honorable Kevin J. Carey  
United States Bankruptcy Judge

## EXHIBIT 1

### **BIDDING PROCEDURES**<sup>1</sup>

By the Motion dated December 11, 2017, Dextera Surgical Inc. (the “Debtor”) sought approval of, among other things, the procedures through which it will determine the highest or otherwise best price for the sale of substantially all of its assets (the “Purchased Assets”) described in the Stalking Horse APA dated as of December 11, 2017 (the “Stalking Horse APA”) by and among Aesculap, Inc. or its permitted assignee as purchaser (the “Stalking Horse Bidder”) and the Debtor, as seller, a copy of which is attached as **Exhibit A** to the Motion.

On January \_\_, 2018, the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) entered an order (the “Bidding Procedures Order”), which, among other things, authorized the Debtor to determine the highest or otherwise best price for the Purchased Assets through the process and procedures set forth below (the “Bidding Procedures”).

Unless expressly indicated, the following Bidding Procedures apply to all bidders regardless of the phase of the Auction in which the bidder intends to participate.

#### **Access to Diligence Materials**

To participate in the bidding process with respect to a transaction involving some or all of the Purchased Assets (a “Competing Transaction”) and to receive access to due diligence (the “Diligence Materials”), a party must submit to the Debtor an executed confidentiality agreement in the form and substance satisfactory to the Debtor. A party who qualifies for access to Diligence Materials shall be a “Preliminary Interested Investor.” All due diligence requests must be directed to the Debtor.

For any Preliminary Interested Investor who is a competitor of the Debtor or is affiliated with any competitor of the Debtor, the Debtor reserves the right to withhold any Diligence Materials that the Debtor, in its sole discretion, determines are business-sensitive or otherwise not appropriate for disclosure to such Preliminary Interested Investor.

#### **Bid Qualification Process**<sup>2</sup>

To be eligible to participate in the Auction (defined below), each offer, solicitation or proposal (each, a “Bid”), and each party submitting such a Bid, whether submitting a single Bid for all or substantially all of the Purchased Assets or a joint Bid with another party each for

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the motion to approve these Bidding Procedures (the “Motion”) or the Stalking Horse APA, as applicable.

<sup>2</sup> None of the Bid Qualification Process requirements apply to the Stalking Horse Bidder or the Stalking Horse APA, as may be amended, (the “Stalking Horse Bid”). For the avoidance of doubt, the Stalking Horse Bid is a Qualified Bid and the Stalking Horse Bidder is a Qualified Bidder.

separate components of the Purchased Assets (each, a “Bidder”), must be determined by the Debtor to satisfy each of the following conditions:

(a) Good Faith Deposit: Each Bid must be accompanied by a deposit by wire transfer in the amount equal to ten percent (10%) of the Bid to an interest-bearing account to be identified and established by the Debtor (the “Good Faith Deposit”).

(b) Same or Better Terms: The Bid must be on terms that are substantially the same or better than the terms of the Stalking Horse APA, as determined by the Debtor. A Bid must identify which assets the Bidder intends to purchase and include executed transaction documents. A Bid shall include a copy of the Stalking Horse APA, including exhibits and schedules, marked to show all changes requested by the Bidder. A Bid will not be considered as qualified for the Auction if (i) such Bid contains additional material representations and warranties, covenants, closing conditions, termination rights other than as may be included in the Stalking Horse APA (it being agreed and understood that such Bid shall modify the Stalking Horse APA as needed to comply in all respects with the Bidding Procedures Order and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder such as the Stalking Horse Payment); (ii) such Bid is not received by the Debtor in writing on or prior to the Bid Deadline, or (iii) such Bid does not contain evidence that the Bidder has received conditional debt and/or equity funding commitments (or has unrestricted and fully available cash) sufficient in the aggregate to finance the purchase contemplated thereby, including proof that the Good Faith Deposit has been made.

(c) Corporate Authority: The Bid must include written evidence reasonably acceptable to the Debtor demonstrating appropriate corporate authorization to consummate the proposed Competing Transaction.

(d) Proof of Financial Ability to Perform: The Bid must include written evidence that the Debtor reasonably concludes demonstrates that the Bidder has the necessary financial ability to close the Competing Transaction and provide adequate assurance of future performance under all contracts and unexpired leases to be assumed and assigned in such Competing Transaction.

(e) Contingencies: A Bid may not (i) contain representations and warranties, covenants, termination rights, financing or due diligence contingencies other than as may be included in the Stalking Horse APA (it being agreed and understood that such Bid shall modify the Stalking Horse APA as needed to comply in all respects with the Bidding Procedures Order (including removing any termination rights in conflict with the Bidding Procedures Order) and will remove provisions that apply only to the Stalking Horse Bidder as the stalking horse bidder, such as the Stalking Horse Payment) or (ii) be conditioned on obtaining financing or any internal approval, or on the outcome or review of due diligence, but may be

subject to the accuracy in all material respects of specified representations and warranties at the Closing.

(f) Irrevocable: A Bid must be irrevocable through the Auction, provided, however, that if such Bid is accepted as the Successful Bid or a Backup Bid (each as defined herein), such Bid shall continue to remain irrevocable, subject to the terms and conditions of the Bidding Procedures.

(g) Bid Deadline. Regardless of when a party qualifies as a Preliminarily Interested Investor, the following parties must receive a Bid in writing, on or before January 19, 2018 at 5:00 p.m. (prevailing Eastern Time) or such earlier date as may be agreed to by the Debtor (the "Bid Deadline"): (i) Dexter Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev, jnikolchev@dexterasurgical.com); (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) reisenbach@cooley.com, and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) mark.minuti@saul.com; (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); rl@stevenslee.commailto:bhall@sgrlaw.com, and (v) the Office of the United States Trustee, attention David L. Buchbinder, Esq., 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (collectively, the "Notice Parties").

(h) Amount of Bid. Each Bid for all of the Purchased Assets shall clearly show the amount of the purchase price and shall be, separately or jointly with identified co-Bidders, in a minimum amount of \$18 million.

(i) Adequate Assurance of Future Performance. Each Bid shall be accompanied by adequate assurance of future performance information (the "Adequate Assurance Information"), including (i) information about the Bidder's financial condition, such as federal tax returns for the previous two years, a current financial statement, or bank account statements, (ii) information demonstrating (in the Debtor's reasonable business judgment) that the Bidder has the financial capacity to consummate the proposed Competing Transaction, (iii) evidence that the Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, (iv) the identity and exact name of the Bidder (including any equity holder or other financial backer if the Bidder is an entity formed for the purpose of consummating the proposed Competing Transaction), (v) the potential assignee's intended use for the space; (vi) a contact person for the proposed assignee that landlords may directly contact in connection with the adequate assurance of future performance; (vii) such additional information regarding the Bidder as the Bidder may elect to include; and (viii) if the proposed assignee is a "Newco," the Newco's established financing as well as what proposed credit



enhancements will be offered to guaranty the Newco's performance. By submitting a Bid, Bidders agree that, in the event the Debtor determines such bid to be the Successful Bidder (as defined below), the Debtor may disseminate their Adequate Assurance Information to those non-Debtor counterparties to Debtor's Contracts such Successful Bidder designates for assumption and assignment, provided that such bidder may require non-Debtor counterparties to confirm in writing their agreement to keep such information strictly confidential and to use it solely for the purpose of evaluating whether such Successful Bidder has provided adequate assurance of future performance under the counterparty's Debtor's Contract. If selected as the Successful Bidder, such Successful Bidder may require such counterparties to execute confidentiality agreements prior to the remittance of any confidential, non-public information.

The Debtor will review each Bid received from a Bidder to determine, in consultation with the Official Committee of Unsecured Creditors (the "Committee"), if one is appointed, whether it meets the requirements set forth above. A Bid received from a Bidder before the Bid Deadline that meets the above requirements, as determined by the Debtor, in consultation with the Committee, if one is appointed, shall constitute a "Qualified Bid," and each such Bidder, separately or jointly, shall constitute a "Qualified Bidder."<sup>3</sup> The Debtor shall inform Bidders whether or not their Bids have been designated as Qualified Bids prior to the Auction and shall contemporaneously inform the Stalking Horse Bidder of all Bids that the Debtor considers to be a Qualified Bid. Notwithstanding anything herein to the contrary, the Stalking Horse APA submitted by the Stalking Horse Bidder shall be deemed a Qualified Bid, and the Stalking Horse Bidder is a Qualified Bidder for each phase of the Auction.

### Auction

If one or more Qualified Bids (in addition to the Stalking Horse Bid) are received by the Bid Deadline, the Debtor will conduct an auction (the "Auction") to determine the highest or otherwise best Qualified Bid. If no Qualified Bid (other than the Stalking Horse Bid) is received by the Bid Deadline, no Auction shall be conducted and the Stalking Horse Bid shall be deemed the Successful Bid. Only Qualified Bidders may participate in the Auction. Qualified Bidders and any creditors of the Debtor wishing to attend the Auction must make a written reservation with the Debtor on or before the Bid Deadline.

The Auction shall take place on January 22, 2018 at 10:00 a.m. (prevailing Eastern Time) at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, or such other place and time as the Debtor shall notify all Qualified Bidders, including the Stalking Horse Bidder, counsel for the Stalking Horse Bidder, any official committee, and other parties invited to attend by the Debtor.

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<sup>3</sup> For the avoidance of doubt, any bid for separate components of the Purchased Assets shall only be a "Qualified Bid" if submitted jointly with other identified Bids which, taken together, provide a purchase price of at least \$18 million and, otherwise, satisfy all Qualified Bid requirements.

(a) The Debtor Shall Conduct the Auction. The Debtor and its professionals shall direct and preside over the Auction. At the start of the Auction, the Debtor shall announce which Qualified Bid(s) is/are deemed to be the highest or otherwise best (each Qualified Bid an "Auction Baseline Bid"). Each Qualified Bidder participating in the Auction must confirm that it has not engaged in any collusion with respect to the bidding or sale of the Debtor's assets.

The Stalking Horse Payment shall be taken into account in connection with each round of bidding and in each phase of the Auction by adding \$519,000 to the amount of each bid made by the Stalking Horse Bidder. Any credit bids submitted by a party other than the Stalking Horse Bidder shall include a cash component that is sufficient to pay the amount of the Stalking Horse Payment.

Only the Debtor, the Stalking Horse Bidder, any other Qualified Bidder, and any creditors of the Debtor that make a written reservation with the Debtor on or before the Bid Deadline, in each case, along with their representatives, and any official committee, shall attend the Auction in person, and only the Stalking Horse Bidder and such other Qualified Bidders will be entitled to make any Bids at the Auction.

The Debtor reserves the right, in its reasonable business judgment to make one or more continuances of the Auction to, among other things: facilitate discussions between the Debtor and individual Bidders; allow individual Bidders to consider how they wish to proceed; and give Bidders the opportunity to provide the Debtor with such additional evidence as the Debtor in its reasonable business judgment may require, that the Bidder has sufficient internal resources, or has received sufficient non-contingent debt and/or equity funding commitments, to consummate the proposed Competing Transaction at the prevailing Overbid amount.

The Stalking Horse Bidder is entitled to make any bids at the Auction in compliance with the Bidding Procedures. The Stalking Horse Bidder shall have the last opportunity to bid after the receipt of any Overbid and before the next round of bidding commences.

(b) Terms of Overbids. An "Overbid" is any Bid made at the Auction subsequent to the Debtor's announcement of an Auction Baseline Bid. To submit an Overbid for purposes of this Auction, a Bidder must comply with the following conditions:

(i) Minimum Overbid Increment.

Any Overbid after the Auction Baseline Bid shall be made initially in increments valued in an amount of \$100,000 subject to modification of such increment by the Debtor at the Auction. Additional consideration in excess of the amount set forth in an Auction Baseline Bid may include cash and/or noncash consideration. The Stalking Horse Bidder shall be

entitled to credit bid all, or any portion, of the outstanding balance of the debtor-in-possession loan from the Stalking Horse Bidder (or its affiliate) to the Debtor.

(ii) Remaining Terms Are the Same as for Qualified Bids.

Except as modified herein, an Overbid must comply with the conditions for a Qualified Bid set forth above, provided, however, that the Bid Deadline shall not apply. Any Overbid must remain open and binding on the Bidder until and unless the Debtor accepts a higher Overbid.

(c) Backup Bidder. Notwithstanding anything in the Bidding Procedures to the contrary, if an Auction is conducted, the party with the next highest or otherwise best Qualified Bid at the Auction, as determined by the Debtor, in the exercise of its business judgment will be designated as the backup bidder (the "Backup Bidder"). The Backup Bidder shall be required to keep its initial Bid (or if the Backup Bidder submitted one or more Overbids at the Auction, its final Overbid) (the "Backup Bid") open and irrevocable until the earlier of 12:00 p.m. (prevailing Eastern Time) on the date that is seventeen (17) days after the date of the Sale Hearing (the "Outside Backup Date") or the closing of the transaction with the Successful Bidder (defined herein), provided, however, that the Stalking Horse Bidder shall not be required to be a Backup Bidder without its consent. Following the Sale Hearing, if the Successful Bidder (defined herein) fails to consummate an approved transaction, because of a breach or failure to perform on the part of such Successful Bidder (defined herein), the Debtor may designate the Backup Bidder to be the new Successful Bidder (defined herein), and the Debtor will be authorized, but not required, to consummate the transaction, with the Backup Bidder without further order of the Bankruptcy Court. In such case, the defaulting Successful Bidder's deposit shall be forfeited to the Debtor, and the Debtor specifically reserves the right to seek all available damages from the defaulting Successful Bidder (defined herein). The deposit of the Backup Bidder shall be held by the Debtor until the earlier of 24 hours after (i) the closing of the transaction with the Successful Bidder (defined herein) and (ii) the Outside Backup Date. The foregoing notwithstanding, all rights of the Debtor against the Stalking Horse Bidder in the event of a default by the Stalking Horse Bidder are stated in the Stalking Horse APA, as such agreement may be amended by the Debtor and the Stalking Horse Bidder.

(d) Additional Procedures. The Debtor may, with the consent of the Stalking Horse Bidder as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, announce at the Auction additional procedural rules that are reasonable under the circumstances (*e.g.*, the amount of time to make subsequent Overbids) for conducting the Auction, so long as additional procedural rules are: (i) reasonable under the circumstances; (ii) not inconsistent with the Bidding Procedures, the APA, the Bankruptcy Code, the Bidding Procedures Order or any other order of the Bankruptcy Court entered in the Debtor's case, and (iii) disclosed to all Qualified Bidders at the Auction.

Without limiting the foregoing, at any point during the Auction, the Debtor shall have the right to request additional financial information from any Qualified Bidder (other than the Stalking Horse Bidder) to allow the Debtor to make a reasonable determination as to the Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by any Qualified Bid, as amended during the Auction process, and any further information that Debtor believes is reasonably necessary to clarify and evaluate the terms of a Qualified Bid.

(e) Consent to Jurisdiction as Condition to Bidding. The Stalking Horse Bidder and all other Qualified Bidders at the Auction shall be deemed to have consented to the core jurisdiction of the Bankruptcy Court and waived any right to a jury trial in connection with any disputes relating to these Bidding Procedures, the Stalking Horse APA, the Auction or the construction and enforcement of any documents relating to a Competing Transaction.

(f) Closing the Auction. The Auction shall continue until the Debtor determines in its reasonable business judgment that there is a highest or otherwise best Qualified Bid at the Auction for the Purchased Assets (each a "Successful Bid" and each Bidder submitting such Successful Bid, a "Successful Bidder"). The Auction shall not close unless and until all Bidders who have submitted Qualified Bids have been given a reasonable opportunity to submit an Overbid at the Auction to the then-existing Overbids and the Successful Bidder has submitted fully executed sale and transaction documents memorializing the terms of the Successful Bid. Within one (1) business day following conclusion of the Auction, the Debtor shall file a notice on the Bankruptcy Court's docket identifying (with specificity) the Successful Bidder for the Purchased Assets and any applicable Backup Bidders. The Debtor shall not consider any Bids submitted after the conclusion of the Auction and any and all such Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

### **Bid Protections**

The Stalking Horse Bidder is entitled to the Stalking Horse Payment, to the extent it becomes payable, pursuant to the terms of the Stalking Horse APA and the Bidding Procedures Order.

Except for the Stalking Horse Bidder, no other party submitting an offer or Bid for the Purchased Assets or a Qualifying Bid shall be entitled to any expense reimbursement, breakup fee, termination or similar fee or payment.

### **Sale Hearing**

The Debtor will seek approval of the transactions contemplated by the Stalking Horse APA with the Successful Bidder at the hearing scheduled on January 24, 2018 at 2:00 p.m. (the "Sale Hearing"). Objections, if any, to the sale of the Purchased Assets to the Successful Bidder and the transaction contemplated by the Stalking Horse APA must be in writing and filed with

the Court no later than 5:00 p.m. (prevailing Eastern Time) on January 19, 2018 (the “Sale Objection Deadline”) and be served such that they are actually received by: (i) Dextera Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), jnikolchev@dexterasurgical.com; (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) reisenbach@cooley.com, and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) mark.minuti@saul.com; (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); rl@stevenslee.commailto:bhall@sgrlaw.com, and (v) the Office of the United States Trustee, attention David L. Buchbinder, Esq., 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801 (collectively, the “Objection Notice Parties”), in each case, so as to be received the same day the objection is filed.

### **Return of Good Faith Deposit**

The Good Faith Deposits of all Qualified Bidders shall be held in one or more interest-bearing segregated accounts by the Debtor, but shall not become property of the Debtor’s estate absent further order of the Court. The Good Faith Deposit of any Qualified Bidder that is neither the Successful Bidder nor the Backup Bidder shall be returned to such Qualified Bidder not later than two (2) business days after the Sale Hearing. The Good Faith Deposit of the Backup Bidder shall be returned to the Backup Bidder on the date that is the earlier of 24 hours after (a) the closing of the transaction with the Successful Bidder (defined herein) and (b) the Outside Backup Date. Upon the return of the Good Faith Deposits, their respective owners shall receive any and all interest that has accrued thereon. If the Successful Bidder timely closes the winning transaction, its Good Faith Deposit, if any, shall be credited towards its purchase price. The foregoing notwithstanding, the Stalking Horse Bidder has not provided a Good Faith Deposit and is not required to provide a Good Faith Deposit.

### **Reservation of Rights**

Except as otherwise provided in the Stalking Horse APA, Bidding Procedures or the Bidding Procedures Order, the Debtor further reserves the right as it may reasonably determine to be in the best interest of its estate, to: (a) determine which bidders are Qualified Bidders; (b) determine which Bids are Qualified Bids; (c) if at least one (1) Qualified Bid in addition to the Stalking Horse Bid is received by the Bid Deadline, determine which Qualified Bid is the highest or otherwise best proposal and which is the next highest or otherwise best proposal; (d) reject any Bid, other than the Stalking Horse Bid, that is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bidding Procedures or the requirements of the Bankruptcy Code or (iii) contrary to the best interests of the Debtor and its estate; (e) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached by the Stalking Horse Bidder or terminated, modify the Bidding Procedures, adopt additional rules or procedures, and extend the deadlines set forth therein or in this Order (other than to permit the submission of bids after the close of the Auction); (f) with the consent of the Stalking Horse Bidder, as long as the Stalking Horse APA has not been materially breached or terminated, continue or cancel the Auction; and (g) with the consent of the Stalking Horse Bidder

if the Stalking Horse Bid is the Successful Bid, as long as the Stalking Horse APA has not been terminated, continue the Sale Hearing in open court, without further notice.

**EXHIBIT 2****BIDDING PROCEDURES KEY DATES**

Hearing re: Bidding Procedures	January 3, 2018 at 1:00 p.m. E.S.T.
Service of Motion and Sale Notice	+3 business days from entry of Bidding Procedures Order (January 9, 2018)
Service of Assumption and Assignment Notice	+3 business days from entry of Bidding Procedures Order (January 9, 2018)
Bid Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Assumption/Assignment and Cure Amount Objection Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Sale Objection Deadline	January 19, 2018 at 5:00 p.m. E.S.T.
Auction	January 22, 2018 at 10:00 a.m. E.S.T.
Sale Hearing	January 24, 2018 at 2:00 p.m. E.S.T.
Adequate Assurance Objection (in the event the Stalking Horse Bidder is not the Successful Bidder)	At or before the Sale Hearing

**EXHIBIT 3**  
**SALE NOTICE**



UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

DEXTERA SURGICAL INC.,

Debtor.

Chapter 11

Case No. 17-12913 (KJC)

**NOTICE OF SALE OF SUBSTANTIALLY ALL ASSETS OF DEXTERA SURGICAL  
INC. FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND OTHER  
INTERESTS AND OPPORTUNITY TO SUBMIT BIDS**

PLEASE TAKE NOTICE THAT:

1. Dextera Surgical Inc. (the "Debtor") has filed Debtor's Motion for Orders (A)(I) Authorizing and Approving Bidding Procedures, and Stalking Horse Payment; (II) Authorizing and Approving the Debtor's Entry into the Stalking Horse APA; (III) Approving Notice Procedures; (IV) Scheduling an Auction and Sale Hearing; and (V) Approving Procedures for Assumption and Assignment of Executory Contracts and Unexpired Leases and Determining Cure Amounts and (B)(I) Authorizing the Sale of Substantially All of the Debtor's Assets Free and Clear of All Claims, Liens, Rights, Interests, and Encumbrances; (II) Approving the Stalking Horse APA; and (III) Authorizing the Debtor to Assume and Assign Certain Executory Contracts and Unexpired Leases [D.I. 11] (the "Motion").

2. Pursuant to the *Order (A) Authorizing And Approving Bidding Procedures, and Stalking Horse Payment; (B) Authorizing And Approving The Debtor's Entry Into The Stalking Horse APA; (C) Approving Notice Procedures; (D) Scheduling An Auction And Sale Hearing; (E) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases And Determining Cure Amounts, and (F) Granting Related Relief* [D.I. \_\_\_] (the "Bidding Procedures Order") entered by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on January \_\_, 2018 the Debtor has entered into an Asset Purchase Agreement (the "Stalking Horse APA") for the sale of substantially all of the Debtor's assets to Aesculap, Inc. or its permitted assignee (the "Stalking Horse Bidder") subject to a competitive bidding process as set forth in the Bidding Procedures Order. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to them in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

Copies of (i) the Motion, (ii) the Stalking Horse APA, (iii) the proposed Sale Order, (iv) the Bidding Procedures, and (v) the Bidding Procedures Order can be obtained by contacting the Debtor's investment banker at JMP Securities, LLC, 600 Montgomery Street, Suite 1100, San Francisco, CA 94111, Telephone: (415) 835-3969 (Attn.: Brian Bock), [bbock@jmpsecurities.com](mailto:bbock@jmpsecurities.com), or at the following website: <http://www.omnimgt.com/dextera>.

**3. THE SALE OF THE DEBTOR'S ASSETS WILL BE FREE AND CLEAR OF ALL LIENS, ENCUMBRANCES AND OTHER INTERESTS. IF YOU HAVE A LIEN, ENCUMBRANCE OR INTEREST IN ANY OF THE DEBTOR'S ASSETS AND**

**OBJECT TO THE SALE OF SUCH ASSETS FREE AND CLEAR OF YOUR LIEN, ENCUMBRANCE OR OTHER INTEREST, YOU MUST FILE AN OBJECTION TO THE SALE BY THE OBJECTION DEADLINE (DEFINED BELOW). ALSO TAKE NOTICE THAT ANY SUCH OBJECTION WILL BE HEARD BY THE BANKRUPTCY COURT AT THE SALE HEARING (DEFINED BELOW).**

4. All interested parties are invited to make an offer to purchase the Purchased Assets in accordance with the terms and conditions approved by the Bankruptcy Court (the "Bidding Procedures") by **5:00 p.m.** (prevailing Eastern Time) on **January 19, 2018**. Pursuant to the Bidding Procedures, the Debtor may conduct an auction for the Purchased Assets (the "Auction") beginning at **10:00 a.m.** (prevailing Eastern Time) on **January 22, 2018** at the offices of Cooley LLP, 1114 Avenue of the Americas, New York, New York 10036, or such later time or other place as the Debtor shall notify all Qualified Bidders who have submitted Qualified Bids. Contact the Debtor's investment banker, JMP Securities, LLC, 600 Montgomery Street, Suite 1100, San Francisco, CA 94111, Telephone: (415) 835-3969 (Attn.: Brian Bock), [bbock@jmpsecurities.com](mailto:bbock@jmpsecurities.com), for further information regarding the Debtor's assets and/or making a bid.

5. Participation at the Auction is subject to the Bidding Procedures and the Bidding Procedures Order.

6. A hearing (the "Sale Hearing") to approve the sale of the Purchased Assets to the highest or otherwise best bidder will be held on January 24, 2018 at 2:00 p.m. (prevailing Eastern Time) at the Bankruptcy Court. The Sale Hearing may be adjourned without notice other than an adjournment in open court.

7. Objections, if any, to the proposed Sale must be filed and served in accordance with the Bidding Procedures Order, and **actually received** no later than **5:00 p.m.** (prevailing Eastern Time) on **January 19, 2018**.

8. This notice is qualified in its entirety by the Bidding Procedures Order.

Dated: January \_\_, 2018  
Wilmington, Delaware

**SAUL EWING ARNSTEIN & LEHR LLP**  
Mark Minuti (DE Bar No. 2659)  
1201 N. Market Street, Suite 2300  
P.O. Box 1266  
Wilmington, DE 19899  
Telephone: (302) 421-6840  
Facsimile: (302) 421-5873

*[Proposed] Lead Counsel for the  
Debtor and Debtor in Possession*

**EXHIBIT 4**

**ASSUMPTION AND ASSIGNMENT NOTICE**

UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

In re:

DEXTERA SURGICAL INC.,

Debtor.

Chapter 11

Case No. 17-12913 (KJC)

**NOTICE OF POSSIBLE ASSUMPTION AND CURE AMOUNT WITH RESPECT TO EXECUTORY CONTRACTS OR UNEXPIRED LEASES POTENTIALLY TO BE ASSUMED AND ASSIGNED IN CONNECTION WITH SALE OF DEBTOR'S ASSETS**

PLEASE TAKE NOTICE THAT:

1. Pursuant to the Order (A) Authorizing And Approving Bidding Procedures, and Stalking Horse Payment; (B) Authorizing And Approving The Debtor's Entry Into The Stalking Horse APA; (C) Approving Notice Procedures; (D) Scheduling An Auction And Sale Hearing; (E) Approving Procedures For The Assumption And Assignment Of Executory Contracts And Unexpired Leases And Determining Cure Amounts, and (F) Granting Related Relief (the "Bidding Procedures Order") entered by the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") on January \_\_, 2018, [D.I. \_\_] the above captioned debtor (the "Debtor"), has entered into an Asset Purchase Agreement (the "Stalking Horse APA") with Aesculap, Inc. (together with any permitted assignee, the "Stalking Horse Bidder") for the sale of substantially all of the Debtor's assets subject to a competitive bidding process as set forth in the Bidding Procedures Order. The Debtor hereby provides notice that it may seek to assume and assign the prepetition executory contracts or unexpired leases (the "Debtor's Contracts") listed on **Exhibit A** hereto to the Stalking Horse Bidder or any other Successful Bidder, as the case may be. The inclusion of any executory contract or unexpired lease on **Exhibit A** does not require or guarantee that such lease or contract will be assumed and assigned, or that such contract or lease is executory, and all rights of the Debtor with respect thereto are reserved. Capitalized terms used but not otherwise defined in this notice have the meanings ascribed to them in the Bidding Procedures Order or the Stalking Horse APA, as applicable.

2. Pursuant to the terms of the Stalking Horse APA (or the asset sale and purchase agreement that the Debtor may enter into with any other Successful Bidder), the Debtor may seek to assume and/or assign one or more of the Debtor's Contracts to the Stalking Horse Bidder or any other Successful Bidder, as the case may be, subject to approval at the hearing to be held at 2:00 p.m. (prevailing Eastern Time) on **January 24, 2018** (the "Sale Hearing") before the Bankruptcy Court. On Exhibit "A" hereto, the Debtor has stated the amounts (each an "Asserted Cure Amount") the Debtor believes must be paid to the non-debtor counterparty to each Debtor's Contract to cure any defaults required to be cured as a condition of assumption of such Debtor's Contract pursuant to Section 365(b)(1) of the Bankruptcy Code (the "Cure Amount").

3. **Objections, if any, to (i) the assumption and assignment of a Debtor's Contract, (ii) the Asserted Cure Amount, and/or (iii) the Stalking Horse Bidder's ability to provide adequate assurance of future performance must (a) be in writing, (b) state with**

specificity the Cure Amount asserted to be required, (c) include appropriate documentation thereof, (d) be filed with the Bankruptcy Court no later than January 19, 2018 at 5:00 p.m. (prevailing Eastern Time) (the "Sale Objection Deadline") and served on the following parties: (i) Dextera Surgical Inc., 900 Saginaw Drive, Redwood City, CA 94063 (Attn: Julian Nikolchev), jnikolchev@dexterasurgical.com; (ii) special corporate counsel to the Debtor, Cooley LLP, 101 California Street, 5th Floor, San Francisco, CA 94111-5800 (Attn: Robert L. Eisenbach III, Esq.) reisenbach@cooley.com, and lead counsel for the Debtor, Saul Ewing Arnstein & Lehr, LLP, P.O. Box 1266, Wilmington, DE 19899-1266 (mailing) and 1201 Market Street, Suite 2300, Wilmington DE 19801 (courier) (Attn: Mark Minuti, Esq.) mark.minuti@saul.com; (iii) counsel for the Official Committee of Unsecured Creditors, if any; (iv) counsel for the Stalking Horse Bidder, Stevens & Lee, P.C., 620 Freedom Business Center, Suite 200, King of Prussia, PA 19406 (Attn: Robert Lapowsky, Esq.); rl@stevenslee.commailto:hall@sgrlaw.com, and (v) the Office of the United States Trustee, attention David L. Buchbinder, Esq., 844 King Street, Suite 2207, Lockbox 35, Wilmington, DE 19801, so as to be received no later than 5:00 p.m. on the Sale Objection Deadline.

**If the bid of the Stalking Horse Bidder is not the Successful Bid at the Auction, the non-Debtor counterparties to the Debtor's Contracts shall have until the Sale Hearing to object to the assumption and assignment of such Debtor's Contract solely on the issue of whether such Successful Bidder can provide adequate assurance of future performance as required by section 365 of the Bankruptcy Code.**

4. If an objection to the assumption and assignment of a Debtor's Contract is timely filed and received, a hearing with respect to the objection will be held before the Bankruptcy Court at the Sale Hearing, provided, however, to the extent such objection includes an objection to an Asserted Cure Amount and the parties are unable to consensually resolve the dispute, at the Debtor's discretion and provided at Closing the disputed portion of the Cure Amount or such other amount as may be determined by the Bankruptcy Court is escrowed, the hearing regarding the Cure Amount may be continued until after the Closing Date and the Debtor's Contract(s) subject to such Cure Amount dispute shall be assumed and assigned to the Stalking Horse Bidder or any other Successful Bidder at the Closing of the Sale.

5. Pursuant to 11 U.S.C. § 365, there is adequate assurance of future performance that the Asserted Cure Amount set forth in the Assumption and Assignment Notice will be paid in accordance with the terms of the Sale Order. There is adequate assurance of the Stalking Horse Bidder's future performance under the executory contract or unexpired lease to be assumed and assigned because of the significant resources of the Stalking Horse Bidder. If necessary, the Debtor will adduce facts at the hearing on any objection demonstrating the financial wherewithal of the Successful Bidder, and its willingness and ability to perform under the contracts to be assumed and assigned to it.

6. If no objection is timely received, the Asserted Cure Amount set forth in Exhibit A hereto will be controlling, notwithstanding anything to the contrary in any Debtor's Contract or any other document, and the non-Debtor party to the Debtor's Contract will be deemed to have consented to the Asserted Cure Amount and to assumption and assignment of such Debtor's Contract to the Stalking Horse Bidder, or to any other Successful Bidder, and will

be forever barred from asserting any other claims in respect of such Debtor's Contract against the Debtor, the Stalking Horse Bidder, or any other Successful Bidder (as appropriate), or the property of any of them. The failure of any objecting person or entity to timely file its objection will be a bar to the assertion, at the Sale Hearing or thereafter, of any objection to the Sale Motion, the Sale, or the Debtor's consummation of and performance under the Sale Agreement (including the transfer of the Purchased Assets and the Debtor's Contracts free and clear of all claims, liens and interests), if authorized by the Court.

7. Prior to the conclusion of the Sale Hearing, the Stalking Horse Bidder or any other Successful Bidder may amend its decision with respect to the assumption and assignment of any Debtor's Contract. The Debtor shall retain the right to amend the Asserted Cure Amount and provide a new notice amending the information provided in this notice, including, without limitation, a determination not to assume certain contracts.

Dated: January \_\_, 2018  
Wilmington, Delaware

**SAUL EWING ARNSTEIN & LEHR LLP**  
Mark Minuti (DE Bar No. 2659)  
1201 N. Market Street, Suite 2300  
P.O. Box 1266  
Wilmington, DE 19899  
Telephone: (302) 421-6840  
Facsimile: (302) 421-5873

*[Proposed] Lead Counsel for the  
Debtor and Debtor in Possession*

**EXHIBIT A**

<b><u>Contract/Lease Counterparty</u></b>	<b><u>Contract or Lease</u></b>	<b><u>Cure Amount</u></b>