

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

TRICIDA, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-10024 (\_\_\_)

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) PROHIBITING THE DEBTOR’S UTILITY PROVIDERS FROM ALTERING,  
REFUSING, OR DISCONTINUING SERVICES, (II) DETERMINING  
ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION  
SERVICES, (III) ESTABLISHING PROCEDURES FOR  
DETERMINING ADEQUATE ASSURANCE; AND  
(IV) GRANTING RELATED RELIEF**

Tricida, Inc., as the debtor in possession in the above-captioned chapter 11 case (the “Debtor”), hereby submits this motion (this “Motion”), under sections 105(a) and 366 of title 11 of the United States Code (the “Bankruptcy Code”) and rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of interim and final orders (the “Proposed Orders”) (a) prohibiting the Debtor’s utility providers (each, a “Utility Provider” and collectively, the “Utility Providers”) from altering, refusing or discontinuing service to the Debtor, except as set forth herein; (b) determining adequate assurance of payment for postpetition utility services; and (c) establishing procedures for determining adequate assurance of payment to the Utility Providers; and (d) granting related relief. In support of this Motion, the Debtor submits the *Declaration of Lawrence Perkins in Support of the Debtor’s Chapter 11 Petition and First Day*

<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.



*Pleadings* (the “First Day Declaration”), filed contemporaneously herewith and incorporated herein by reference.<sup>2</sup> In further support of this Motion, the Debtor respectfully states as follows:

**STATUS OF THE CASE AND JURISDICTION**

1. On the date hereof (the “Petition Date”), the Debtor filed a voluntary petition for relief under sections 101–1532 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “Court”). The Debtor continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No party has requested the appointment of a trustee or examiner in this case, and no statutory committee has been appointed.

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent, pursuant to rule 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local Rules”), to the entry of a final order or judgment by the Court in connection with this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to such terms in the First Day Declaration.

4. The statutory and other bases for the relief requested in this Motion are sections 105(a) and 366 of the Bankruptcy Code and Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure.

**BACKGROUND OF THE DEBTOR**

5. Founded in 2013, the Debtor is a clinical-stage pharmaceutical company focused on the development and commercialization of veverimer, a drug meant to slow the progression of CKD through the treatment of chronic metabolic acidosis. Veverimer is a new chemical entity discovered by the Debtor using its own proprietary technology. In addition to veverimer, the Debtor's intellectual property portfolio includes 233 patents in 52 different countries, including compositions-of-matter, dosage unit forms, methods-of-treatment, medical use, and methods of manufacture.

6. Additional information regarding the Debtor's business, capital structure and the circumstances preceding the Petition Date may be found in the First Day Declaration.

**RELIEF REQUESTED**

7. By this Motion, the Debtor seeks entry of the Proposed Orders, substantially in the forms attached hereto as **Exhibit A** and **Exhibit B**, respectively, granting, among other things, the following relief:

- a. prohibiting the Debtor's Utility Providers (as defined below), which includes any providers that begin providing services to the Debtor during the pendency of this case, from altering, refusing or discontinuing service to the Debtor, on account of any unpaid prepetition invoices, the commencement of this case, or any perceived inadequacy of the adequate assurance proposed in this Motion (including, without limitation, making demands for security deposits or accelerated payment terms);
- b. determining that the Utility Providers have "adequate assurance of payment" within the meaning of section 366 of the Bankruptcy Code based on the Debtor's establishment of a segregated account containing an amount equal to two weeks of the Debtor's average cost of utility service;

- c. establishing Adequate Assurance Procedures (as defined below) for resolving requests for additional adequate assurance of future payment and authorizing the Debtor to provide adequate assurance of future payment to the Utility Providers; and
- d. granting related relief, including scheduling a final hearing to consider approval of the Motion on a final basis.

## **UTILITY SERVICES AND PROPOSED ADEQUATE ASSURANCE**

### **I. Debtor's Utilities**

8. In the ordinary course of business, the Debtor incurs utility expenses in connection with its real property.<sup>3</sup> Approximately four (4) Utility Providers provide services to the Debtor, including those entities identified on **Exhibit C** attached hereto (the "Utility Service List").

9. On average, the Debtor spends approximately \$7,150 per month on utility costs.

10. Preserving utility services at the Debtor's facilities on an uninterrupted basis is essential to the Debtor's ongoing sale process. Any interruption in utility services—even for a brief period of time—would, distract management and employees from sale efforts, thereby negatively impacting the value of the assets to the detriment of all parties in interest. Accordingly, it is critical that the Debtor obtains the relief requested herein to ensure it is able to maintain and pay for utility services on an uninterrupted basis throughout this chapter 11 case.

### **II. Proposed Adequate Assurance**

11. The Debtor intends to pay any postpetition utility costs to the Utility Providers in a timely manner in the ordinary course of business and from the cash on hand. Nevertheless, to provide the Utility Providers with adequate assurance pursuant to section 366 of the Bankruptcy Code, the Debtor proposes depositing into a segregated account at Silicon Valley Bank for the benefit of the Utility Providers (the "Adequate Assurance Account"), cash in an amount equal to

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<sup>3</sup> The remainder of the Debtor's utilities are paid pursuant to the Debtor's office lease.

two weeks of the Debtor's average cost of utility services for the prior twelve month period (the "Adequate Assurance Deposit"). Based on this formula, the Debtor's estimate that the total amount of the Adequate Assurance Deposit should equal \$4,000.<sup>4</sup>

12. The Adequate Assurance Deposit will be held by the Debtor in the Adequate Assurance Account for the benefit of the Utility Providers identified on the Utility Service List during the pendency of this chapter 11 case. The amount of the Adequate Assurance Deposit allocated for, and potentially payable to, each Utility Provider, will be the amount set forth on the Utility Service List. No liens will encumber the Adequate Assurance Deposit or the Adequate Assurance Account.

13. The Debtor respectfully submits that the Adequate Assurance Deposit, in conjunction with cash on hand, demonstrates the Debtor's ability to pay for future utility services in the ordinary course of business (collectively, the "Proposed Adequate Assurance") and constitutes sufficient adequate assurance to the Utility Providers.

### **III. Proposed Adequate Assurance Procedures**

14. If any Utility Provider believes it is entitled to additional or different adequate assurance based on individualized circumstances, it may follow the procedures described below and set forth in the proposed order (the "Adequate Assurance Procedures"):<sup>5</sup>

- a. The Debtor will serve a copy of this Motion and any order or proposed order granting the relief requested herein, which include the proposed Adequate Assurance Procedures, on each Utility Provider listed on the Utility Service List.
- b. The Debtor will deposit the Adequate Assurance Deposit into the Adequate Assurance Account within twenty (20) days of the Petition Date. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account (pursuant

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<sup>4</sup> The Adequate Assurance Deposit amount has been rounded up to the nearest thousand.

<sup>5</sup> To the extent that there are any inconsistencies or discrepancies between the summary of the Adequate Assurance Procedures in this Motion and the Adequate Assurance Procedures as set forth in the proposed order, the proposed order shall control in all respects.

to the terms of the Adequate Assurance Procedures) in the amount set forth for such Utility Provider in the column labeled “Adequate Assurance Deposit” on the Utility Service List; provided that to the extent any Utility Provider receives any other value from the Debtor as adequate assurance of payment, the Debtor may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.

- c. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtor, the Utility Provider must serve a request for additional assurance (an “Additional Assurance Request”) so that it is actually received by: (i) the Debtor, 700 Shoreline Court, Suite 201 South San Francisco, CA 94080, Attn: Robert McKague; (ii) proposed counsel to the Debtor, Sidley Austin LLP, 555 West Fifth Street, Los Angeles, California 77002, Attn: Julia Phillips Roth, (julia.roth@sidley.com); and (iii) counsel to any official committee appointed in this chapter 11 case (collectively, the “Additional Assurance Request Parties”) no later than fourteen (14) days after service of the final order.
- d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the account number, the type of utility services, and identify the location(s) for which such services are provided, (iii) summarize any deposits, letters of credit, and other security held by the Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider.
- e. If a Utility Provider fails to serve on the Additional Assurance Request Parties an Additional Assurance Request, such Utility Provider shall be prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtor on account of the commencement of this chapter 11 Case or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- f. Upon the Debtor’s receipt of any Additional Assurance Request as provided herein, the Debtor shall have twenty (20) days from the receipt of the Additional Assurance Request (the “Resolution Period”) to negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtor and the applicable Utility Provider without application to or approval of this Court.
- g. The Debtor may, without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider if the Debtor determines that such Additional Assurance Request is reasonable, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include but shall not be limited to cash deposits, prepayments, or other forms of security, in each case, without further order of this Court to the extent the Debtor believes that such additional

assurance is reasonable in the exercise of its business judgment and the Debtor may, by mutual agreement with the objecting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by any amount allocated to such Utility Company.

- h. If the Debtor determines that the Additional Assurance Request is not reasonable and the Debtor is unable to reach an alternative resolution with the Utility Provider, the Debtor, during or immediately after the Resolution Period, will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider.
  - i. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtor on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; (iii) any objections filed in response to the Proposed Adequate Assurance; or (iv) the commencement of this chapter 11 case.
  - j. Absent compliance with the Adequate Assurance Procedures and the terms of the proposed order, the Debtor’s Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of this chapter 11 case and/or any unpaid charges for prepetition services provided to the Debtor and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
  - k. If any utility account with a Utility Company is closed during this chapter 11 case (a “Closed Account”), the Debtor may, in its discretion, and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each Closed Account, the amount deposited with respect to such Closed Account; *provided* that for any Utility Company for which the Utility Deposit is reduced, the Debtor shall provide twenty-one (21) days’ notice of its intent to reduce the Utility Deposit and that the Debtor shall have paid such Utility Company in full for any outstanding postpetition Utility Services with respect to the Closed Account before reducing the Utility Deposit.
15. The Adequate Assurance Procedures set forth a streamlined process for Utility Providers to address potential concerns with respect to the Proposed Adequate Assurance, while at the same time allowing the Debtor to focus on maximizing the value of its assets in a sale.

#### **IV. Subsequent Modification**

16. The Debtor has made a good-faith effort to identify its Utility Providers and include them on the Utility Service List. Nonetheless, to the extent that the Debtor subsequently identifies additional Utility Providers or if a Utility Provider begins or ceases to provide services to the

Debtor during the pendency of this chapter 11 case, the Debtor seeks authority, in its discretion, to amend the Utility Service List to add or remove any Utility Provider before or after entry of the proposed order. Any such amended Utility Service List shall be filed with the Court.

17. The Debtor further requests that the Court's orders on this Motion be deemed to apply to any such subsequently identified Utility Provider, regardless of when such Utility Provider is added to the Utility Service List; *provided, however*, that the Debtor shall serve a copy of the Order on the subsequently identified Utility Provider within three (3) business days of their identification. The Debtor will cause a copy of this Motion and any orders hereon to be served on any such Utility Provider subsequently added to the Utility Service List and will deposit an amount equal to two weeks of the Debtor's average cost of utility services in the Adequate Assurance Account for the benefit of such Utility Provider (less any letters of credit or amounts on deposit with any such subsequently added Utility Provider that exceed outstanding prepetition amounts). Subsequently added Utility Providers shall be required to make any Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

#### **BASIS FOR RELIEF REQUESTED**

18. Section 366 of the Bankruptcy Code protects a debtor against the immediate termination or alteration of utility services after the Petition Date.<sup>6</sup> Section 366(c)(2) of the Bankruptcy Code requires the debtor to provide "adequate assurance" of payment for postpetition services in a form "satisfactory" to the utility company within thirty (30) days of the petition date, or the utility company may alter, refuse, or discontinue service.<sup>7</sup> Section 366(c)(1)(A) of the Bankruptcy Code provides a non-exhaustive list of examples for what constitutes "assurance of

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<sup>6</sup> See 11 U.S.C. § 366.

<sup>7</sup> *Id.* § 366(c)(2).

payment.”<sup>8</sup> Although assurance of payment must be “adequate,” it need not constitute an absolute guarantee of the debtor’s ability to pay.<sup>9</sup>

19. When considering whether a given assurance of payment is “adequate,” this Court should examine the totality of the circumstances to make an informed decision as to whether the Utility Provider will be subject to an unreasonable risk of nonpayment.<sup>10</sup> In determining the level of adequate assurance, however, “a bankruptcy court must focus upon the need of the utility for assurance, and . . . require that the debtor supply no more than that, since the debtor almost perforce has a conflicting need to conserve scarce financial resources.”<sup>11</sup>

20. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Adequate Assurance Deposit and the Debtor’s ongoing ability to meet obligations as they come due in the ordinary course provide assurance of the Debtor’s payment of its future obligations.

21. Courts are permitted to fashion reasonable procedures, such as the Adequate Assurance Procedures proposed herein, to implement the protections afforded under section 366 of the Bankruptcy Code.<sup>12</sup> Such procedures are important because, without them, the Debtor “could be forced to address numerous requests by utility companies in an unorganized manner at

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<sup>8</sup> *Id.* § 366(c)(1).

<sup>9</sup> *See, e.g., In re Great Atl. & Pac. Tea Co.*, 2011 WL 5546954, at \*5 (S.D.N.Y. Nov. 14, 2011) (finding that “[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full”); *In re Caldor, Inc.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires . . . ‘adequate assurance’ of payment. The statute does not require an absolute guarantee of payment.” (citation omitted)), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646 (2d Cir. 1997).

<sup>10</sup> *See, e.g., In re Keydata Corp.*, 12 B.R. 156, 158 (B.A.P. 1st Cir. 1981) (citing *In re Cunha*, 1 B.R. 330 (Bankr. E.D. Va. 1979)); *In re Adelpia Bus. Solutions, Inc.*, 280 B.R. 63, 82–83 (Bankr. S.D.N.Y. 2002).

<sup>11</sup> *Va. Elec. & Power Co. v. Caldor, Inc.*, 117 F.3d 646, 650 (2d Cir. 1997) (internal quotations omitted) (citing *In re Penn Jersey Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)).

<sup>12</sup> *See, e.g., In re Circuit City Stores Inc.*, Case No. 08-35653, 2009 WL 484553, at \*5 (Bankr. E.D. Va. Jan. 14, 2009) (stating that “the plain language of § 366 of the Bankruptcy Code allows the court to adopt the [p]rocedures set forth in the Utility Order”).

a critical period in their efforts to reorganize.”<sup>13</sup> Here, notwithstanding a determination that the Proposed Adequate Assurance constitutes sufficient adequate assurance, any rights the Utility Providers believe they have under sections 366(b) and 366(c)(2) of the Bankruptcy Code are wholly preserved under the Adequate Assurance Procedures.<sup>14</sup> The Utility Providers still may choose, in accordance with the Adequate Assurance Procedures, to request modification of the Proposed Adequate Assurance.<sup>15</sup> The Adequate Assurance Procedures, however, avoid a haphazard and chaotic process whereby each Utility Provider could make an unreasonable, last-minute demand for adequate assurance that would force the Debtor to pay under the threat of losing critical utility services.<sup>16</sup> Moreover, termination of the utility services could result in delay or disruption of the Debtor’s sale process to the detriment of all stakeholders.<sup>17</sup>

22. The Adequate Assurance Procedures are reasonable and in accord with the purposes of section 366 of the Bankruptcy Code, and thus the Debtor respectfully requests that this Court grant the relief requested herein.

23. Further, this Court possesses the power, under section 105(a) of the Bankruptcy Code, to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.”<sup>18</sup> The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366 thereof. Accordingly, the Debtor respectfully requests that this Court

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<sup>13</sup> *Id.*

<sup>14</sup> *See id.* at \*5–6.

<sup>15</sup> *See id.* at \*6.

<sup>16</sup> *See id.* at \*5.

<sup>17</sup> *Cf. In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321–22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it”).

<sup>18</sup> 11 U.S.C. § 105(a).

exercise its powers under sections 105(a) and 366 of the Bankruptcy Code and approve both the Adequate Assurance Procedures and the Proposed Adequate Assurance.

**THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED**

24. The Debtor asserts that immediate relief is necessary to avoid immediate and irreparable harm. Bankruptcy Rule 6003 empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” For the reasons discussed above, entry of the proposed interim order is integral to the Debtor’s ability to successfully transition into chapter 11 and run an orderly sale. Specifically, the relief requested is necessary to avoid a severe disruption of the Debtor’s sale process and operations at this critical juncture and, in turn, to preserve and maximize the value of the Debtor’s estate for the benefit of all stakeholders. Accordingly, the Debtor submits that it has satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully requests that the Court approve the relief requested in this Motion.

**REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS**

25. The Debtor requests a waiver of any applicable notice requirements under Bankruptcy Rule 6004(a) and any stay of the order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtor’s sale process and to preserve and maximize the value of the Debtor’s estate for all stakeholders. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and such stay apply.

**RESERVATION OF RIGHTS**

26. Nothing contained herein or any action taken pursuant to relief requested is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or € a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtor's or any party in interest's rights to subsequently dispute such claim.

**NOTICE**

27. Notice of this Motion has been provided to: (a) the U.S. Trustee; (b) the holders of the 20 largest unsecured claims against the Debtor; (c) Davis Polk & Wardwell LLP and Greenberg Traurig, LLP counsel to (1) U.S. Bank, the indenture trustee to the 3.50% Convertible Senior Notes Due 2027 and (2) certain holders of 3.50% Convertible Senior Notes Due 2027; (d) counsel to the United States Attorney's Office for the District of Delaware; (e) the Internal Revenue Service; (f) the Securities and Exchange Commission; (g) the United States Food and Drug Administration; (h) the Utility Providers; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank.]*

WHEREFORE, the Debtor respectfully requests entry of the Proposed Orders, substantially in the form attached hereto as **Exhibit A** and **Exhibit B**, granting the relief requested herein and granting such other relief as is just and proper.

Dated: January 11, 2023  
Wilmington, Delaware

*/s/ Sean M. Beach*

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**Exhibit A**

**Proposed Interim Order**

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

In re:

TRICIDA, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-10024 (\_\_\_)

Re: Docket No. \_\_\_

**INTERIM ORDER (I) PROHIBITING THE DEBTOR’S UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES, (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION SERVICES, (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE; AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (“Motion”)<sup>2</sup> of Tricida, Inc., as debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), for entry of an interim order (a) prohibiting the Debtor’s Utility Providers from altering, refusing or discontinuing service to the Debtor, except as set forth herein; (b) determining adequate assurance of payment for postpetition utility services; and (c) establishing procedures for determining adequate assurance of payment to the Utility Providers; and (d) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion in this district being proper

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<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for hearing on the Motion having been given; and the Court having determined that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtor and its estate, as contemplated by Bankruptcy Rule 6003; and the relief requested in the Motion being in the best interests of the Debtor's estate, its creditors, and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in this Motion is GRANTED on an interim basis as set forth herein.
2. The final hearing on the Motion shall be held on \_\_\_\_\_, 2023 at \_\_\_\_\_ (prevailing Eastern Time) (the "Final Hearing"). Any objections or responses to entry of the proposed final order shall be filed on or before 4:00 p.m. (prevailing Eastern Time) on \_\_\_\_\_, 2023. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter a final order without need for the Final Hearing.
3. The Debtor is authorized, but not directed, to pay on a timely basis and in accordance with its prepetition practices, all undisputed invoices for postpetition utility services provided by the Utility Providers.
4. Subject to the Adequate Assurance Procedures set forth below, all Utility Providers are prohibited from altering, refusing, or discontinuing service to the Debtor on account of any unpaid prepetition invoices or the commencement of this chapter 11 case.
5. The Debtor is authorized to cause the Adequate Assurance Deposit, as it may be supplemented or modified, to be held in the Adequate Assurance Account, as set forth herein.

6. Subject to the Adequate Assurance Procedures, the Adequate Assurance Deposit constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code. Except as provided herein, the Utility Providers shall have no interest in, or lien on, the Adequate Assurance Deposit or the Adequate Assurance Account.

7. The following Adequate Assurance Procedures are approved:

- a. The Debtor will serve a copy of this Motion and any order or proposed order granting the relief requested herein, which include the proposed Adequate Assurance Procedures, on each Utility Provider listed on the Utility Service List.
- b. The Debtor will deposit the Adequate Assurance Deposit into the Adequate Assurance Account within twenty (20) days of the Petition Date. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account (pursuant to the terms of the Adequate Assurance Procedures) in the amount set forth for such Utility Provider in the column labeled “Adequate Assurance Deposit” on the Utility Service List; provided that to the extent any Utility Provider receives any other value from the Debtor as adequate assurance of payment, the Debtor may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
- c. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtor, the Utility Provider must serve a request for additional assurance (an “Additional Assurance Request”) so that it is actually received by: (i) the Debtor, 700 Shoreline Court, Suite 201 South San Francisco, CA 94080, Attn: Robert McKague; (ii) proposed counsel to the Debtor, Sidley Austin LLP, 555 West Fifth Street, Los Angeles, California 77002, Attn: Julia Phillips Roth, (julia.roth@sidley.com); and (iii) counsel to any official committee appointed in this chapter 11 case (collectively, the “Additional Assurance Request Parties”) no later than fourteen (14) days after service of the final order.
- d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the account number, the type of utility services, and identify the location(s) for which such services are provided, (iii) summarize any deposits, letters of credit, and other security held by the Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider.
- e. If a Utility Provider fails to serve on the Additional Assurance Request Parties an Additional Assurance Request, such Utility Provider shall be prohibited from

discontinuing, altering, or refusing service to, or discriminating against, the Debtor on account of the commencement of this chapter 11 Case or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.

- f. Upon the Debtor's receipt of any Additional Assurance Request as provided herein, the Debtor shall have twenty (20) days from the receipt of the Additional Assurance Request (the "Resolution Period") to negotiate with the Utility Provider to resolve the Utility Provider's Additional Assurance Request. The Resolution Period may be extended by agreement of the Debtor and the applicable Utility Provider without application to or approval of this Court.
- g. The Debtor may, without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider if the Debtor determines that such Additional Assurance Request is reasonable, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include but shall not be limited to cash deposits, prepayments, or other forms of security, in each case, without further order of this Court to the extent the Debtor believes that such additional assurance is reasonable in the exercise of its business judgment and the Debtor may, by mutual agreement with the objecting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by any amount allocated to such Utility Company.
- h. If the Debtor determines that the Additional Assurance Request is not reasonable and the Debtor is unable to reach an alternative resolution with the Utility Provider, the Debtor, during or immediately after the Resolution Period, will request a hearing (a "Determination Hearing") before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider.
- i. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtor on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; (iii) any objections filed in response to the Proposed Adequate Assurance; or (iv) the commencement of this chapter 11 case.
- j. Absent compliance with the Adequate Assurance Procedures and the terms of the proposed order, the Debtor's Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of this chapter 11 case and/or any unpaid charges for prepetition services provided to the Debtor and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
- k. If any utility account with a Utility Company is closed during this chapter 11 case (a "Closed Account"), the Debtor may, in its discretion, and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each

Closed Account, the amount deposited with respect to such Closed Account; *provided* that for any Utility Company for which the Utility Deposit is reduced, the Debtor shall provide twenty-one (21) days' notice of its intent to reduce the Utility Deposit and that the Debtor shall have paid such Utility Company in full for any outstanding postpetition Utility Services with respect to the Closed Account before reducing the Utility Deposit.

8. The inclusion of any entity in, as well as any omission of any entity from, the Utility Service List shall not be deemed an admission by the Debtor that such entity is, or is not, a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtor reserves all rights and defenses with respect thereto.

9. The Debtor is authorized to amend the Utility Service List to the extent the Debtor identifies additional Utility Providers or if a Utility Provider begins or ceases to provide services to the Debtor during the pendency of this case. This order (including the Adequate Assurance Procedures set forth herein) shall apply to and be binding upon any subsequently-identified Utility Provider, regardless of when such Utility Provider was added to the Utility Service List; *provided, however,* that the Debtor shall serve a copy of this order on the subsequently identified Utility Provider within three (3) business days of their identification. The Debtor shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Provider is added to the Utility Service List by an amount equal to two weeks of the Debtor's average cost of utility services from such Utility Provider, less any deposits or letters of credit already held by such Utility Provider. Subsequently added Utility Providers shall be required to make any Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

10. The Debtor shall file any amended version(s) of the Utility Service List with the Court.

11. Nothing contained in the Motion or this order shall be construed to create, alter, or perfect, in favor of any person or entity, any interest in cash of a Debtor.

12. Nothing in this interim order shall constitute (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

13. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b) because the relief granted in this interim order is necessary to avoid immediate and irreparable harm to the Debtor's estates.

14. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are waived by such notice.

15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this interim order are immediately effective and enforceable upon its entry.

16. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this interim order in accordance with the Motion.

17. This Court retains jurisdiction with respect to all matters arising from or related to the implementation, interpretation and enforcement of this interim order.

**Exhibit B**

**Proposed Final Order**

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

In re:

TRICIDA, INC.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 23-10024 (\_\_\_)

Re: Docket No. \_\_\_

**FINAL ORDER (I) PROHIBITING THE DEBTOR’S UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES, (II) DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR POSTPETITION SERVICES, (III) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE; AND (IV) GRANTING RELATED RELIEF**

Upon consideration of the motion (“Motion”)<sup>2</sup> of Tricida, Inc., as debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), for entry of a final order (a) prohibiting the Debtor’s Utility Providers from altering, refusing or discontinuing service to the Debtor, except as set forth herein; (b) determining adequate assurance of payment for postpetition utility services; and (c) establishing procedures for determining adequate assurance of payment to the Utility Providers; and (d) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 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 being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue

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<sup>1</sup> The Debtor in this chapter 11 case, together with the last four digits of the Debtor’s federal tax identification number, is Tricida, Inc. (2526). The Debtor’s service address is 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080.

<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

of this proceeding and the Motion in this district being proper pursuant to 28 U.S.C. §§ 1408 and 1409; and appropriate notice of and opportunity for a hearing on the Motion having been given; and the relief requested in the Motion being in the best interests of the Debtor's estates, its creditors, and other parties in interest; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The relief requested in this Motion is GRANTED on a final basis as set forth herein.
2. The Debtor is authorized, but not directed, to pay on a timely basis and in accordance with its prepetition practices, all undisputed invoices for postpetition utility services provided by the Utility Providers.
3. Subject to the Adequate Assurance Procedures set forth below, all Utility Providers are prohibited from altering, refusing, or discontinuing service to the Debtor on account of any unpaid prepetition invoices or the commencement of this chapter 11 case.
4. The Debtor is authorized to cause the Adequate Assurance Deposit, as it may be supplemented or modified in accordance with this final order, to be held in the Adequate Assurance Account, as set forth herein.
5. Subject to the Adequate Assurance Procedures, the Adequate Assurance Deposit constitutes sufficient adequate assurance of future payment to the Utility Providers to satisfy the requirements of section 366 of the Bankruptcy Code. Except as provided herein, the Utility Providers shall have no interest in, or lien on, the Adequate Assurance Deposit or the Adequate Assurance Account.

6. The following Adequate Assurance Procedures are approved:
  - a. The Debtor will serve a copy of this Motion and any order or proposed order granting the relief requested herein, which include the proposed Adequate Assurance Procedures, on each Utility Provider listed on the Utility Service List.
  - b. The Debtor will deposit the Adequate Assurance Deposit into the Adequate Assurance Account within twenty (20) days of the Petition Date. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account (pursuant to the terms of the Adequate Assurance Procedures) in the amount set forth for such Utility Provider in the column labeled “Adequate Assurance Deposit” on the Utility Service List; provided that to the extent any Utility Provider receives any other value from the Debtor as adequate assurance of payment, the Debtor may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account on account of such Utility Provider by the amount of such other value.
  - c. If a Utility Provider is not satisfied with the Adequate Assurance Deposit provided by the Debtor, the Utility Provider must serve a request for additional assurance (an “Additional Assurance Request”) so that it is actually received by: (i) the Debtor, 700 Shoreline Court, Suite 201 South San Francisco, CA 94080, Attn: Robert McKague; (ii) proposed counsel to the Debtor, Sidley Austin LLP, 555 West Fifth Street, Los Angeles, California 77002, Attn: Julia Phillips Roth, (julia.roth@sidley.com); and (iii) counsel to any official committee appointed in the chapter 11 case (collectively, the “Additional Assurance Request Parties”) no later than fourteen (14) days after service of the Final Order.
  - d. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the account number, the type of utility services, and identify the location(s) for which such services are provided, (iii) summarize any deposits, letters of credit, and other security held by the Utility Provider; (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment; and (v) specify the amount and nature of assurance of payment that would be satisfactory to the Utility Provider.
  - e. If a Utility Provider fails to serve on the Additional Assurance Request Parties an Additional Assurance Request, such Utility Provider shall be prohibited from discontinuing, altering, or refusing service to, or discriminating against, the Debtor on account of the commencement of this chapter 11 case or any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
  - f. Upon the Debtor’s receipt of any Additional Assurance Request as provided herein, the Debtor shall have twenty (20) days from the receipt of the Additional Assurance Request (the “Resolution Period”) to negotiate with the Utility Provider to resolve the Utility Provider’s Additional Assurance Request. The Resolution Period may

be extended by agreement of the Debtor and the applicable Utility Provider without application to or approval of this Court.

- g. The Debtor may, without further order of this Court, resolve any Additional Assurance Request by mutual agreement with a Utility Provider if the Debtor determines that such Additional Assurance Request is reasonable, and may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of future payment, which may include but shall not be limited to cash deposits, prepayments, or other forms of security, in each case, without further order of this Court to the extent the Debtor believes that such additional assurance is reasonable in the exercise of its business judgment and the Debtor may, by mutual agreement with the objecting Utility Company and without further order of the Court, reduce the Adequate Assurance Deposit by any amount allocated to such Utility Company.
- h. If the Debtor determines that the Additional Assurance Request is not reasonable and the Debtor is unable to reach an alternative resolution with the Utility Provider, the Debtor, during or immediately after the Resolution Period, will request a hearing (a “Determination Hearing”) before the Court to determine the adequacy of assurance of payment with respect to that Utility Provider.
- i. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtor on account of: (i) unpaid charges for prepetition services; (ii) a pending Additional Assurance Request; (iii) any objections filed in response to the Proposed Adequate Assurance; or (iv) the commencement of this chapter 11 case.
- j. Absent compliance with the Adequate Assurance Procedures and the terms of the proposed order, the Debtor’s Utility Providers are prohibited from altering, refusing, or discontinuing service on account of the commencement of this chapter 11 case and/or any unpaid charges for prepetition services provided to the Debtor and are deemed to have received adequate assurance of payment in accordance with section 366 of the Bankruptcy Code.
- k. If any utility account with a Utility Company is closed during this chapter 11 case (a “Closed Account”), the Debtor may, in its discretion, and without further order of the Court, reduce the Utility Deposit by an amount not exceeding, for each Closed Account, the amount deposited with respect to such Closed Account; *provided* that for any Utility Company for which the Utility Deposit is reduced, the Debtor shall provide twenty-one (21) days’ notice of its intent to reduce the Utility Deposit and that the Debtor shall have paid such Utility Company in full for any outstanding postpetition Utility Services with respect to the Closed Account before reducing the Utility Deposit.

7. The inclusion of any entity in, as well as any omission of any entity from, the Utility Service List shall not be deemed an admission by the Debtor that such entity is, or is not, a “utility” within the meaning of section 366 of the Bankruptcy Code, and the Debtor reserves all rights and defenses with respect thereto.

8. The Debtor is authorized to amend the Utility Service List to the extent the Debtor identifies additional Utility Providers or if a Utility Provider begins or ceases to provide services to the Debtor during the pendency of this case. This order (including the Adequate Assurance Procedures set forth herein) shall apply to and be binding upon any subsequently-identified Utility Provider, regardless of when such Utility Provider was added to the Utility Service List; *provided, however*, that the Debtor shall serve a copy of this order on the subsequently identified Utility Provider within three (3) business days of their identification. The Debtor shall increase the amount of the Adequate Assurance Deposit in the event an additional Utility Provider is added to the Utility Service List by an amount equal to two weeks of the Debtor’s average cost of utility services from such Utility Provider, less any deposits or letters of credit already held by such Utility Provider. Subsequently added Utility Providers shall be required to make any Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

9. The Debtor shall file any amended version(s) of the Utility Service List with the Court.

10. Nothing contained in the Motion or this final order shall be construed to create, alter, or perfect, in favor of any person or entity, any interest in cash of the Debtor.

11. Nothing in this final order shall constitute (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor’s or any party in interest’s rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy

law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

12. Notice of the Motion shall be deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are waived by such notice.

13. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this final order are immediately effective and enforceable upon its entry.

14. The Debtor is authorized to take all actions necessary to effectuate the relief granted in this interim order in accordance with the Motion.

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

**Exhibit C**

**Utility Service List**

**EXHIBIT C**

Utility Provider	Utility Service	Account No.	Utility Provider Address	Service Address	Average Monthly Bill
AT&T	Internet	831-001-0350 895	P.O. Box 5019 Carol Stream, IL 60197-5019	7000 Shoreline Court, Suite 201 South San Francisco, CA 94080	\$2,000
AT&T Mobility	Mobile Phones	287257137737	P.O. Box 6463 Carol Stream, IL 60197-5019	7000 Shoreline Court, Suite 201 South San Francisco, CA 94080	\$3,000
WiLine Networks	Internet	915098	P.O. Box 92169 Las Vegas, NV 89193-2169	7000 Shoreline Court, Suite 201 South San Francisco, CA 94080	\$2,100
Voice Carrier	Virtual Fax	1505	P.O. Box 102150 Pasadena, CA 91189-2150	7000 Shoreline Court, Suite 201 South San Francisco, CA 94080	\$50