

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 ()

Proposed Bidding Procedures Objection
Deadline: January 23, 2023 at 4:00 p.m. (ET)

Proposed Bidding Procedures Hearing Date:
January 26, 2023 at a time TBD

Proposed Sale Objection Deadline:
February 10, 2023 at 4:00 p.m. (ET)

Proposed Sale Hearing Date:
February 21, 2023 at a time TBD

**DEBTOR’S MOTION FOR ENTRY OF
(I) AN ORDER (A) APPROVING CERTAIN BIDDING
PROCEDURES AND THE FORM AND MANNER OF NOTICE
THEREOF, (B) SCHEDULING AN AUCTION AND A HEARING ON
THE APPROVAL OF THE SALE OF ALL OR SUBSTANTIALLY ALL OF
THE DEBTOR’S ASSETS, (C) ESTABLISHING CERTAIN ASSUMPTION
AND ASSIGNMENT PROCEDURES AND APPROVING THE MANNER OF
NOTICE THEREOF, AND (D) GRANTING RELATED RELIEF; AND (II) AN
ORDER (A) AUTHORIZING AND APPROVING THE DEBTOR’S ENTRY INTO
AN ASSET PURCHASE AGREEMENT, (B) AUTHORIZING THE SALE OF ALL
OR SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS FREE AND CLEAR OF
ALL ENCUMBRANCES, (C) APPROVING THE ASSUMPTION AND ASSIGNMENT
OF THE ASSUMED CONTRACTS, AND (D) GRANTING RELATED RELIEF**

By this motion (this “Motion”), the above-captioned debtor and debtor in possession (the “Debtor”) requests, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, and 9006 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rules 2002-1, 6004-1

¹ 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.



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”), entry of:

- (i) an order, substantially in the form attached hereto as **Exhibit A** (the “Bidding Procedures Order”):
 - (a) approving proposed bidding procedures (the “Bidding Procedures”) in connection with the sale or sales (collectively, the “Sale”) of all or substantially all of the Debtor’s assets or any portion thereof (the “Assets”), in the form attached to the Bidding Procedures Order as Exhibit 1, and approving the form and manner of notice thereof in the form attached to the Bidding Procedures Order as Exhibit 2,
 - (b) subject to final Court approval of the Stalking Horse Approval Order (as defined below), authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder (as defined below) in accordance with the Bidding Procedures,
 - (c) subject to final Court approval at the Sale Hearing (as defined below), authorizing and approving the Debtor to enter into and perform under an asset purchase agreement consistent with the Bidding Procedures (the “Purchase Agreement”),
 - (d) scheduling an auction (the “Auction”) and a sale hearing (the “Sale Hearing”) in connection with the Sale,
 - (e) establishing procedures for the assumption and assignment (the “Assumption and Assignment Procedures”) of the executory contracts and unexpired leases identified in the Cure Schedule (as defined below) (each, an “Assumed Contract,” and collectively, the “Assumed Contracts”) and the form and manner of notice thereof in the form attached to the Bidding Procedures Order as Exhibit 3, and
 - (f) granting related relief; and
- (ii) an order (the “Sale Order”):
 - (a) authorizing and approving the Debtor’s entry into the Purchase Agreement with the Successful Bidder(s) (as defined below) or Next-Highest Bidder(s) (as defined below), as applicable,
 - (b) authorizing the Sale of the Assets to the party or parties that are the Successful Bidder(s) at the Auction, free and clear of all liens, claims and encumbrances (the “Encumbrances”), except for certain assumed liabilities,

- (c) authorizing and approving the assumption and assignment of the Assumed Contracts in connection with the Sale, including proposed cure amounts (if any), and
- (d) granting related relief.

In support of this Motion, the Debtor incorporates the statements contained in the *Declaration of Lawrence Perkins in Support of Chapter 11 Petition and First Day Motions* (the “First Day Declaration”)² and the *Declaration of Alexander V. Rohan in Support of Motion of Debtor for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor’s Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtor’s Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtor’s Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* (the “Rohan Declaration”), each filed contemporaneously herewith. 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 (this “Chapter 11 Case”) 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

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

Bankruptcy Code. No party has requested the appointment of a trustee or examiner in this Chapter 11 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 Local Rule 9013-1(f), 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.

4. The statutory and legal predicates for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of title 11 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, and 6006, and Local Rule 6004-1.

PRELIMINARY STATEMENT

5. The Debtor commenced the Chapter 11 Case to facilitate a timely and efficient process aimed at maximizing the value of the Debtor's estate for the benefit of all stakeholders. Following a prepetition marketing process, the Debtor determined, in consultation with Miller Buckfire & Co., LLC and Stifel, Nicolaus & Company (collectively, "Stifel-MB") and the Debtor's other advisors, that an expedited sale process under chapter 11 of the Bankruptcy Code is the best path forward to consummate a value-maximizing Sale of its Assets. For the reasons set forth herein, a marketing and Sale process under section 363 of the Bankruptcy Code provides the Debtor with certain advantages that were not available to the Debtor during the prepetition marketing process.

6. Accordingly, the Debtor files this Motion to approve the proposed Bidding Procedures while it works to identify a Stalking Horse Bidder for the Sale of the Assets. A Stalking Horse Bidder, if one can be identified, permits the Debtor to secure a bid that will serve as a floor for all other potential bids. The ultimate aim of these proposed procedures is to allow the Debtor to identify a Stalking Horse Bidder and thereafter facilitate a productive Auction, where interested parties will have an opportunity to bid on the Assets. The Bidding Procedures proposed by this Motion ensure that the Debtor's postpetition marketing and sale process builds upon the prepetition process in a fair, open manner that encourages bidders to submit proposals in a manner that maximizes asset value.

7. For these reasons, as set forth more fully below, the Debtor seeks entry of the Bidding Procedures Order on an expedited basis,³ approval to conduct the marketing and Sale process in accordance with the Bidding Procedures, and, following the completion of the Sale process, entry of the Sale Order.

RELEVANT BACKGROUND

A. Overview

8. The Debtor is a clinical-stage pharmaceutical company focused on the development and commercialization of veverimer, a new chemical entity discovered by the Debtor utilizing its own proprietary technology, to slow the progression of chronic kidney disease ("CKD") through the treatment of chronic metabolic acidosis. The Debtor's intellectual property portfolio consists

³ Concurrently herewith, the Debtor filed the *Debtor's Motion for Entry of an Order Shortening the Notice and Objection Periods for the Debtor's Motion for Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor's Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtor's Entry into an Asset Purchase Agreement, (B) Authorizing the Sale of All or Substantially All of the Debtor's Assets Free and Clear of All Encumbrances, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief* (the "Motion to Shorten") seeking a hearing on this Motion on January 26, 2023.

of not only veverimer, but also 233 patents in 52 different countries, including compositions-of-matter, dosage unit forms, methods-of-treatment, medical use, and methods of manufacture.

9. The Debtor experienced a significant setback in its development and commercialization of veverimer in late October 2022, when it announced that its Phase 3 clinical trial failed to produce sufficient data about clinical efficacy and safety to obtain FDA approval to market veverimer. However, although the Debtor has not received approval to market any CKD treatments to date, veverimer may have future uses in the development of novel treatments or therapies for a number of diseases in which metabolic acidosis is implicated, including but not limited to CKD. Common reasons for failure of Phase 3 clinical studies include lack of efficacy, substantial safety concerns, and critically flawed trial designs; however, the situation with the Debtor's study appears to be different. Based on its supplemental review of the Phase 3 trial data, the Debtor believes approximately sixty percent (60%) of the patient population enrolled in the trial did not have CKD-induced chronic metabolic acidosis at the level required for the trial and expected for the patient population. It might be possible to design a clinical trial that would more reliably identify the targeted patient population and establish the efficacy of veverimer in slowing CKD progression; however, Tricida does not have the resources to pursue such a trial.

10. A more detailed description of the Debtor, including the Debtor's business operations, its corporate and capital structure, the veverimer drug trial process and other events leading to the commencement of the Chapter 11 Case, and other facts and circumstances supporting this Motion, is set forth in the First Day Declaration.

B. The Debtor's Prepetition Sale and Marketing Efforts

11. Beginning in late October 2022, following the unsuccessful Phase 3 clinical study, the Debtor determined that it was necessary to explore strategic alternatives aimed at maximizing

optionality while containing costs wherever possible to best preserve available liquidity and maximize the value of the Assets for all its stakeholders. On November 3, 2022, the Debtor retained Stifel-MB to assist in these efforts. Commencing shortly thereafter, the Debtor, with the assistance of its professional advisors, pursued multiple work streams to evaluate a range of strategic alternatives with the goal of maximizing the value of the company and its Assets.

12. After conducting initial due diligence, the Debtor, in consultation with Stifel-MB, launched a marketing process for the Assets on November 14, 2022. In order to ensure a robust process, on November 17, 2022, the Debtor made public through an 8-K filing (the “November 8-K”) certain information regarding veverimer.⁴ Stifel-MB contacted or received inbound interest from approximately 53 strategic and financial parties regarding a potential transaction for the Debtor or the Assets, primarily comprised of large-cap and mid-cap public and private companies with strategic interests in nephrology or renal and metabolic therapeutic categories. With respect to this outreach process, Stifel-MB prioritized parties with both adequate commercial infrastructure and drug development capabilities along with sufficient capital resources—or a reasonable likelihood of being able to obtain such capital—to consummate a transaction that would maximize the value for the creditors. These parties were provided non-confidential presentation materials prepared by the Debtor (disclosed in the November 8-K). Certain confidential information (including access to a virtual data room) was provided to those parties who executed a non-disclosure agreement.

13. Despite the best efforts of the Debtor and its advisors, the strategic alternative exploration and evaluation process—including the marketing process—did not produce a satisfactory stalking horse offer to purchase the company as a going concern or to purchase the

⁴ Tricida, Inc., Current Report (Form 8-K), at 2-45 (Nov. 17, 2022), <https://ir.tricida.com/static-files/0245c0ed-c2c9-4497-baaf-375de5df2bd3>

Assets outside of the protections afforded by a chapter 11 process. Without a clear out-of-court solution to maximize value, the Debtor pivoted to preparing for a chapter 11 filing and Sale process under section 363 of the Bankruptcy Code.

C. The Debtor's Proposed Sale Process

14. Through the Bidding Procedures outlined in this Motion, the Debtor intends to build upon its prepetition efforts by marketing the Assets more broadly than it did prepetition. Stifel-MB is launching the postpetition process in connection with the filing of the proposed Bidding Procedures, contacting all parties from the prepetition process as well as additional potential purchasers, including those who may be interested in only certain business segments or a subset of the Assets. Pursuant to the Bidding Procedures, the Debtor intends to further market the Assets to potential buyers and facilitate access to diligence materials. Such materials include details of the proposed Bidding Procedures, a non-confidential presentation and, for those executing a non-disclosure agreement with the Debtor, access to a virtual data room, confidential presentation materials and, as appropriate, meetings with management. This postpetition marketing process for the Assets will include a broader universe of potential buyers due to the public nature of the Bidding Procedures and the ability to sell the Assets free and clear of claims and interests, provides the best path forward to consummating a value-maximizing transaction.

15. Given the Debtor's liquidity situation and the robust prepetition marketing process, the Debtor has determined that its best opportunity to maximize the value of its estate for the benefit of all the Debtor's stakeholders relies on its ability to expeditiously proceed through the Chapter 11 Case and complete the Sale in a manner that minimizes administrative expenses. Therefore, an expedited, efficient sale process, as provided for in this Motion and the Motion to

Shorten, is necessary to generate the highest or otherwise best value for the Assets while minimizing costs.

THE PROPOSED BIDDING PROCEDURES⁵

16. The Debtor is requesting approval of the Bidding Procedures, which describe, among other things, the (a) Assets available for sale, (b) manner in which bids become “qualified,” (c) coordination of diligence efforts among the bidders and the Debtor, (d) receipt and negotiation of bids received, (e) conduct of any Auction, (f) selection and approval of the Successful Bidder and the Next-Highest Bidder (as defined below), and (g) designation and approval of any Stalking Horse Bidder, Stalking Horse APA, and Bid Protections (as defined below), if one is designated. The Debtor designed the Bidding Procedures to promote a controlled, fair, and open sale process while ensuring that the highest or best bid is generated for the Assets. The following is a summary of the proposed Bidding Procedures, as required by Local Rule 6004-1.⁶

17. Confidentiality Agreement. Unless otherwise ordered by the Court for cause shown, to participate in the Bidding Process, each person or entity must enter into with the Debtor, on or before the Bid Deadline, a confidentiality agreement in form and substance satisfactory to the Debtor (the “Confidentiality Agreement”). Each such person or entity that enters into a Confidentiality Agreement with the Debtor on or before the Bid Deadline is hereinafter referred to as a “Potential Bidder,” and the Debtor shall inform the Consultation Parties (as defined below) of any person or entity that becomes a Potential Bidder. After a Potential Bidder enters into a

⁵ Capitalized terms used in this section but not otherwise defined herein shall have the meanings ascribed to them in the Bidding Procedures.

⁶ Any summary of the Bidding Procedures contained herein is qualified in its entirety by the actual terms and conditions of the Bidding Procedures attached as Exhibit 1 to the Bidding Procedures Order. To the extent that there is any conflict between the summary contained herein and the actual terms and conditions of the Bidding Procedures reflected in Exhibit 1 to the Bidding Procedures Order, the terms and conditions of the Bidding Procedures shall control in all respects.

Confidentiality Agreement with the Debtor and provides preliminary proof, the adequacy of which the Debtor and its advisors will determine in their sole discretion, of its bona fide interest in purchasing some of all of the Assets and its financial capacity to potentially consummate a proposed Sale, the Debtor shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information with respect to the Assets.

18. Designation of the Stalking Horse Bidder. The Debtor may, at any time prior to the Auction, in consultation with (a) any statutory committee appointed in the Chapter 11 Case, if any (each a “Committee”) and such Committee’s counsel, (b) certain holders (the “Consenting Noteholders”) of the 3.50% Convertible Senior Notes Due 2027 (the “Notes”) that are signatories to that certain Restructuring Support Agreement dated as of January 11, 2023 by and between the Debtor and the Consenting Noteholders and such Consenting Noteholders’ counsel, Davis Polk & Wardwell LLP (Attn: Darren S. Klein (darren.klein@davispolk.com) and Abraham Bane (abraham.bane@davispolk.com)), (c) counsel to the indenture trustee to the Notes, Greenberg Traurig, LLP (Attn: Michael B. Fisco (fiscom@gtlaw.com) and Whitney Mark (whitney.mark@gtlaw.com)), and (d) any other party that the Debtor deems appropriate (collectively, the “Consultation Parties” and each, a “Consultation Party”), designate a stalking horse bidder (the “Stalking Horse Bidder”), whose Qualified Bid shall serve as the stalking horse bid (the “Stalking Horse Bid”). Any asset purchase agreement memorializing the proposed transaction set forth in the Stalking Horse Bid (the “Stalking Horse APA”) will be binding on the Stalking Horse Bidder and set the floor for all Qualified Bids, subject to higher or otherwise better Qualified Bids. If the Stalking Horse Bid is not selected as the Successful Bid, the Stalking Horse Bidder may still serve as the Next-Highest Bidder (as defined below), if its bid represents the second-highest or otherwise best bid after the Auction. Notwithstanding any of the foregoing, the

Debtor is not obligated to select a Stalking Horse Bidder and may proceed to the Auction without one.

19. Timing of the Designation of the Stalking Horse Bidder. In the event that the Debtor designates a Stalking Horse Bidder and seeks to enter into a Stalking Horse APA on or prior to February 6, 2023, at 4:00 p.m. (prevailing Eastern Time) (the “Stalking Horse Supplement Deadline”), the Debtor shall file a supplement to the Motion (the “Stalking Horse Supplement”) seeking approval of the same, and serve the Stalking Horse Supplement by email, where available, or otherwise by first class mail, with no less than three (3) business days’ notice of the objection deadline (the “Stalking Horse Objection Deadline”) to (a) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), (b) the Consultation Parties, and (c) those parties who have requested notice of all pleadings filed in the Chapter 11 Case pursuant to Bankruptcy Rule 2002 (collectively, the “Stalking Horse Notice Parties”) with no further notice being required, provided that the Stalking Horse Supplement (a) sets forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly-formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (b) sets forth the amount of the Stalking Horse Bid and what portion (if any) is cash; (c) states whether the Stalking Horse Bidder has any connection to the Debtor other than those that arise from the Stalking Horse Bid; (d) specifies any proposed bid protections (the “Bid Protections”); (e) attaches the Stalking Horse APA, including all exhibits, schedules or attachments thereto; and (f) sets forth the deadline to object to the Stalking Horse Bidder designation and Bid Protections. The Stalking Horse Supplement shall also include any evidence the Debtor would like the Court to consider in connection with any request to approve any breakup fee and/or expense reimbursement and/or any other Bid Protections as an administrative expense under section 503(b) of the Bankruptcy Code. If the Debtor designates a

Stalking Horse Bidder by the Stalking Horse Supplement Deadline, the Debtor will file the proposed form of the Sale Order agreed to by the Stalking Horse Bidder on or before the Stalking Horse Supplement Deadline.

20. In the event the Debtor designates a Stalking Horse Bidder after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtor may seek Court approval on an expedited basis of the Stalking Horse Bidder and Stalking Horse APA, including the Bid Protections, and reserves its right to file such a motion at any time after the Stalking Horse Supplement Deadline and prior to the Auction. Prior to the filing of any proposed motion, the Debtor will consult with the Consultation Parties with respect to the designation of the Stalking Horse Bidder and Stalking Horse APA.

21. Objections to the designation of a Stalking Horse Bidder or any of the terms of a Stalking Horse Bid (the "Stalking Horse Objection") shall (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served on the Stalking Horse Notice Parties within three (3) business days after the service of the Stalking Horse Supplement.

22. If a timely Stalking Horse Objection is filed, the Debtor will schedule a hearing regarding such Stalking Horse Objection as soon as reasonably practicable seeking approval of such Stalking Horse Bid on or before February 9, 2023 (but in no event fewer than three (3) business days after the service of the Stalking Horse Supplement). If no Stalking Horse Objection is timely filed and served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtor will submit to the Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA

(the “Stalking Horse Approval Order”), which may be entered by the Court without a hearing, including with respect to any Bid Protections set forth in the Stalking Horse Supplement.

23. Upon entry of an order approving the Stalking Horse Bidder, the Debtor’s obligation to pay the Bid Protections shall constitute, pursuant to section 503(b) of the Bankruptcy Code, an administrative expense claim against the Debtor’s bankruptcy estate, and shall survive termination of the Stalking Horse APA. In such case, the Bid Protections shall be payable by the Debtor to the Stalking Horse Bidder on the terms and conditions set forth in the Stalking Horse APA. For the avoidance of doubt, this Motion is not seeking authorization to grant the Bid Protections superpriority expense treatment pursuant to sections 364(c)(1) or 507(b) of the Bankruptcy Code, but the Debtor reserves its right to do so by filing a separate motion with the Court.

24. Determination by the Debtor. Following consultation with the Consultation Parties, the Debtor shall (a) coordinate with Potential Bidders regarding the conduct of its respective due diligence, (b) evaluate Bids from Potential Bidders on any or all of the Assets, (c) negotiate any bid made to acquire any or all of the Assets, and (d) make such other determinations as are provided in the Bidding Procedures; provided that, notwithstanding anything to the contrary contained in this Motion or the Bidding Procedures, the Debtor shall not consult with a Consultation Party (or its advisors) that is actively participating as a Potential Bidder for the Assets.⁷ Neither the Debtor nor its representatives shall be obligated to furnish any information

⁷ For the avoidance of doubt, if one of the Consenting Noteholders or a member of a Committee (or their affiliates, as applicable) is actively participating as a Potential Bidder for the Assets (a “Bidding Party”), then (a) the remaining Consenting Noteholders and members of the Committee other than the Bidding Party, (b) the Consenting Noteholders’ counsel, and (c) the Committee’s counsel shall continue to be Consultation Parties, but shall not provide any information they receive as Consultation Parties to the Bidding Party.

of any kind whatsoever relating to the Assets to any party that is not a Potential Bidder or a Consultation Party.

25. Due Diligence. The Debtor established the Data Room into which substantial information about the Debtor and its business has been posted. Except to the extent a Confidentiality Agreement or other agreement provides otherwise, all Potential Bidders and the Consultation Parties will be granted full access to the Data Room. The Debtor, with the assistance of Stifel-MB, will coordinate all reasonable requests for additional information and due diligence access from Potential Bidders and the Consultation Parties. In the event that any such due diligence materials are prepared by the Debtor in written form and have not previously been provided to any other Potential Bidder, the Debtor will simultaneously provide access to such materials to (a) all Potential Bidders and (b) all Consultation Parties.

26. Bid Deadline. On or before **February 10, 2023, at 10:00 a.m. (prevailing Eastern Time)** (the "Bid Deadline"), a Potential Bidder that desires to make a Bid is required to deliver written copies of its Bid in both Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) format to Stifel-MB, Attn: Alexander Rohan (Alex.Rohan@millerbuckfire.com), Neal Karnovsky (karnovskyn@stifel.com) and Rishi Shah (rishi.shah@millerbuckfire.com). The Debtor shall provide to the Consultation Parties copies of each Bid (as defined below) received by the Debtor as soon as reasonably practicable following receipt of such Bid.

27. Bid Requirements.⁸ All Bids must comply with the following Bid Requirements:
- (a) be accompanied by a letter or email:
 - (i) fully disclosing the identity of the Potential Bidder and providing the contact information of the specific person(s) whom the Debtor or its

⁸ The Debtor will also consider proposals to acquire any and all of the Assets through a plan of reorganization. Should any such proposal be received prior to the Bid Deadline that the Debtor, in consultation with the Consultation Parties, concludes is in the best interest of the estate and its stakeholders, then the Debtor reserves the right to postpone the Auction and proceed toward the confirmation of a plan of reorganization.

advisors should contact (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale) in the event that the Debtor has any questions or wishes to discuss the Bid submitted by the Potential Bidder;

- (ii) setting forth the purchase price to be paid by such Potential Bidder and forms of consideration the Potential Bidder intends to use to pay such purchase price;
- (iii) stating with specificity the Assets (including any specific executory contracts and unexpired leases) such Potential Bidder wishes to bid on and the liabilities and obligations (including any applicable cure costs) to be assumed by the Potential Bidder in the Sale;
- (iv) providing, other than as may be exclusively applicable to the Stalking Horse Bidder, if designated, that the Bid is not subject to any bidding fee, break-up fee, termination fee, transaction fee, expense reimbursement or any similar type of reimbursement, and including an express waiver of any substantial contribution administrative expense claim under Section 503(b) of the Bankruptcy Code related to bidding for the Assets; provided that, in the event a Stalking Horse Bidder is designated, all bids must provide consideration to the Debtor of at least the sum of (1) the Stalking Horse Bid, (2) the amount of any Bid Protections, and (3) a reasonable minimum overbid amount equal to or greater than \$100,000 or such other amount determined by the Debtor in consultation with the Consultation Parties (“Incremental Overbid”) over the Starting Bid or the Leading Bid;
- (v) agreeing that the Potential Bidder’s offer is binding, unconditional, and irrevocable until three (3) business days after the closing of the Sale;
- (vi) containing a commitment to close the contemplated transaction(s) by a Closing Date of no later than February 24, 2023;
- (vii) providing that such Bid is not subject to contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;
- (viii) containing an acknowledgment that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Assets, has relied solely upon its own independent review and investigation and/or inspection of any documents and any other information in making the Bid;
- (ix) providing that the Potential Bidder agrees to serve as a backup bidder (the “Next-Highest Bidder”) if the Potential Bidder’s Qualified Bid (as defined below) is the next highest or best bid after the Successful Bid (as

defined below) (the “Next-Highest Bid”) with respect to the relevant Assets through the Closing Date; and

- (b) be accompanied by (i) an executed purchase agreement in form and substance reasonably satisfactory to the Debtor (a “Qualified Bid Purchase Agreement”), and (ii) if a Stalking Horse APA has been entered into, or if a form purchase agreement is provided, a redline of the executed Qualified Bid Purchase Agreement to reflect any proposed amendments and modifications to the Stalking Horse APA or the form purchase agreement, as applicable, and the applicable schedules and exhibits;
- (c) be accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”), which may include (i) information demonstrating (in the Debtor’s reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, (ii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, and (iii) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Debtor may disseminate their Adequate Assurance Information to affected counterparties to any contracts or leases potentially being assumed and assigned in connection with the Sale and the Consultation Parties in the event that the Debtor determines such bid to be a Qualified Bid (as defined below); and
- (d) be accompanied by (i) a deposit in the form of a certified check or wire transfer, payable to the order of the Debtor, in the amount of ten percent (10%) of the cash consideration of the Bid, which funds will be deposited, prior to the Bid Deadline, into an escrow account to be identified and established by the Debtor (a “Good Faith Deposit”), and (ii) written evidence, documented to the Debtor’s satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the relevant Assets (provided, however, that the closing shall not be contingent in any way on the Successful Bidder’s financing) and such other evidence of ability to consummate the transaction(s) as the Debtor may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided further that such commitments may have covenants and conditions acceptable to the Debtor). The Debtor reserves the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) in its sole discretion after consulting with the Consultation Parties, including by requiring Qualified Bidders to provide a Good Faith Deposit for any non-cash consideration based on such Qualified Bidder’s estimate of the value of any such non-cash consideration.

28. A Bid received from a Potential Bidder for any portion of the Assets that is determined by the Debtor, in consultation with the Consultation Parties, to meet the above

requirements will be considered a “Qualified Bid” and each Potential Bidder that submits such a Qualified Bid will be considered a “Qualified Bidder.” The Debtor shall inform Qualified Bidders that their Bids have been designated as Qualified Bids no later than February 14, 2023, at 6:00 p.m. (prevailing Eastern Time). For the avoidance of doubt, any Stalking Horse Bid will be deemed a Qualified Bid and the Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements pursuant to the Bidding Procedures, notwithstanding the requirements that a Potential Bidder must satisfy to be a Qualified Bidder. The Debtor shall inform the Stalking Horse Bidder of the Qualified Bids received and shall provide copies of the Starting Bid(s) (as defined below) no later than February 14, 2023, at 9:00 p.m. (prevailing Eastern Time).

29. Starting Bid(s). If at least two Qualified Bids are received by the Bid Deadline with regard to any particular Assets, the Debtor will conduct the Auction with respect to such Assets and shall determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction for the relevant Assets (the “Starting Bid(s)”). In the event a Stalking Horse Bidder is selected, the Starting Bid shall include the amount provided for in the Stalking Horse Bid plus the amount of any Bid Protections. The Starting Bid(s) will be communicated and provided to the Qualified Bidders prior to the commencement of the Auction.

30. The determination of which Qualified Bid constitutes the Starting Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtor (in consultation with the Consultation Parties) reasonably deems relevant to the value of the Qualified Bid to the Debtor’s estate, including, among other things, the following: (a) the amount and nature of the consideration, including any obligations to be assumed; (b) the executory contracts and unexpired leases of the Debtor, if any, for which assumption and assignment or

rejection is required, and the costs and delay associated with any litigation concerning executory contracts and unexpired leases necessitated by such bid; (c) the number, type and nature of any changes to the Stalking Horse APA, as applicable, requested by each Qualified Bidder; (d) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtor of such modifications or delay; (e) the likelihood of the Qualified Bidder being able to close the proposed transaction (including obtaining any required regulatory approvals) and the timing thereof; (f) the net benefit to the Debtor's estate (including after taking account of the Bid Protections, if any); (g) the tax consequences of such Qualified Bid; and (h) the impact on employees and the proposed treatment of employee obligations.

31. Auction. The Auction, if required, will be conducted on February 15, 2023, starting at 10:00 a.m. (prevailing Eastern Time) at the offices of Sidley Austin, LLP, 787 Seventh Avenue, New York, NY 10019 and, if determined by the Debtor to be necessary or convenient, via teleconference and/or videoconference. Professionals and principals for the Debtor, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties (including their professionals), the U.S. Trustee and any other parties the Debtor deems appropriate shall be permitted to attend and observe the Auction. Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

32. At the Auction, participants will be permitted to increase their Bids and improve their terms in accordance with the Bidding Procedures; provided that any such increased or improved bid must be a Qualified Bid (except that the Bid Deadline will not apply). Bidding for any part or all of the Assets will start at the applicable Starting Bid(s) and will continue, in one or

more rounds of bidding, so long as during each round at least one Subsequent Bid is submitted by a Qualified Bidder. In consultation with the Consultation Parties, the Debtor may at any time adopt rules for the Auction that the Debtor reasonably determines to be appropriate to promote the goals of the Bidding Process; provided that such rules are disclosed to each Qualified Bidder during the Auction.

33. Prior to the conclusion of the Auction, the Debtor, in consultation with the Consultation Parties, will, for the Assets (or subset thereof) that were subject to the Auction: (a) determine, consistent with the Bidding Procedures, which bid constitutes the highest or otherwise best bid (the “Successful Bid”); and (b) notify all Qualified Bidders at the Auction for the subject Assets, prior to its conclusion, of the name of the maker of the Successful Bid (the “Successful Bidder”) with respect to the subject Assets, and the amount and other material terms of the Successful Bid.

34. After determining the Successful Bid(s) for the Assets, the Debtor may determine, in its reasonable business judgment, in consultation with the Consultation Parties, which Qualified Bid(s) are the Next-Highest Bid(s) for the Assets.

35. Acceptance of Qualified Bids. The Debtor’s selection and submission to the Court of the selected Bid as the Successful Bid will not constitute the Debtor’s acceptance of the Bid. The Debtor will have accepted a Qualified Bid only when such Qualified Bid has been approved by the Court at the Sale Hearing. If the Successful Bidder does not close the Sale by the date agreed upon by the Debtor and the Successful Bidder and a Stalking Horse Bid was not designated, then the Debtor shall be authorized, but not required, to close with the Next-Highest Bidder pursuant to further order of the Court.

36. Modification of Bidding Procedures. Following consultation with the Consultation Parties, the Debtor may amend the Bidding Procedures or the Bidding Process at any time and from time to time in any manner that it determines in good faith will best promote the goals of the process and does not conflict with the Bankruptcy Code, Bankruptcy Rules, or Local Rules, including extending or modifying any of the dates described herein.

37. Return of Good Faith Deposit. The Good Faith Deposits of all Qualified Bidders will be held in escrow and while held in escrow will not become property of the Debtor's bankruptcy estates unless released from escrow pursuant to terms of the applicable escrow agreement or pursuant to further order of the Court. At the closing of a Sale contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith Deposits of any Next-Highest Bidder shall be retained until three (3) business days after the applicable Closing Date. The Good Faith Deposits of any other Qualified Bidders will be returned as soon as practicable but no later than seven (7) business days following the Auction.

**NOTICE PROCEDURES FOR THE SALE,
BIDDING PROCEDURES, AUCTION AND SALE HEARING**

38. The Debtor also requests approval of the notice of the Auction, Sale Hearing, and Bidding Procedures (the "Sale Notice"), substantially in the form attached to the Bidding Procedures Order as Exhibit 2.

39. As soon as practicable after the entry of the Bidding Procedures Order, the Debtor will serve the Sale Notice by email, if available, or otherwise by first class mail upon the following; *provided, however*, that the Debtor need not serve the Sale Notice on any party for whom the Debtor is unable to obtain, after reasonable diligence, an email or physical address as of the entry of the Bidding Procedures Order; *provided, further* that the Debtor shall not be obligated to provide

supplemental service of the Sale Notice with respect to any Sale Notice that is returned to the Debtor as undeliverable so long as the Debtor has confirmed that any such Sale Notice was sent to the applicable email or physical address on file in the Debtor's books and records and no other email or physical address could be obtained after reasonable diligence: (a) the U.S. Trustee; (b) the United States Securities and Exchange Commission; (c) the United States Department of Justice; (d) the United States Food and Drug Administration; (e) Davis Polk & Wardwell LLP and Greenberg Traurig, LLP, counsel to (1) the Consenting Noteholders and (2) U.S. Bank, the indenture trustee to the Notes, respectively; (f) counsel to any Committee; (g) all state attorneys' general and consumer protection agencies in jurisdictions in which the Assets are located; (h) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (i) all parties who are known by the Debtor to assert liens against the Assets, if any; (j) all non-Debtor parties to the Assumed Contracts; (k) any party known or reasonably believed to have expressed an interest in acquiring some or all or substantially all of the Assets; (l) all of the Debtor's other known creditors and equity security holders; and (m) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, "Sale Notice Parties").

40. The Debtor will also cause the Sale Notice to be published once in each (a) the *San Jose Mercury News* and (b) the national edition of *The New York Times* or another publication with similar national circulation, and post the Sale Notice and the Bidding Procedures Order on the website of the Debtor's proposed claims and noticing agent, Kurtzman Carson Consultants LLC. The Sale Notice will include, among other things, the date, time and place of the Auction and the Sale Hearing and the deadline for filing any objections to the relief requested in the Sale Motion, once they are set by the Court.

ASSUMPTION AND ASSIGNMENT PROCEDURES

41. To facilitate the Sale, the Debtor seeks authority to assume and assign to any Successful Bidder(s), the Assumed Contracts in accordance with the Assumption and Assignment Procedures provided herein and the form and manner of notice thereof substantially in the form attached to the Bidding Procedures Order as Exhibit 3 (the “Assumption and Assignment Notice”).

42. By no later than three (3) business days after the entry of the Bidding Procedures Order, the Debtor will file the Assumption and Assignment Notice, which shall include a schedule of cure obligations (the “Cure Schedule”) for the Assumed Contracts. The Cure Schedule will include a description of each Assumed Contract potentially to be assumed and assigned by a potential buyer and the amount, if any, necessary to cure such agreements pursuant to section 365 of the Bankruptcy Code (the “Cure Costs”). A copy of the Assumption and Assignment Notice, including the Cure Schedule, will be served on each of the non-Debtor parties listed on the Cure Schedule by email, where available, or otherwise by first class mail on the date that the Assumption and Assignment Notice is filed with the Court.

43. The Debtor proposes that any objections to the assumption and assignment of any executory contract or unexpired lease identified on the Cure Schedule, including, but not limited to, the Cure Costs set forth on such schedule, must be in writing, state the basis of such objection with specificity, be filed with the Court no later than 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) calendar days from date of the service of the Cure Schedule, and be served on the following parties: (a) proposed counsel to the Debtor, Sidley Austin LLP, 555 West Fifth Street, Los Angeles, CA 90013 (Attn.: Sam Newman (sam.newman@sidley.com), Julia Philips Roth (julia.roth@sidley.com), Charles Persons (cpersons@sidley.com), and Geoffrey Levin (glevin@sidley.com)); (b) proposed co-counsel to the Debtor, Young Conaway Stargatt & Taylor,

LLP, One Rodney Square, 1000 N. King Street, Wilmington, DE 19801 (Attn.: Sean M. Beach (sbeach@ycst.com) and Allison S. Mielke (amielke@ycst.com)); (c) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn.: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov)); and (d) counsel to any Committee that has been appointed in the Chapter 11 Case (collectively, the “Notice Parties”). Any such objections shall set forth a specific default by the Debtor in any Assumed Contracts and claim a specific monetary amount that differs from the amount (if any) specified by the Debtor in the Cure Schedule.

44. If no objection is timely and properly received with respect to an Assumed Contract, then (a) any non-Debtor counterparties to the Assumed Contracts shall be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Assumed Contract, and the Debtor and the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; (b) be deemed to have consented to the assumption and assignment of such Assumed Contract; and (c) be forever barred, estopped, and permanently enjoined from asserting or claiming against the Debtor, the Successful Bidder or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Contract or that there is any objection or defense to the assumption and assignment of such Assumed Contract. In addition, the Cure Costs set forth in the Cure Schedule shall be binding upon the non-Debtor parties to the Assumed Contracts for all purposes in the Chapter 11 Case and will constitute a final determination of the Cure Costs required to be paid by the Debtor in connection with the assumption and assignment of the Assumed Contracts.

45. Where a non-Debtor counterparty to an Assumed Contract timely files an objection asserting a cure amount higher or different than the proposed Cure Costs (the “Disputed Cure Amount”), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amount, the Cure Amount shall be as agreed between the parties, or (b) to the extent the parties are unable to consensually resolve the dispute, the amount to be paid under section 365 of the Bankruptcy Code with respect to such Disputed Cure Amount will be determined at the Assumption/Assignment Hearing to be scheduled by the Court. All other objections to the proposed assumption and assignment of the Assumed Contracts will be heard at the Sale Hearing, unless adjourned by agreement of the parties.

KEY SALE PROCESS DATES

46. Subject to entry of an order on the Motion to Shorten, the following is a summary of the proposed key dates for the sale process:

<u>Date</u>	<u>Deadline/Event</u>
January 26, 2023, at a time TBD	Bidding Procedures Hearing
Three (3) business days after the entry of the Bidding Procedures Order	Deadline for Debtor to file the Assumption and Assignment Notice and Cure Schedule
Fourteen (14) calendar days after service of the Assumption and Assignment Notice at 4:00 p.m. (ET)	Deadline to object to the Debtor’s proposed assumption and assignment of the Assumed Contracts and related Cure Costs
February 6, 2023, at 4:00 p.m. (ET)	Stalking Horse Supplement Deadline
February 10, 2023, at 10:00 a.m. (ET)	Bid Deadline
February 10, 2023, at 4:00 p.m. (ET)	Deadline to object to the Sale of the Assets ⁹
February 14, 2023, at 6:00 p.m. (ET)	Deadline for Debtor to notify Potential Bidders of whether their Bids are Qualified Bids

⁹ This objection deadline applies to all objections to the Sale of the Assets to a Successful Bidder, with the exception of objections related solely to conduct of the Auction, identity of the Successful Bidder(s), and adequate assurance of future performance by the Successful Bidder(s).

<u>Date</u>	<u>Deadline/Event</u>
February 15, 2023, starting at 10:00 a.m. (ET)	Auction (if necessary)
February 16, 2023, at 4:00 p.m. (ET)	Deadline to file and serve Notice of Successful Bidder(s)
February 17, 2023, at 4:00 p.m. (ET)	Deadline to object to the (a) conduct of the Auction, (b) proposed Sale to the Successful Bidder(s), and (c) ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance
February 21, 2023, at a time TBD	Sale Hearing
On or prior to February 24, 2023	Closing

47. The Debtor respectfully submits that the timeline set forth above is necessary under the circumstances of the Chapter 11 Case. Such timeline provides a thirty-day period between the filing of this Motion and the Bid Deadline and is comparable to other timelines recently approved in this district. *See, e.g., In re Winc, Inc.*, Case No. 22-11238 (LSS) (Bankr. D. Del. Dec. 22, 2022) (approving a sale timeline that provided an approximate five-week period between the filing of the motion and the bid deadline); *In re Fast Radius, Inc.*, Case No. 22-11051 (JKS) (Bankr. D. Del. Nov. 14, 2022) (approving a sale timeline that provided an approximate three-week period between the filing of the motion and the bid deadline); *In re Clarus Therapeutics Holdings Inc.*, Case No. 22-10845 (Bankr. D. Del. Sept. 22, 2022) (approving a sale timeline that provided a five-week period between the filing of the motion and the bid deadline). This timeline, which builds off of the months' long marketing process conducted prepetition by the Debtor's investment banker, Stifel-MB, will allow Potential Bidders sufficient time to evaluate the Assets, given the nature and complexity of the Assets, and formulate bids. In addition to the Debtor's prepetition marketing efforts, the Debtor will actively market the Assets postpetition, including by contacting Potential Purchasers that may be interested in only certain business segments or Assets instead of a going

concern sale. Moreover, relevant information regarding the Debtor's business has been made available on a non-confidential basis prepetition and (subject to the execution of a confidentiality agreement) in the Data Room (as defined in the Bidding Procedures), allowing Potential Bidders to immediately conduct due diligence on the Assets.

THE PROPOSED SALE ORDER

48. The Debtor anticipates that the Sale Order will contain certain provisions that require disclosure under Local Rule 6004-1. At this time, the Debtor makes the following statements:

- (a) Local Rule 6004-1(b)(iv)(A). To the extent a proposed purchaser is an insider (within the meaning of section 101(31) of the Bankruptcy Code), the Debtor will make the necessary disclosures to the Court and take measures to ensure the fairness of the sale process and the proposed transaction.
- (b) Local Rule 6004-1(b)(iv)(B). The Debtor does not presently have any agreement between any interested bidder and the Debtor's management or key employees. If any agreements are reached, the Debtor will make the necessary disclosures.
- (c) Local Rule 6004-1(b)(iv)(C). To the extent that the Sale Order includes a release in favor of any entity, the Debtor will make the necessary disclosures.
- (d) Local Rule 6004-1(b)(iv)(E). The contemplated Closing Date for the Sale is February 24, 2023.
- (e) Local Rule 6004-1(b)(iv)(F). The Debtor is requiring Qualified Bids to include a good faith deposit constituting ten percent (10%) of the total cash consideration of the bid.
- (f) Local Rule 6004-1(b)(iv)(G). The Debtor does not currently have any interim management or other agreement with any party. If any agreements are reached, the Debtor will make the necessary disclosures.
- (g) Local Rule 6004-1(b)(iv)(H). Other than with respect to a potential credit bid under section 363(k) of the Bankruptcy Code, the Debtor is not seeking to release or allocate any sale proceeds without further order of the Court.
- (h) Local Rule 6004-1(b)(iv)(I). The Debtor is not seeking to have the Sale declared exempt from taxes under section 1146(a) of the Bankruptcy Code pursuant to this Motion.

- (i) Local Rule 6004-1(b)(iv)(J). The Debtor will retain necessary books and records, copies thereof, or include as part of the Purchase Agreement appropriate access to such information, to enable it to administer the Chapter 11 Case following any Sale.
- (j) Local Rule 6004-1(b)(iv)(K). The Debtor may seek to sell avoidance actions.
- (k) Local Rule 6004-1(b)(iv)(L). The Debtor is seeking to sell the Assets free and clear of successor liability claims. The Debtor may have unpaid prepetition unsecured claims after the closing of the Sale. No party would likely be willing to purchase the Debtor's assets if it were at risk of liability for those claims under principles of successor liability.
- (l) Local Rule 6004-1(b)(iv)(M). The Debtor is seeking to sell the Assets free and clear of all liens, claims, and encumbrances to the fullest extent permitted by sections 363 and 365 of the Bankruptcy Code.
- (m) Local Rule 6004-1(b)(iv)(N). The Debtor does not seek to affect credit bidding pursuant to Bankruptcy Code section 363(k) in any manner.
- (n) Local Rule 6004-1(b)(iv)(O). The Debtor is seeking relief from the fourteen-day stay imposed by Bankruptcy Rule 6004(h) for any Sale, as further described below.

RELIEF REQUESTED

49. By this Motion, the Debtor seeks entry of (i) the Bidding Procedures Order, (a) scheduling a date for the Auction and Sale Hearing, (b) approving the Bidding Procedures and the form and manner of notice of the Bidding Procedures, (c) subject to the Stalking Horse Approval Order, authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder and enter into the Stalking Horse APA in accordance with the Bidding Procedures, (d) subject to final Court approval at the Sale Hearing, authorizing and approving the Debtor to enter into and perform under the Purchase Agreement, as applicable, subject to higher or otherwise better offers submitted in accordance with the Bidding Procedures, (e) establishing the Assumption and Assignment Procedures and manner and notice thereof; and (ii) the Sale Order, (a) authorizing and approving the Debtor's entry into the Purchase Agreement with the Successful

Bidder(s) or Next-Highest Bidder(s), as applicable, (b) approving the Sale, free and clear of all Encumbrances, (c) authorizing and approving the assumption and assignment of the Assumed Contracts, and (d) granting related relief.

BASIS FOR RELIEF REQUESTED

A. Approval of the Sale Is Warranted Under Section 363(b) of the Bankruptcy Code

50. Section 363(b) of the Bankruptcy Code provides that a Debtor “after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b). Debtors must demonstrate a sound business justification for a sale or use of assets outside the ordinary course of business. *See, e.g., In re Martin*, 91 F.3d 389 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513 (7th Cir. 1991)); *In re Chateaugay Corp.*, 973 F.2d 141, 143 (2d Cir. 1992); *Stephens Indus., Inc. v. McClung*, 789 F.2d 386 (6th Cir. 1986); *In re Lionel Corp.*, 722 F.2d 1063 (2d Cir. 1983).

51. Courts typically consider the following factors in determining whether a proposed sale meets this standard:

- a. whether a sound business justification exists for the sale;
- b. whether adequate and reasonable notice of the sale was given to interested parties;
- c. whether the sale will produce a fair and reasonable price for the property; and
- d. whether the parties have acted in good faith.

In re Decora Indus., Inc., 2002 WL 32332749, at *2 (D. Del. May 20, 2002) (citing *Del. & Hudson Ry. Co.*, 124 B.R. 169, 176 (D. Del. 1991)).

52. When a debtor demonstrates a valid business justification for a decision, a strong presumption arises “that in making [the] business decision the directors of a corporation acted on an informed basis, in good faith and in the honest belief that the action taken was in the best interests

of the company.” *Official Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 656 (S.D.N.Y. 1990) (holding that the Delaware business judgment rule has “vitality by analogy” in chapter 11) (citations omitted).

53. The Debtor submits that its decision to pursue a Sale on the terms set forth in this Motion represents a reasonable exercise of the Debtor’s business judgment and, accordingly, the Sale should be approved under section 363(b) of the Bankruptcy Code. The Debtor will continue to conduct an extensive and fulsome process to market the Assets. The open and fair Auction and sale process contemplated by the Bidding Procedures will ensure that the Debtor’s estate receives the highest or best value available for the Assets by allowing the market to dictate the value of the Assets, and will provide a greater recovery than would be provided by any other available alternative. Furthermore, compliance with the Bidding Procedures will ensure the fairness and reasonableness of the consideration to be paid by the Successful Bidder(s), and establish that the Debtor and the Successful Bidder(s) proceeded in good faith.

54. Additionally, the Debtor believes that the notice procedures described above are reasonable and adequate under the circumstances. Bankruptcy Rules 2002(a) and (c) require the Debtor to notify creditors of the Sale, the terms and conditions of the Sale, the time and place of the Auction, and the deadline for filing any objections. The Debtor asserts that the proposed notice procedures fully comply with Bankruptcy Rule 2002, and are reasonably calculated to provide timely and adequate notice of the Sale, the Auction, and the Sale Hearing to the Debtor’s creditors and all other parties in interest that are entitled to notice, as well as those parties that have expressed a *bona fide* interest in acquiring the Assets. Contemporaneously herewith, the Debtor filed the Motion to Shorten, and for the reasons stated therein, assert that the proposed notice of this Motion

is reasonably calculated to provide adequate notice of the Bidding Procedures, the Auction, and the Sale Hearing.

55. The Sale, conducted in accordance with the Bidding Procedures, will provide the Debtor with the best opportunity to generate maximum value for the Debtor's estate, and represents the best path forward for maximizing recoveries. The Debtor submits that ample business justification exists for the consummation of the Sale, and therefore requests that the Court approve the Bidding Procedures.

B. The Sale of the Assets Free and Clear of All Encumbrances Is Authorized Under Section 363(f) of the Bankruptcy Code

56. The Debtor requests approval to sell the Assets free and clear of any and all liens, claims, interests and encumbrances in accordance with section 363(f) of the Bankruptcy Code. Pursuant to section 363(f), a debtor in possession may sell estate property "free and clear of any interest in such property of an entity other than the estate" if any one of the following conditions is satisfied:

- (a) applicable nonbankruptcy law permits sale of such property free and clear of such interest;
- (b) such entity consents;
- (c) such interest is a lien and the price at which such property is to be sold is greater than the aggregate value of all liens on such property;
- (d) such interest is in bona fide dispute; or
- (e) such entity could be compelled, in a legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f); *see Citicorp Homeowners Serv., Inc. v. Elliot (In re Elliot)*, 94 B.R. 343, 345 (Bankr. E.D. Pa. 1988) (because section 363(f) is written in the disjunctive, a court may approve a "free and clear" sale even if only one of the subsections is met).

57. Furthermore, it is well established that a bankruptcy court has the power, pursuant to section 363(f) of the Bankruptcy Code, to approve the sale of the Debtor's assets free and clear of any claims against the Debtor. *In re TWA Airlines, Inc.*, 322 F.3d 283, 288-90 (3d Cir. 2003) (holding that successor liability claims are "interests in property" within the meaning of section 363(f)); *United Mine Workers of Am. Benefit Plan v. Leckie Smokeless Coal Co. (In re Leckie Smokeless Coal Co.)*, 99 F.3d 573 (4th Cir. 1996) (same).

58. The Debtor submits that the Sale of the Assets free and clear of the Encumbrances will satisfy the requirements of section 363(f) of the Bankruptcy Code. The Debtor also asserts that the service of the Stalking Horse Supplement and Sale Notice in accordance with the terms set forth in this Motion will afford creditors sufficient notice of the Stalking Horse Bidder and Stalking Horse APA, if designated, and the Sale and therefore provides additional justification for approval of the Sale free and clear of all Encumbrances.

C. The Sale Should Be Subject to the Protections of Section 363(m) of the Bankruptcy Code

59. Section 363(m) of the Bankruptcy Code provides, in part, that the reversal or modification on appeal of an authorization of a sale pursuant to section 363(b) or section 363(c) of the Bankruptcy Code does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the appeal, unless such authorization and such sale or lease were stayed pending appeal. *See* 11 U.S.C. § 363(m).

60. In approving the Sale free and clear of Encumbrances, the Debtor requests that the Court find and hold that all purchasers of the Assets purchased in accordance with the Bidding Procedures are entitled to the protections afforded by section 363(m) of the Bankruptcy Code. Such relief is appropriate in that the selection of the Successful Bidder will be the result of a

competitive Bidding Process and arm's-length, good-faith negotiations, and parties in interest will have the opportunity to review and object to a proposed transaction. *See Esposito v. Title Ins. Co. of Pa. (In re Fernwood Mkts.)*, 73 B.R. 616, 620 (Bankr. E.D. Pa. 1987) (good faith purchasers are protected under section 363(m) where notice is provided to lienholders).

D. The Court Should Approve the Bidding Procedures

61. The key objective in any sale of property of a debtor's estate is to maximize the value received by the estate. *See In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtors "had a fiduciary duty to protect and maximize the estate's assets"); *Official Comm.*, 330 F.3d at 573 (same). Procedures used to enhance competitive bidding support this objective and, therefore, are appropriate in the context of bankruptcy sales. *See In re O'Brien Envtl. Energy, Inc.*, 181 F.3d 527, 537 (3d Cir. 1999); *see also Integrated Res. Inc.*, 147 B.R. at 659 (stating that bidding procedures "encourage bidding and . . . maximize the value of the Debtor's assets").

62. The Debtor and its professional advisors have designed the Bidding Procedures to promote a competitive and fair Bidding Process and, thus, to maximize value for the Debtor's estate and stakeholders. Having the option to enter into a Stalking Horse APA with a Stalking Horse Bidder allows the Debtor to retain flexibility to set the floor from which other Potential Bidders can submit higher or better offers. As a baseline bid, the Stalking Horse Bid could foster competitive bidding, increasing the likelihood that the purchase price of the Assets will increase, allowing the Debtor to maximize value for the benefit of all stakeholders.

63. The Bidding Procedures will allow the Debtor to extend and enhance the prepetition marketing process to a broader universe of potential buyers and conduct the Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders, thereby increasing the likelihood that the Debtor will receive the highest or best possible

consideration for the Assets. Furthermore, the Bidding Procedures provide an appropriate framework for the Debtor and its independent fiduciaries and professional advisors to review, analyze, and compare any Bids received to determine which Bids are in the best interests of the Debtor's estate and its stakeholders.

64. The Debtor submits that the Bidding Procedures are necessary and transparent and will derive the highest or best Bids for the Assets. Therefore, the Debtor requests that the Court approve the Bidding Procedures.

E. The Assumption and Assignment of the Assumed Contracts Satisfies Section 365 of the Bankruptcy Code

65. Section 365(a) of the Bankruptcy Code provides, in pertinent part, that a debtor-in-possession "subject to the court's approval, may assume or reject any executory contract or unexpired lease of the debtor." 11 U.S.C. § 365(a). The standard governing bankruptcy court approval of a debtor's decision to assume or reject an executory contract or unexpired lease is whether the debtor's reasonable business judgment supports assumption or rejection. *See, e.g., In re HQ Global Holdings, Inc.*, 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor's decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if decision was product of bad faith, whim or caprice); *see also In re Market Square Inn, Inc.*, 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease "will be a matter of business judgment by the bankruptcy court").

66. The business judgment test "requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate." *Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co.*, (*In re Wheeling-Pittsburgh Steel Corp.*), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987). Any more exacting scrutiny would slow the administration of a debtor's estate and increase costs, interfere with the Bankruptcy Code's

provision for private control of administration of the estate, and threaten a court's ability to control a case impartially. *See Richmond Leasing Co. v. Capital Bank*, 762 F.2d 1303, 1311 (5th Cir. 1985). Moreover, pursuant to section 365(b)(1) of the Bankruptcy Code, for a debtor to assume an executory contract, it must "cure, or provide adequate assurance that the debtor will promptly cure," any default, including compensation for "actual pecuniary loss" relating to such default. 11 U.S.C. § 365(b)(1).

67. Under section 365(f) of the Bankruptcy Code, a debtor, after assuming a contract, may assign its rights under the contract to a third party. 11 U.S.C. § 365(f); *see also In re Rickel Home Center, Inc.*, 209 F.3d 291, 299 (3d Cir. 2000) ("The Code generally favors free assignability as a means to maximize the value of the Debtor's estate."); *see also In re Headquarters Dodge, Inc.*, 13 F.3d 674, 682 (3d Cir. 1994) (noting that the purpose of section 365(f) is to assist the trustee in realizing the full value of the debtors' assets). Section 365(f)(2)(B) requires that the non-debtor contract counterparty be given adequate assurance of future performance by an assignee. 11 U.S.C. § 365(f)(2)(B). The purpose of the adequate assurance requirement is to protect the interests of the non-debtor party to an assigned contract, as section 365(k) of the Bankruptcy Code relieves a debtor from liability for any breach of a contract that may occur after an assignment. *Cinicola v. Scharffeberger*, 248 F.3d 110, 120 (3d Cir. 2001). Adequate assurance of future performance is not required for every term of an executory contract or unexpired lease, but only such terms that are "material and economically" significant. *In re Fleming Cos., Inc.*, 499 F.3d 300, 305 (3d Cir. 2007).

68. The meaning of "adequate assurance of future performance" depends on the facts and circumstances of each case, but should be given a "practical, pragmatic construction." *In re DBSI, Inc.*, 405 B.R. 698, 708 (Bankr. D. Del. 2009); *see also In re Decora Indus.*, 2002 U.S.

Dist. LEXIS 27031, at *23 (D. Del. 2002) (“[A]dequate assurance falls short of an absolute guarantee of payment.”). Adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. *See, e.g., In re Bygaph, Inc.*, 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that adequate assurance is present when prospective assignee of lease from a debtor has financial resources and has expressed willingness to devote sufficient funding to business to give it strong likelihood of success).

69. The assumption and assignment of certain executory contracts and unexpired leases is an appropriate exercise of the Debtor’s business judgment. Additionally, the Debtor submits that the notice provisions and the objection deadline for counterparties to raise objections to the assumption and assignment of the Assumed Contracts as proposed in this Motion are adequate to protect the rights of counterparties to the Debtor’s contracts and leases. Furthermore, the Debtor will demonstrate adequate assurance of future performance at the Sale Hearing.

WAIVER OF RULES 6004(h) AND 6006(d)

70. The Debtor requests that, upon entry of the Sale Order, the Court waive the 14-day stay requirements of Bankruptcy Rules 6004(h) and 6006(d). The waiver of the 14-day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is necessary to permit the Sale to close expeditiously. The Debtor respectfully requests that the Court waive the 14-day stay requirements contained in Bankruptcy Rules 6004(h) and 6006(d).

NOTICE

71. Notice of this Motion has been provided by email, if available, or otherwise by overnight courier to: (a) the U.S. Trustee; (b) the holders of the twenty (20) largest unsecured claims against the Debtor; (c) Davis Polk & Wardwell LLP and Greenberg Traurig, LLP, counsel

to (1) the Consenting Noteholders and (2) U.S. Bank, the indenture trustee to the Notes, respectively; (d) 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; and (h) 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.

WHEREFORE, the Debtor respectfully requests that the Court (i) grant the relief requested herein and (ii) grant such other and further relief to the Debtor as the Court may deem proper and just.

Dated: January 11, 2023
Wilmington, Delaware

/s/ Sean M. Beach

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Proposed Attorneys for Debtor, Tricida, Inc.

Exhibit A

Bidding Procedures Order

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (___)

Docket Ref. No. [●]

**ORDER (A) APPROVING CERTAIN BIDDING PROCEDURES
AND THE FORM AND MANNER OF NOTICE THEREOF, (B) SCHEDULING
AN AUCTION AND A HEARING ON THE APPROVAL OF THE SALE OF ALL
OR SUBSTANTIALLY ALL OF THE DEBTOR’S ASSETS, (C) ESTABLISHING
CERTAIN ASSUMPTION AND ASSIGNMENT PROCEDURES AND APPROVING
THE MANNER OF NOTICE THEREOF, AND (D) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”),² of the Debtor in the above-captioned chapter 11 case (the “Chapter 11 Case”), seeking, pursuant to sections 105, 363, 365, 503 and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “Bankruptcy Code”), Rules 2002, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) and 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”), an order (this “Order”) (a) approving certain bidding procedures attached hereto as **Exhibit 1** (the “Bidding Procedures”) for the sale or sales (collectively, the “Sale”) of all or substantially all of the Debtor’s assets (the “Assets”), or any portion thereof, and the form and manner of notice thereof substantially in the form attached hereto as **Exhibit 2** (the “Sale Notice”), (b) authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder and approving the Bid

¹ 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.

² Capitalized terms not otherwise defined in this Order shall have the meanings given to them in the Motion or the Bidding Procedures, as applicable.

Protections in accordance with the Bidding Procedures, (c) scheduling an Auction and a Sale Hearing in connection with the Sale, and (d) establishing certain assumption and assignment procedures and approving the manner of notice thereof substantially in the form attached hereto as **Exhibit 3** (the “Assumption and Assignment Notice,”); the Court having reviewed the Motion and conducted a hearing to consider the relief requested therein regarding the Bidding Procedures and related matters (the “Bidding Procedures Hearing”); and the Court having considered the statements of counsel, the First Day Declaration, and the Rohan Declaration in support of the Motion, and the evidence presented at the Bidding Procedures Hearing; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:³

A. The Court has jurisdiction over this matter and over the property of the Debtor and its bankruptcy estate pursuant to 28 U.S.C. §§ 157(a) and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (M), (N), and (O). The statutory predicates for the relief sought herein are sections 105, 363, and 365 of the Bankruptcy Code and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014. Venue of the Chapter 11 Case and the Motion is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

B. The Debtor has offered good and sufficient reasons for, and the best interest of its estate will be served by, the Court granting the Motion to the extent provided in this Order, including (a) approving the Bidding Procedures, attached hereto as **Exhibit 1**, and form and

³ The findings and conclusions set forth herein constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent that any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such. All findings of fact and conclusions of law announced by the Court at the Bidding Procedures Hearing are hereby incorporated herein to the extent not inconsistent herewith.

manner of notice thereof substantially in the form of the Sale Notice, attached hereto as **Exhibit 2**, (b) authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder and approving the Bid Protections in accordance with the Bidding Procedures, (c) scheduling an Auction and a Sale Hearing in connection with the Sale, and (d) establishing certain assumption and assignment procedures and approving the manner of notice thereof substantially in the form of the Assumption and Assignment Notice, attached hereto as **Exhibit 3**.

C. Good and sufficient notice of the relief sought in the Motion has been given under the circumstances, and no further notice is required except as set forth herein with respect to the Auction and the Sale Hearing. Subject to the immediately preceding sentence, a reasonable opportunity to object or to be heard regarding the relief requested in the Motion was afforded to all interested persons and entities.

D. In accordance with Local Rule 6004-1, the Debtor has properly filed and noticed the Motion. The issuance and immediate effectiveness of this Order as of the date hereof, including approval of the Bidding Procedures, is supported by evidence of compelling business justifications and other circumstances demonstrating that the relief granted by this Order is necessary to prevent immediate and irreparable harm to the Debtor and its estate.

E. The proposed Sale Notice, and the Assumption and Assignment Notice, as set forth in the Motion and this Order, are appropriate, sufficient, and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Sale Hearing, the Bidding Procedures, and the assumption and assignment of the Assumed Contracts, and no other or further notice shall be required for the Sale or the assumption and assignment of the Assumed Contracts.

F. The process for filing the Stalking Horse Supplement and the granting of any Bid Protections is appropriate and reasonably calculated to provide all interested parties with timely

and proper notice of: (a) the identification of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor); (b) the amount of the Stalking Horse Bid and what portion (if any) is cash; (c) whether the Stalking Horse Bidder has any connection to the Debtor other than those that arise from the Stalking Horse Bid; (d) any proposed Bid Protections; (e) the Stalking Horse APA, including all exhibits, schedules or attachments thereto; and (f) the Stalking Horse Objection Deadline (as defined below).

G. The Bidding Procedures are fair, reasonable, and appropriate under the circumstances, and are reasonably designed to maximize the value to be achieved for the Assets.

H. The Assumption and Assignment Procedures provided for herein and the Assumption and Assignment Notice are reasonable and appropriate and consistent with the provisions of section 365 of the Bankruptcy Code and Bankruptcy Rule 6006. The Assumption and Assignment Procedures and the Assumption and Assignment Notice have been tailored to provide an adequate opportunity for all counterparties to assert any objections to the assumption and assignment of Assumed Contracts and related Cure Costs.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is GRANTED to the extent provided herein.
2. The Bidding Procedures, attached as **Exhibit 1** to this Order, are hereby approved in their entirety, incorporated by reference as if fully set forth herein, and shall govern all Bids and Bid proceedings relating to the Assets. The Debtor and Kurtzman Carson Consultants LLC, its claims and noticing agent, are authorized to take any and all actions necessary or appropriate to implement the Bidding Procedures.

3. The Debtor will file and serve a proposed Sale Order on or before **4:00 p.m. (prevailing Eastern Time) on February 7, 2023**. Objections to approval of the Sale (with the exception of objections related solely to the conduct of the Auction, identity of the Successful Bidder, and ability of the Successful Bidder to provide adequate assurance of future performance, which must be received by a different deadline), must be in writing, state the basis of such objection with specificity, and be filed with this Court and served on or before **4:00 p.m. (prevailing Eastern Time) on February 10, 2023 (prevailing Eastern Time)** (the “Sale Objection Deadline”) on the following parties (collectively, the “Notice Parties”):

- (a) proposed counsel to the Debtor, Sidley Austin LLP, 555 West Fifth Street, Los Angeles, CA 90013 (Attn.: Sam Newman (sam.newman@sidley.com), Julia Philips Roth (julia.roth@sidley.com), Charles Persons (cpersons@sidley.com), and Geoffrey Levin (glevin@sidley.com));
- (b) proposed co-counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Rodney Square, Wilmington, DE 19801 (Attn.: Sean M. Beach (sbeach@ycst.com) and Allison S. Mielke (amielke@ycst.com));
- (c) the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn.: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov)); and
- (d) counsel to any statutory committee that has been appointed in the Chapter 11 Case.

4. All objections to the entry of this Order or to the relief provided herein that have not been withdrawn, waived, resolved, or settled are hereby denied and overruled.

A. Designation of Stalking Horse Bidder

5. The Debtor is authorized, but not directed, in the exercise of its reasonable business judgment and in consultation with the Consultation Parties, to (a) designate the Stalking Horse Bidder, (b) enter into the Stalking Horse APA in accordance with the Bidding Procedures, and (c) agree to any breakup fee and/or expense reimbursement (the “Bid Protections”) subject to

further Court approval, in each case at any time prior to the Auction and in accordance with the Bidding Procedures.

6. In the event that the Debtor designates a Stalking Horse Bidder and enters into the Stalking Horse APA on or prior to February 6, 2023, at 4:00 p.m. (prevailing Eastern Time) (the “Stalking Horse Supplement Deadline”), the Debtor shall file a supplement to the Motion (the “Stalking Horse Supplement”) seeking approval of the same, with notice to the U.S. Trustee, the Consultation Parties, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the Chapter 11 Case (the “Stalking Horse Notice Parties”) with no further notice being required, provided that the Stalking Horse Supplement (a) sets forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (b) sets forth the amount of the Stalking Horse Bid and what portion (if any) is cash; (c) states whether the Stalking Horse Bidder has any connection to the Debtor other than those that arise from the Stalking Horse Bid; (d) specifies any proposed Bid Protections; (e) attaches the Stalking Horse APA, including all exhibits, schedules or attachments thereto; and (f) sets forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. The Stalking Horse Supplement shall also include any evidence the Debtor would like the Court to consider in connection with any request to approve any Bid Protections as an administrative expense under section 503(b) of the Bankruptcy Code.

7. If the Debtor designates a Stalking Horse Bidder by the Stalking Horse Supplement Deadline, the Debtor will file the proposed form of the Sale Order agreed to by the Stalking Horse Bidder on or before the Stalking Horse Supplement Deadline.

8. Objections to the designation of a Stalking Horse Bidder or any of the terms of a Stalking Horse Bid (the “Stalking Horse Objection”) shall (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served on the Stalking Horse Notice Parties no later than three (3) business days after the service of the Stalking Horse Supplement (the “Stalking Horse Objection Deadline”).

9. If a timely Stalking Horse Objection is filed, the Debtor will schedule a hearing regarding such Stalking Horse Objection as soon as reasonably practicable seeking approval of such Stalking Horse Bid on or before February 9, 2023 (but in no event fewer than three (3) business days after the service of the Stalking Horse Supplement). If no Stalking Horse Objection is timely filed and served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtor will submit to the Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA (the “Stalking Horse Approval Order”), which may be entered by the Court without a hearing, including with respect to any Bid Protections set forth in the Stalking Horse Supplement. For the avoidance of doubt, no determination is made in this Order regarding the authorization of any Bid Protections.

10. Upon entry of an order approving the designation of the Stalking Horse Bidder, the Debtor’s obligation to pay the Bid Protections shall constitute, pursuant to section 503(b) of the Bankruptcy Code, an administrative expense claim against the Debtor’s bankruptcy estate, and shall survive termination of the Stalking Horse APA. For the avoidance of doubt, this Order does not grant the Bid Protections superpriority expense treatment pursuant to sections 364(c)(1) or

507(b) of the Bankruptcy Code but the Debtor reserves its right to seek such relief by filing a separate motion with the Court.

11. If the Stalking Horse Bidder and the Stalking Horse APA are designated after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtor reserves the right to file a motion with the Court seeking approval, on an expedited basis, of the Stalking Horse Bidder and Stalking Horse APA, subject to consultation with the Consultation Parties prior to the filing of any proposed motion.

B. The Bidding Procedures, Auction, and Sale Hearing

12. The deadline for submitting a Qualified Bid shall be **February 10, 2023, at 10:00 a.m. (prevailing Eastern Time)**, unless extended by the Debtor pursuant to the Bidding Procedures (the "Bid Deadline").

13. For the purposes of the Bidding Procedures: (a) any designated Stalking Horse Bidder will be considered a Qualified Bidder, and any Stalking Horse APA will be considered a Qualified Bid; and (b) in determining whether the Potential Bidders constitute Qualified Bidders, the Debtor may consider a combination of bids for the Assets.

14. All bidders submitting a Qualified Bid are deemed to have submitted to the exclusive jurisdiction of this Court with respect to all matters related to the Auction and the terms and conditions of the transfer of the Assets.

15. The Debtor shall inform Qualified Bidders that their Bids have been designated as Qualified Bids no later than **February 14, 2023, at 9:00 p.m. (prevailing Eastern Time)**.

16. If no Qualified Bid other than any Stalking Horse Bid is submitted on or before the Bid Deadline, the Debtor will not hold an Auction and will request at the Sale Hearing that this Court approve the Stalking Horse APA.

17. If at least two Qualified Bids are received by the Bid Deadline with regard to any particular Assets, the Debtor will conduct the Auction. The Auction will take place on **February 15, 2023, starting at 10:00 a.m. (prevailing Eastern Time)** at the offices of Sidley Austin, LLP, 787 Seventh Avenue, New York, NY 10019 and, if determined by the Debtor to be necessary or convenient, via teleconference and/or videoconference. Professionals and principals for the Debtor, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any other parties the Debtor deems appropriate shall be permitted to attend and observe the Auction.

18. Each Qualified Bidder participating at the Auction will be required to confirm in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

19. Following the Auction, the Debtor will determine, in consultation with the Consultation Parties, which Qualifying Bid is the highest or otherwise best Bid for the Assets or subsets thereof.

20. Objections related solely to conduct at the Auction, the identity of the Successful Bidder, and adequate assurance of future performance by the Successful Bidder must be in writing, state the basis of such objection with specificity, and be filed with this Court and served so as to be received by the Notice Parties on or before **February 17, 2023, at 4:00 p.m. (prevailing Eastern Time)** (the "Auction Objection Deadline").

21. The Court shall convene the Sale Hearing on **February 21, 2023, at [●]:00 [a./p.]m. (prevailing Eastern Time)** or as soon thereafter as counsel and interested parties may be heard, at which time the Court will consider approval of the Sale to the Successful Bidder(s) or Next-Highest

Bidder(s) and the entry of the Sale Order. At the Sale Hearing, the Debtor will seek the entry of the Sale Order approving and authorizing the Sale to the Successful Bidder(s) or Next-Highest Bidder(s). Subject to consultation with the Consultation Parties, the Debtor may adjourn the Sale Hearing from time to time without further notice to creditors or other parties in interest other than by announcement of said adjournment at the Sale Hearing or in notice or agenda filed with the Court. The Debtor shall file a form of Sale Order no later than fourteen (14) calendar days before the Sale Hearing.

C. Assumption and Assignment Procedures

22. Within three (3) business days of the entry of this Order, the Debtor will file an Assumption and Assignment Notice, substantially in the form attached as **Exhibit 3** to this Order, which shall include a schedule of cure obligations (the “Cure Schedule”) for the Assumed Contracts, and shall serve such Assumption and Assignment Notice on each of the non-Debtor parties listed therein by email, where available, or otherwise by first class mail on the date the Assumption and Assignment Notice is filed with the Court. The Cure Schedule will include a description of each Assumed Contract potentially to be assumed and assigned by a potential buyer and the amount, if any, necessary to cure, or compensate the non-Debtor parties for, any defaults under such agreements pursuant to section 365 of the Bankruptcy Code (the “Cure Costs”).

23. Objections to (a) the Cure Costs set forth in the Cure Schedule or (b) the assumption and assignment of any Assumed Contracts identified in the Cure Schedule must be in writing, state the basis of such objection with specificity, be filed with the Court, and be served on the Notice Parties no later than 4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) calendar days from the date of service of the Assumption and Assignment Notice.

24. Unless a non-Debtor party to an Assumed Contract has timely and properly filed and served an objection to the assumption and assignment of its Assumed Contract, such

non-Debtor counterparty shall (a) be forever barred from objecting to the Cure Costs and from asserting any additional cure or other amounts with respect to the Assumed Contract, and the Debtor and the Successful Bidder shall be entitled to rely solely upon the Cure Costs set forth in the Cure Schedule; (b) be deemed to have consented to the assumption and assignment of such Assumed Contract; and (c) be forever barred, estopped, and permanently enjoined from asserting or claiming against the Debtor, the Successful Bidder or their respective property that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Assumed Contract or that there is any objection or defense to the assumption and assignment of such Assumed Contract. In addition, the Cure Costs set forth in the Cure Schedule shall be binding upon the non-Debtor parties to the Assumed Contracts for all purposes in this Chapter 11 Case and will constitute a final determination of the Cure Costs required to be paid by the Debtor in connection with the assumption and assignment of the Assumed Contracts.

25. Where a non-Debtor counterparty to an Assumed Contract timely and properly files an objection asserting a cure amount higher or different than the proposed Cure Amount (the “Disputed Cure Amount”), then (a) to the extent that the parties are able to consensually resolve the Disputed Cure Amount, the Cure Amount shall be as agreed between the parties, or (b) to the extent the parties are unable to consensually resolve the dispute, then such objection will be adjudicated at the Sale Hearing or at such other date and time as may be determined by the Debtor or fixed by the Court.

D. Notice Procedures

26. The form of the Sale Notice and the Assumption and Assignment Notice annexed hereto are hereby approved and appropriate and sufficient for all purposes and no other or further notice shall be required. No finding or ruling is made in this Order as to the merits of any motion for approval of the Sale.

27. As soon as practicable after the entry of the Bidding Procedures Order, the Debtor will serve the Sale Notice by email, if available, or otherwise by first class mail upon the following; *provided, however*, that the Debtor need not serve the Sale Notice on any party for whom the Debtor is unable to obtain, after reasonable diligence, an email or physical address as of the entry of the Bidding Procedures Order; *provided, further* that the Debtor shall not be obligated to provide supplemental service of the Sale Notice with respect to any Sale Notice that is returned to the Debtor as undeliverable so long as the Debtor has confirmed that any such Sale Notice was sent to the applicable email or physical address on file in the Debtor's books and records and no other email or physical address could be obtained after reasonable diligence: (a) the U.S. Trustee; (b) the United States Securities and Exchange Commission; (c) the United States Department of Justice; (d) the United States Food and Drug Administration; (e) 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; (f) counsel to any Committee; (g) all state attorneys' general and consumer protection agencies in jurisdictions in which the Assets are located; (h) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (i) all parties who are known by the Debtor to assert liens against the Assets, if any; (j) all non-Debtor parties to the Assumed Contracts; (k) any party known or reasonably believed to have expressed an interest in acquiring some or all or substantially all of the Assets; (l) all of the Debtor's other known creditors and equity security holders; and (m) all parties who, as of the filing of this Motion, have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002 (collectively, "Sale Notice Parties").

28. In addition, the Debtor shall publish the Sale Notice once in each of (a) the *San Jose Mercury News* and (b) the national edition of *The New York Times* or another publication with

similar national circulation as soon as practicable after entry of this Order and post the Stalking Horse Supplement, the Sale Notice, and this Order on the website of the Debtor's claims and noticing agent: <http://kccllc.net/Tricida>. Publication of the Sale Notice as described in this Order conforms to the requirements of Bankruptcy Rules 2002(l) and 9008, and is reasonably calculated to provide notice to any affected party, including any Potential Bidder(s), and to afford the affected party the opportunity to exercise any rights affected by the Motion and the relief granted by this Order.

29. Failure to timely file an objection in accordance with this Order shall forever bar the assertion of any objection to the Motion, entry of the Sale Order, or consummation of the Sale, and shall be deemed to constitute consent to entry of the Sale Order and consummation of the Sale and all transactions related thereto including, without limitation, for purposes of section 363(f) of the Bankruptcy Code.

30. All parties (whether or not Qualified Bidders) that participate in the Bidding Process shall be deemed to have knowingly and voluntarily (a) consented to the entry of a final order by this Court in connection with the Motion or this Order (including any disputes relating to the Bidding Process, the Auction and/or the Sale) to the extent that it is later 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, and (b) waived any right to jury trial in connection with any disputes relating to the any of the foregoing matters.

31. In the event there is any conflict between this Order and the Bidding Procedures, the terms and conditions of this Order shall control and govern in all respects.

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

33. Notwithstanding any applicability of Bankruptcy Rule 6004(h), 6006(d), 7052 or 9014, this Order shall be immediately effective and enforceable upon its entry. All time periods set forth in this Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

34. The Court shall retain jurisdiction over any matter or dispute arising from or relating to the implementation of this Order.

Exhibit 1

The Bidding Procedures

BIDDING PROCEDURES

On January 11, 2023, Tricida, Inc. (the “Debtor”), filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”). The Debtor is authorized to continue to operate its business and manage its properties as a debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

Set forth below are the bidding procedures (the “Bidding Procedures”)¹ to be used with respect to the sale(s) or disposition(s) (collectively, the “Sale”) of the Assets (as defined below) of the Debtor.

Any party interested in bidding on the Assets should contact Alexander Rohan (Alex.Rohan@millerbuckfire.com), Neal Karnovsky (karnovskyn@stifel.com) and Rishi Shah (rishi.shah@millerbuckfire.com) of Miller Buckfire & Co., LLC and Stifel, Nicolaus & Company (collectively, “Miller Buckfire”), the Debtor’s proposed investment banker in the chapter 11 case (the “Chapter 11 Case”).

Summary of Key Sale Process Dates

<u>Date</u>	<u>Deadline/Event</u>
January 26, 2023, at a time TBD	Bidding Procedures Hearing
Three (3) business days after the entry of the Bidding Procedures Order	Deadline for Debtor to file the Assumption and Assignment Notice and Cure Schedule
Fourteen (14) calendar days after service of the Assumption and Assignment Notice at 4:00 p.m. (ET)	Deadline to object to the Debtor’s proposed assumption and assignment of the Assumed Contracts and related Cure Costs
February 6, 2023, at 4:00 p.m. (ET)	Stalking Horse Supplement Deadline
February 10, 2023, at 10:00 a.m. (ET)	Bid Deadline
February 10, 2023, at 4:00 p.m. (ET)	Deadline to object to the Sale of the Assets ²

¹ Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Debtor’s Motion For Entry of (I) an Order (A) Approving Certain Bidding Procedures and the Form and Manner of Notice Thereof, (B) Scheduling an Auction and a Hearing on the Approval of the Sale of All or Substantially All of the Debtor’s Assets, (C) Establishing Certain Assumption and Assignment Procedures and Approving the Manner of Notice Thereof, and (D) Granting Related Relief; and (II) an Order (A) Authorizing and Approving the Debtor’s Entry into an Asset Purchase Agreement, and (B) Authorizing the Sale of All or Substantially All of the Debtor’s Assets Free and Clear of All Encumbrance, (C) Approving the Assumption and Assignment of the Assumed Contracts, and (D) Granting Related Relief (the “Motion”).

² This objection deadline applies to all objections to the Sale of the Assets to a Successful Bidder, with the exception of objections related solely to conduct of the Auction, identity of the Successful Bidder(s), and adequate assurance of future performance by the Successful Bidder(s).

<u>Date</u>	<u>Deadline/Event</u>
February 14, 2023, at 6:00 p.m. (ET)	Deadline for Debtor to notify Potential Bidders of whether their Bids are Qualified Bids
February 15, 2023, starting at 10:00 a.m. (ET)	Auction (if necessary)
February 16, 2023, at 4:00 p.m. (ET)	Deadline to file and serve Notice of Successful Bidder(s)
February 17, 2023, at 4:00 p.m. (ET)	Deadline to object to the (a) conduct of the Auction, (b) proposed Sale to the Successful Bidder(s), and (c) ability of the Successful Bidder to provide adequate assurance of future performance, or the proposed form of adequate assurance of future performance
February 21, 2023, at a time TBD	Sale Hearing
On or prior to February 24, 2023	Closing

I. Description of the Assets to Be Sold

The Debtor is seeking to sell all or substantially all of its assets, including but not limited to the equipment, intellectual property, unexpired leases, contract rights, and other assets related to or necessary to operate the business currently operated by the Debtor (the “Assets”), or any portion thereof, in each case free and clear of all liens, claims, and encumbrances thereon.

The Sale of the Assets shall be subject to a competitive Bidding Process (as defined below) as set forth herein and approval by the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) pursuant to sections 105, 363, and 365 of title 11 of the Bankruptcy Code, rules 2002, 6003, 6004, 6006, 9007, 9008 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and 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”). The Debtor may consider bids for the Assets (or any portion thereof) in a single bid from a single bidder, or in multiple bids from multiple bidders.

II. Confidentiality Agreement

Unless otherwise ordered by the Bankruptcy Court for cause shown, to participate in the Bidding Process (as defined below), each person or entity must enter into with the Debtor, on or before the Bid Deadline (as defined below), a confidentiality agreement in form and substance reasonably satisfactory to the Debtor (the “Confidentiality Agreement”). Further, to participate in the diligence process and receive access to due diligence information, a party must submit to the Debtor, or its advisors, sufficient information, as reasonably determined by the Debtor and its advisors in their sole discretion, to allow the Debtor to determine that the interested party (a) has the financial wherewithal to consummate the applicable Sale and (b) intends to access the Data Room (as defined below) for a purpose consistent with these Bidding Procedures. Each person or entity that enters into the Confidentiality Agreement with the Debtor on or before the Bid Deadline

is hereinafter referred to as a “Potential Bidder.” The Debtor shall inform the Consultation Parties of any person or entity that becomes a Potential Bidder.

After a Potential Bidder enters into a Confidentiality Agreement with the Debtor and provides preliminary proof, the adequacy of which the Debtor and its advisors will determine in their sole discretion, of its bona fide interest in purchasing some of all of the Assets and its financial capacity to potentially consummate a proposed Sale, the Debtor shall deliver or make available (unless previously delivered or made available) to each Potential Bidder certain designated information with respect to the Assets.

III. Determination by the Debtor

As appropriate throughout the Bidding Process (as defined below), the Debtor will consult with (a) any statutory committee appointed in the Chapter 11 Case, if any (each a “Committee”) and such Committee’s counsel, (b) certain holders (the “Consenting Noteholders”) of the 3.50% Convertible Senior Notes Due 2027 (the “Notes”) that are signatories to that certain Restructuring Support Agreement dated as of January 11, 2023 by and between the Debtor and the Consenting Noteholders and such Consenting Noteholders’ counsel, Davis Polk & Wardwell LLP (Attn: Darren S. Klein (darren.klein@davispolk.com) and Abraham Bane (abraham.bane@davispolk.com)), (c) counsel to the indenture trustee to the Notes, Greenberg Traurig, LLP (Attn: Michael B. Fisco (fisco@gtlaw.com) and Whitney Mark (whitney.mark@gtlaw.com)), and (d) any other party that the Debtor deems appropriate (collectively, the “Consultation Parties” and each, a “Consultation Party”). Following consultation with the Consultation Parties, the Debtor shall (a) coordinate with Potential Bidders regarding the conduct of their respective due diligence, (b) evaluate bids from Potential Bidders on any or all of the Assets, (c) negotiate any bid made to acquire any or all of the Assets, and (d) make such other determinations as are provided in these Bidding Procedures (collectively, the “Bidding Process”); provided that, notwithstanding anything to the contrary in these Bidding Procedures, the Debtor shall not consult with a Consultation Party (or its advisors) that is actively participating as a Potential Bidder for the Assets. For the avoidance of doubt, if one of the Consenting Noteholders or a member of a Committee (or their affiliates, as applicable) is actively participating as a Potential Bidder for the Assets (a “Bidding Party”), then (a) the remaining Consenting Noteholders and members of the Committee other than the Bidding Party, (b) the Consenting Noteholders’ counsel, and (c) the Committee’s counsel shall continue to be Consultation Parties, but shall not provide any information they receive as Consultation Parties to the Bidding Party. Neither the Debtor nor its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any party that is not a Potential Bidder or a Consultation Party.

IV. Due Diligence

The Debtor has established a confidential electronic data room concerning the Assets (the “Data Room”) and will grant each Potential Bidder or Consultation Party, as applicable, access to such Data Room. Up to and including the Bid Deadline (as defined below), the Debtor shall afford any Potential Bidder or Consultation Party such due diligence access or additional information as may be reasonably requested by the Potential Bidder or Consultation Party that the Debtor, in its business judgment, determines to be reasonable and appropriate under the

circumstances. The Debtor may designate a representative or representatives to coordinate all reasonable requests for additional information and due diligence access from such Potential Bidders and/or Consultation Parties, as applicable. In the event that any such due diligence materials are prepared by the Debtor in written form and have not previously been provided to any other Potential Bidder, the Debtor will simultaneously provide access to such materials to (a) all Potential Bidders and (b) all Consultation Parties. Each Potential Bidder shall be required to acknowledge that it has had an opportunity to conduct any and all due diligence regarding the Assets in conjunction with submitting its Bid (as defined below).

Neither the Debtor nor any of its representatives shall be obligated to furnish any information of any kind whatsoever relating to the Assets to any person or entity who is not a Potential Bidder or a Consultation Party who does not otherwise comply with the participation requirements set forth above.

V. Stalking Horse Designation

The Debtor may, at any time prior to the Auction, pursuant to these Bidding Procedures and in consultation with the Consultation Parties, designate a stalking horse bidder (the “Stalking Horse Bidder”), whose Qualified Bid (as defined below) shall serve as the stalking horse bid (the “Stalking Horse Bid”), and any asset purchase agreement memorializing the proposed transaction set forth in the Stalking Horse Bid (the “Stalking Horse APA”), including any breakup fee and/or expense reimbursement (the “Bid Protections”) will be binding on the Stalking Horse Bidder and set the floor for all Qualified Bids, subject to higher or otherwise better offers at the Auction. If the Stalking Horse Bid is not selected as the Successful Bid, the Stalking Horse Bid may still serve as the Next-Highest Bidder (as defined below), if its bid represents the second-highest or otherwise best bid after the Auction. Notwithstanding any of the foregoing, the Debtor is not obligated to select a Stalking Horse Bidder and may proceed to the Auction without one.

In the event that the Debtor designates a Stalking Horse Bidder and enters into the Stalking Horse APA on or prior to February 6, 2023, at 4:00 p.m. (prevailing Eastern Time) (the “Stalking Horse Supplement Deadline”), the Debtor shall file a supplement to the Motion (the “Stalking Horse Supplement”) seeking approval of the same, with notice provided to the Office of the United States Trustee for the District of Delaware, the Consultation Parties, and those parties who have filed the appropriate notice pursuant to Bankruptcy Rule 2002 requesting notice of all pleadings filed in the Chapter 11 Case (the “Stalking Horse Notice Parties”) with no further notice being required, provided that the Stalking Horse Supplement (a) sets forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly-formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (b) sets forth the amount of the Stalking Horse Bid and what portion (if any) is cash; (c) states whether the Stalking Horse Bidder has any connection to the Debtor other than those that arise from the Stalking Horse Bid; (d) specifies any proposed Bid Protections; (e) attaches the Stalking Horse APA, including all exhibits, schedules or attachments thereto; and (f) sets forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. The Stalking Horse Supplement shall also include any evidence the Debtor would like the Court to consider in connection with any request to approve any Bid Protections as an administrative expense under section 503(b) of the Bankruptcy Code.

If the Debtor designates a Stalking Horse Bidder by the Stalking Horse Supplement Deadline, the Debtor will file the proposed form of the Sale Order agreed to by the Stalking Horse Bidder on or before the Stalking Horse Supplement Deadline.

Objections to the designation of a Stalking Horse Bidder or any of the terms of a Stalking Horse Bid (the “Stalking Horse Objection”) shall (a) be in writing, (b) comply with the Bankruptcy Code, Bankruptcy Rules, and Local Rules, (c) state, with specificity, the legal and factual bases thereof, and (d) be filed with the Court and served on the Stalking Horse Notice Parties no later than three (3) business days after the service of the Stalking Horse Supplement (the “Stalking Horse Objection Deadline”).

If a timely Stalking Horse Objection is filed, the Debtor will schedule a hearing regarding such Stalking Horse Objection as soon as reasonably practicable seeking approval of such Stalking Horse Bid on or before February 9, 2023 (but in no event fewer than three (3) business days after the service of the Stalking Horse Supplement). If no timely Stalking Horse Objection is filed and served with respect to the Stalking Horse Bid, upon the expiration of the Stalking Horse Objection Deadline, the Debtor will submit to the Court an order under certification of counsel approving the designation of the Stalking Horse Bidder and Stalking Horse APA (the “Stalking Horse Approval Order”), which may be entered by the Court without a hearing, including with respect to any Bid Protections set forth in the Stalking Horse Supplement.

In the event the Debtor designates a Stalking Horse Bidder after the occurrence of the Stalking Horse Supplement Deadline, but prior to the Auction, the Debtor may seek Court approval on an expedited basis of the Stalking Horse Bidder and Stalking Horse APA, including the Bid Protections, and reserves its right to file such a motion at any time after the Stalking Horse Supplement Deadline and prior to the Auction. Prior to the filing of any proposed motion, the Debtor will consult with the Consultation Parties with respect to the designation of the Stalking Horse Bidder and Stalking Horse APA.

VI. Bid Deadline

A Potential Bidder that desires to make a Bid shall deliver written copies of its Bid (as defined below) in both Portable Document Format (.pdf) and Microsoft Word (.doc/.docx) to Miller Buckfire, Attn: Alexander Rohan (Alex.Rohan@millerbuckfire.com), Neal Karnovsky (karnovskyn@stifel.com), and Rishi Shah (rishi.shah@millerbuckfire.com), **by no later than February 10, 2023, at 10:00 a.m. (prevailing Eastern Time)** (the “Bid Deadline”). The Debtor shall provide to the Consultation Parties copies of each Bid (as defined below) received by the Debtor as soon as reasonably practicable following receipt of such Bid.

VII. Bid Requirements³

All bids (each hereinafter, a “Bid”) must comply with the following requirements (collectively, the “Bid Requirements”):

³ The Debtor will also consider proposals to acquire any and all of the Assets through a plan of reorganization. Should any such proposal be received prior to the Bid Deadline that the Debtor, in consultation with the Consultation Parties,

- (a) be accompanied by a letter or email:
- (i) fully disclosing the identity of the Potential Bidder and providing the contact information of the specific person(s) whom the Debtor or its advisors should contact (including any equity holder or other financial backer if the Potential Bidder is an entity formed for the purpose of consummating the proposed Sale) in the event that the Debtor has any questions or wishes to discuss the Bid submitted by the Potential Bidder;
 - (ii) setting forth the purchase price to be paid by such Potential Bidder and forms of consideration the Potential Bidder intends to use to pay such purchase price;
 - (iii) stating with specificity the Assets (including any specific executory contracts and unexpired leases) such Potential Bidder wishes to bid on and the liabilities and obligations (including any applicable cure costs) to be assumed by the Potential Bidder in the Sale;
 - (iv) providing, other than as may be exclusively applicable to the Stalking Horse Bidder, if designated, that the Bid is not subject to any bidding fee, break-up fee, termination fee, transaction fee, expense reimbursement or any similar type of reimbursement, and including an express waiver of any substantial contribution administrative expense claim under Section 503(b) of the Bankruptcy Code related to bidding for the Assets; provided that, in the event a Stalking Horse Bidder is designated, all bids must provide consideration to the Debtor of at least the sum of (1) the Stalking Horse Bid, (2) the amount of any Bid Protections, and (3) a reasonable minimum overbid amount equal to or greater than \$100,000 or such other amount determined by the Debtor in consultation with the Consultation Parties (the “Incremental Overbid”) over the Starting Bid or Leading Bid (as defined below);
 - (v) agreeing that the Potential Bidder’s offer is binding, unconditional, and irrevocable until three (3) business days after the closing of the Sale;
 - (vi) containing a commitment to close the contemplated transaction(s) by a Closing Date (as defined below) of no later than February 24, 2023;
 - (vii) providing that such Bid is not subject to contingencies of any kind, including, without limitation, contingencies related to financing, internal approval, or due diligence;
 - (viii) containing an acknowledgment that the Potential Bidder has had an opportunity to conduct any and all due diligence regarding the Assets, has

concludes is in the best interest of the estate and its stakeholders, then the Debtor reserves the right to postpone the Auction and proceed toward the confirmation of a plan of reorganization.

relied solely upon its own independent review and investigation and/or inspection of any documents and any other information in making the Bid;

- (ix) providing that the Potential Bidder agrees to serve as a backup bidder (the “Next-Highest Bidder”) if the Potential Bidder’s Qualified Bid (as defined below) is the next highest or best bid after the Successful Bid (as defined below) (the “Next-Highest Bid”) with respect to the relevant Assets through the Closing Date (as defined below); and

(b) be accompanied by (i) an executed purchase agreement in form and substance reasonably satisfactory to the Debtor (a “Qualified Bid Purchase Agreement”), and (ii) if a Stalking Horse APA has been entered into, or if a form purchase agreement is provided, a redline of the executed Qualified Bid Purchase Agreement to reflect any proposed amendments and modifications to the Stalking Horse APA or the form purchase agreement, as applicable, and the applicable schedules and exhibits;

(c) be accompanied by adequate assurance of future performance information (the “Adequate Assurance Information”), which may include (i) information demonstrating (in the Debtor’s reasonable business judgment) that the Potential Bidder has the financial capacity to consummate the proposed Sale, (ii) evidence that the Potential Bidder has obtained authorization or approval from its board of directors (or comparable governing body) with respect to the submission of its Bid, and (iii) such additional information regarding the Potential Bidder as the Potential Bidder may elect to include. By submitting a Bid, Potential Bidders agree that the Debtor may disseminate their Adequate Assurance Information to affected counterparties to any contracts or leases potentially being assumed and assigned in connection with the Sale and the Consultation Parties in the event that the Debtor determines such bid to be a Qualified Bid (as defined below); and

(d) be accompanied by (i) a deposit in the form of a certified check or wire transfer, payable to the order of the Debtor, in the amount of ten percent (10%) of the cash consideration of the Bid, which funds will be deposited, prior to the Bid Deadline, into an escrow account to be identified and established by the Debtor (a “Good Faith Deposit”), and (ii) written evidence, documented to the Debtor’s satisfaction, that demonstrates the Potential Bidder has available cash, a commitment for financing if selected as the Successful Bidder (as defined below) with respect to the relevant Assets (provided, however, that the closing shall not be contingent in any way on the Successful Bidder’s financing) and such other evidence of ability to consummate the transaction(s) as the Debtor may request, including proof that such funding commitments or other financing are not subject to any internal approvals, syndication requirements, diligence or credit committee approvals (provided further that such commitments may have covenants and conditions acceptable to the Debtor). The Debtor reserves the right to increase the Good Faith Deposit for one or more Qualified Bidders (as defined below) in its sole discretion after consulting with the Consultation Parties, including by requiring Qualified Bidders to provide a Good Faith Deposit for any non-cash consideration based on such Qualified Bidder’s estimate of the value of any such non-cash consideration.

The Debtor, in consultation with those Consultation Parties that have not submitted a Bid, will review each Bid received from a Potential Bidder to determine whether it meets the

requirements set forth above. A bid received from a Potential Bidder for any portion of the Assets that is determined by the Debtor, in consultation with the Consultation Parties, to meet the above requirements will be considered a “Qualified Bid” and each Potential Bidder that submits such a Qualified Bid will be considered a “Qualified Bidder.” The Debtor shall inform Qualified Bidders that their Bids have been designated as Qualified Bids no later than February 14, 2023, at 6:00 p.m. (prevailing Eastern Time). For the avoidance of doubt, any Stalking Horse Bid will be deemed a Qualified Bid and the Stalking Horse Bidder will be deemed a Qualified Bidder, for all purposes and requirements pursuant to the Bidding Procedures, notwithstanding the requirements that a Potential Bidder must satisfy to be a Qualified Bidder. The Debtor shall inform the Stalking Horse Bidder of the Qualified Bids received and shall provide copies of the Starting Bid(s) (as defined below) no later than February 14, 2023, at 9:00 p.m. (prevailing Eastern Time).

A Qualified Bid will be valued by the Debtor based upon any and all factors that the Debtor deems pertinent in its reasonable business judgment (in consultation with the Consultation Parties), including, among others, (a) the amount of the Qualified Bid, (b) the risks and timing associated with consummating the transactions(s) with the Qualified Bidder, (c) any excluded assets or executory contracts and leases, and (d) any other factors that the Debtor, in consultation with the Consultation Parties, may reasonably deem relevant.

The Debtor, in its business judgment and in consultation with the Consultation Parties, reserve the right to reject any Bid if such Bid, among other things:

(a) requires any indemnification of the Potential Bidder in any Qualified Bid Purchase Agreement submitted as part of the Bid;

(b) is not received by the Bid Deadline;

(c) does not comport with the Bid Requirements;

(d) is subject to any contingencies (including representations, warranties, covenants and timing requirements) of any kind or any other conditions precedent to such party’s obligation to acquire the relevant Assets; or

(e) does not, in the Debtor’s determination (after consultation with the Consultation Parties), include a fair and adequate price or the acceptance of which would not be in the best interests of the Debtor’s estate or the Auction.

Any Bid rejected pursuant to the foregoing shall not be deemed to be a Qualified Bid; provided that the Debtor has the right to work with the parties to any rejected Bid to cure any such defects. In the event that any Bid is so rejected, the Debtor shall cause the Good Faith Deposit of such Potential Bidder (including all accumulated interest thereon) to be refunded to it as soon as reasonably practicable, but no later than five (5) business days after the Bid Deadline.

The Debtor may, in consultation with the Consultation Parties, among other things, (a) extend such Bid Deadline with respect to the subject Assets and postpone the Auction, or (b) cancel the Auction and terminate the proposed Sale for the subject Assets.

VIII. No Qualified Bids

If no Qualified Bids other than a Stalking Horse Bid are received by the Bid Deadline, then the Debtor, after consultation with the Consultation Parties, may cancel the Auction, and may decide, in the Debtor's reasonable business judgment, to designate the Stalking Horse Bid as the Successful Bid, and pursue entry of the Sale Order approving the Sale of the Debtor's Assets to the Stalking Horse Bidder pursuant to the Stalking Horse APA.

IX. Auction

Unless otherwise ordered by the Bankruptcy Court for cause shown, only the Qualified Bidders are eligible to participate at the Auction (as defined below). The Consultation Parties and their professionals shall be permitted to attend and observe the Auction. In addition, any creditor of the Debtor or party the Debtor deems appropriate may observe the Auction. At least one (1) day prior to the start of the Auction, each Qualified Bidder must inform the Debtor in writing whether it intends to participate in the Auction. If the Debtor receives only one Qualified Bid with regard to any particular Assets (or all of the Assets), (a) the Debtor shall not hold an Auction with respect to such Assets; (b) the Qualified Bid, as applicable, will be deemed the Successful Bid with respect to such Assets; and (c) the Qualified Bidder will be named the Successful Bidder with respect to such Assets. At any point and at its sole discretion, the Debtor shall have the right to remove any Assets from the Auction.

If at least two Qualified Bids are received by the Bid Deadline with regard to any particular Assets, the Debtor will conduct an auction (the "Auction") with respect to such Assets and shall determine, after consultation with the Consultation Parties, which Qualified Bid is the highest or otherwise best Qualified Bid for purposes of constituting the opening bid at the Auction for the relevant Assets (the "Starting Bid(s)"). The determination of which Qualified Bid constitutes the Starting Bid and which Qualified Bid constitutes the Successful Bid shall take into account any factors the Debtor (in consultation with the Consultation Parties) reasonably deems relevant to the value of the Qualified Bid to the Debtor's estate, including, among other things, the following: (a) the amount and nature of the consideration, including any obligations to be assumed; (b) the executory contracts and unexpired leases of the Debtor, if any, for which assumption and assignment or rejection is required, and the costs and delay associated with any litigation concerning executory contracts and unexpired leases necessitated by such bid; (c) the number, type and nature of any changes to the Stalking Horse APA, as applicable, requested by each Qualified Bidder; (d) the extent to which such modifications are likely to delay closing of the Sale and the cost to the Debtor of such modifications or delay; (e) the likelihood of the Qualified Bidder being able to close the proposed transaction (including obtaining any required regulatory approvals) and the timing thereof; (f) the net benefit to the Debtor's estate (including after taking account of the Bid Protections); (g) the tax consequences of such Qualified Bid; and (h) the impact on employees and the proposed treatment of employee obligations. The Starting Bid(s) will be provided to Qualified Bidders on or before February 14, 2023, at 9:00 p.m. (prevailing Eastern Time).

The Auction, if required, will be conducted on February 15, 2023, starting at 10:00 a.m. (prevailing Eastern Time) at the offices of Sidley Austin, LLP, 787 Seventh Avenue, New York, NY 10019 and, if determined by the Debtor to be necessary or convenient, via teleconference and/or videoconference. Professionals and principals for the Debtor, each Qualified Bidder

(including, its representative(s), if any), each of the Consultation Parties, the U.S. Trustee, and any other parties the Debtor deems appropriate shall be permitted to attend and observe the Auction. Each Qualified Bidder participating in the Auction will be required to confirm, in writing, and on the record at the Auction, that (a) it has not engaged in any collusion with respect to the Bidding Process, and (b) its Qualified Bid is a good faith *bona fide* offer that it intends to consummate if selected as the Successful Bidder.

Bidding at the Auction for the Assets (or subset thereof) that are subject to Qualified Bids will begin with the Starting Bid and continue, in one or more rounds of bidding, so long as during each round (a) at least one Qualified Bidder submits a Qualified Bid that improves on such Qualified Bidder's immediately prior Qualified Bid (a "Subsequent Bid") and (b) the Debtor reasonably determines, in consultation with the Consultation Parties, that such Subsequent Bid is (i) for the first round, a higher or otherwise better offer than the Starting Bid, and (ii) for subsequent rounds, a higher or otherwise better offer than the Leading Bid (as defined below). Each Subsequent Bid at the Auction shall provide additional net value to the estate over the Starting Bid or the Leading Bid (as defined below) in an amount equal to or greater than the Incremental Overbid amount. After the first round of bidding and between each subsequent round of bidding, the Debtor shall announce the bid that it believes to be the highest or otherwise best offer for the subject Assets (the "Leading Bid"). A round of bidding will conclude after each participating Qualified Bidder has had the opportunity to submit a Subsequent Bid with full knowledge of the Leading Bid, subject to the Debtor's authority to revise the Auction procedures as set forth below. In any Subsequent Bid by the Stalking Horse Bidder, if designated, the amount of the Bid Protections shall be included in the calculation of such Bid.

The Debtor may, in consultation with the Consultation Parties, announce at the Auction additional procedural rules (*e.g.*, the amount of time to make Subsequent Bids, the amount of the Incremental Overbid, or the requirement that parties submit "best and final" Bids) for conducting the Auction or otherwise modify these Bidding Procedures; provided that such rules are disclosed to each Qualified Bidder during the Auction. The bidding at the Auction shall be transcribed and the Debtor shall maintain a transcript of all Bids made and announced at the Auction.

Prior to the conclusion of the Auction, the Debtor, in consultation with the Consultation Parties, will, for the Assets (or subset thereof) that were subject to the Auction: (a) determine, consistent with the Bidding Procedures, which bid constitutes the highest or otherwise best bid (the "Successful Bid"); and (b) notify all Qualified Bidders at the Auction for the subject Assets, prior to its conclusion, of the name of the maker of the Successful Bid (the "Successful Bidder") with respect to the subject Assets, and the amount and other material terms of the Successful Bid. The Debtor may, in consultation with the Consultation Parties, designate the Next-Highest Bid (and the corresponding Next-Highest Bidder) to close with respect to the subject Assets in the event that the Successful Bidder does not close the Sale. Unless the Bankruptcy Court orders otherwise upon application by the Debtor, the Debtor shall not consider any Bids or Subsequent Bids submitted after the conclusion of the Auction and any and all such Bids and Subsequent Bids shall be deemed untimely and shall under no circumstances constitute a Qualified Bid.

As soon as practicable following the conclusion of the Auction, the Debtor shall file a notice on the Bankruptcy Court's docket identifying (with specificity) the Successful Bidder(s) for

the Assets (or subset thereof) and any applicable Next-Highest Bidder(s) (the “Notice of Successful Bidder(s)”).

All bidders at the Auction will be deemed to have consented to the core jurisdiction and constitutional authority of the Bankruptcy Court and waived any right to jury trial in connection with any disputes relating to the Auction, the Sale and all agreements entered into in connection with any proposed Sale.

X. Acceptance of Qualified Bids

The Debtor, in consultation with the Consultation Parties, may reject at any time, before entry of an order of the Bankruptcy Court approving the Sale, any Bid that, in the Debtor’s business judgment, upon considering any comments of the Consultation Parties, is (a) inadequate or insufficient, (b) not in conformity with the requirements of the Bankruptcy Code or the Bidding Procedures, or (c) contrary to the best interests of the Debtor’s and its estate.

The Debtor’s presentation to the Bankruptcy Court for approval of a selected Qualified Bid as a Successful Bid does not constitute the Debtor’s acceptance of such Bid. The Debtor will have accepted a Successful Bid only when such Successful Bid has been approved by the Bankruptcy Court at the Sale Hearing.

XI. No Fees for Potential Bidders or Qualified Bidders

Potential Bidders or Qualified Bidders, other than the Stalking Horse Bidder, if applicable, shall not be allowed any bidding fee, break-up fee, termination fee, transaction fee, expense reimbursement or any similar type of reimbursement as a precondition to, or in consideration of, presenting any bid or participating in the Bidding Process reflected herein.

XII. Sale Hearing

Each Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of one Qualified Bidder is received with respect to the Assets (or subset thereof), then the Qualified Bid of such Qualified Bidder) shall be subject to approval by the Bankruptcy Court. The hearing to approve a Successful Bid and any Next-Highest Bid (or if no Qualified Bid other than that of one Qualified Bidder is received with respect to the Assets (or subset thereof), then the Qualified Bid of such Qualified Bidder) shall take place on **February 21, 2023, at a time TBD** (the “Sale Hearing”). The Sale Hearing may be adjourned by the Debtor from time to time without further notice to creditors or other parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by filing a notice, which may be a hearing agenda stating the adjournment, on the docket of the Chapter 11 Case.

XIII. Return of Good Faith Deposit

The Good Faith Deposits of all Qualified Bidders shall be held in escrow, but shall not become property of the Debtor’s estate absent further order of the Bankruptcy Court. The Debtor shall retain any Good Faith Deposit submitted by each Successful Bidder. At the closing of a Sale contemplated by a Successful Bid, the applicable Successful Bidder will be entitled to a credit for the amount of its Good Faith Deposit to the extent such a deposit was provided. The Good Faith

Deposits of any Next-Highest Bidder shall be retained until three (3) business days after the applicable closing date (the “Closing Date”). The Good Faith Deposits of any other Qualified Bidders will be returned as soon as reasonably practicable, but no later than seven (7) business days following the Auction.

If a Successful Bidder (or, if the Sale is to be closed with a Next-Highest Bidder, then the Next-Highest Bidder) fails to consummate the Sale because of a breach or failure to perform on the part of such bidder, then, subject to the terms of the applicable Qualified Bid Purchase Agreement (as such agreement may be amended or modified at the Auction) or any other form of purchase agreement reasonably satisfactory to the Debtor, the Debtor and its estate shall be entitled to retain the Good Faith Deposit of such Successful Bidder (or, if the Sale is to be closed with the Next-Highest Bidder, then such Next-Highest Bidder) as part of the damages resulting to the Debtor and its estate for such breach or failure to perform.

XIV. Reservation of Rights and Modifications

Notwithstanding any of the foregoing, the Debtor, in consultation with the Consultation Parties, reserves the right to modify these Bidding Procedures at or prior to the Auction, including, without limitation, to extend the deadlines set forth herein, modify bidding increments, waive terms and conditions set forth herein with respect to any or all Potential Bidders (including, without limitation, the Bid Requirements), impose additional terms and conditions with respect to any or all potential bidders, adjourn or cancel the Auction at or prior to the Auction, and/or adjourn the Sale Hearing; *provided* that the Debtor may not amend these Bidding Procedures or the Bidding Process to reduce or otherwise modify its obligations to consult with any Consultation Party without the consent of such Consultation Party or further order of the Court.

The Debtor shall consult with the Consultation Parties as explicitly provided for in these Bidding Procedures; *provided, however*, that the Debtor shall not be required to consult with any Consultation Party (or its advisors) regarding any particular issue, selection, or determination if the Debtor determines in good faith on advice of counsel that such consultation would be inconsistent with the exercise of its fiduciary duties.

Each reference in these Bidding Procedures to “consultation” (or similar phrase) with the Consultation Parties shall mean consultation in good faith.

Further, for the avoidance of doubt, any rights that the Consultation Parties may have pursuant to the terms of other agreements, any orders of the Court, or the Bankruptcy Code are hereby reserved and shall not in any way be affected by these Bidding Procedures. All rights of the Consultation Parties with respect to the proposed Sale are fully reserved.

XV. Next-Highest Bidder

Notwithstanding any of the foregoing, in the event that a Successful Bidder fails to close a Sale prior to such date as specified in the applicable purchase agreement (or such date as may be extended by the Debtor), the Debtor, upon written notice to the Next-Highest Bidder, may designate the applicable Next-Highest Bid as the Successful Bid for the Assets (or subset thereof), the Next-Highest Bidder will be deemed to be the Successful Bidder for such Assets, and the

Debtor will be authorized, but not directed, to close the Sale to the Next-Highest Bidder subject to the terms of the Next-Highest Bid as approved by further order of the Bankruptcy Court.

Exhibit 2

Sale Notice

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (___)

Docket Ref. Nos. [●] &]●]

NOTICE OF AUCTION AND SALE HEARING

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On January 11, 2023, the above-captioned debtor and debtor-in-possession (the “Debtor”), filed a voluntary petition for relief pursuant to chapter 11 of Title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

2. On January 11, 2023, the Debtor filed a motion (the “Bidding Procedures and Sale Motion”), pursuant to sections 363 and 365 of the Bankruptcy Code and Rules 2002, 6004, and 6006 of the Federal Rules of Bankruptcy Procedure (“Bankruptcy Rules”), seeking entry of an order (the “Bidding Procedures Order”) (a) scheduling an auction (the “Auction”) for the sale of the Debtor’s assets (the “Assets”) on or about February 15, 2023, at 10:00 a.m. and a hearing to approve the sale of the Assets (the “Sale Hearing”) on or about February 21, 2023, (b) approving procedures (the “Bidding Procedures”) ² for submitting competing bids for the Assets, (c) authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder and approving the Bid Protections in accordance with the Bid Procedures, (d) subject to final Court approval at the Sale Hearing, authorizing and approving the Debtor to enter into and perform under a purchase agreement, as applicable, subject to higher or otherwise better offers submitted in accordance with the Bidding Procedures, (e) approving the form and manner of the notice of the Auction and the Sale Hearing, and (f) establishing procedures for the assumption and assignment of the Assumed Contracts (as defined in the Bidding Procedures and Sale Motion) to any purchaser(s) of the Assets and approving the manner of notice thereof (the “Assumption and Assignment Notice”).

3. On January [●], 2023, the Bankruptcy Court entered the Bidding Procedures Order. Pursuant to the Bidding Procedures Order, if at least two (2) Qualified Bids with regard to any Assets (as defined in the Bidding Procedures Order) are received by the Bid Deadline (as defined below), the Debtor will conduct the Auction. The Auction shall be held on February 15, 2023,

¹ 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.

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

starting at 10:00 a.m. (prevailing Eastern Time), or such other time as the Debtor shall designate, and notify all Qualified Bidders. Professionals and principals for the Debtor, each Qualified Bidder (including, its representative(s), if any), each of the Consultation Parties, and any other parties the Debtor deems appropriate shall be permitted to attend and observe the Auction. Only parties that have submitted a Qualified Bid, as set forth in the Bidding Procedures Order, by no later than **February 10, 2023, at 10:00 a.m. (prevailing Eastern Time)** (the “Bid Deadline”) may bid at the Auction. Any party that wishes to submit a Bid (as defined in the Bidding Procedures) for all or any portion of the Assets must submit a Bid prior to the Bid Deadline and in accordance with the Bidding Procedures.

4. The Sale Hearing to consider approval of the sale of the Assets to the Successful Bidder(s) at the Auction, free and clear of all liens, claims and encumbrances, will be held before the Honorable [•], United States Bankruptcy Judge, 824 North Market Street, [•] Floor, Courtroom [•], Wilmington, Delaware 19801 on **February 21 2023, at [•]:00 [a./p.]m (prevailing Eastern Time)**, or at such other time thereafter as counsel may be heard. The Sale Hearing may be adjourned by the Debtor from time to time without further notice to creditors or parties in interest other than by announcement of the adjournment in open court on the date scheduled for the Sale Hearing or by including such adjournment on any agenda filed with the Bankruptcy Court or by the filing of a notice with the Bankruptcy Court.

5. Objections to approval of the Sale (with the exception of objections related solely to the conduct of the Auction, identity of the Successful Bidder, and ability of the Successful Bidder to provide adequate assurance of future performance, which must be received by a different deadline), must be in writing, state the basis of such objection with specificity, and be filed with the Bankruptcy Court and served before **4:00 p.m. (prevailing Eastern Time) on February 10, 2023** (the “Sale Objection Deadline”) by the following parties (collectively, the “Notice Parties”):

- (a) proposed counsel to the Debtor, Sidley Austin LLP, 555 West Fifth Street, Los Angeles, CA 90013 (Attn.: Sam Newman (sam.newman@sidley.com), Julia Philips Roth (julia.roth@sidley.com), Charles Persons (cpersons@sidley.com) and Geoffrey Levin (glevin@sidley.com));
- (b) proposed co-counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, 1000 N. King Street, Rodney Square, Wilmington, DE 19801 (Attn.: Sean M. Beach (sbeach@ycst.com) and Allison S. Mielke, (amielke@ycst.com));
- (c) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn.: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov)); and
- (d) counsel to any statutory committee that has been appointed in the Chapter 11 Case.

6. Objections related solely to conduct at the Auction, identity of the Successful Bidder, and adequate assurance of future performance by the Successful Bidder must be in writing, state the basis of such objection with specificity, and be filed with the Bankruptcy Court and served

on or before February 17, 2023, at 4:00 p.m. (prevailing Eastern Time)
(the “Auction Objection Deadline”) by the Notice Parties.

UNLESS AN OBJECTION IS TIMELY SERVED AND FILED IN ACCORDANCE WITH THIS NOTICE, THE BANKRUPTCY COURT MAY GRANT THE RELIEF REQUESTED WITHOUT FURTHER HEARING AND NOTICE.

7. This Sale Notice is subject to the fuller terms and conditions of the Bidding Procedures and Sale Motion and the Bidding Procedures Order, with such Bidding Procedures Order controlling in the event of any conflict. The Debtor encourages all parties-in-interest to review such documents in their entirety. Parties interested in receiving more information regarding the sale of the Assets and/or copies of any related document, including the Bidding Procedures and Sale Motion or the Bidding Procedures Order, may make a written request to Julia Philips Roth (julia.roth@sidley.com) and Charles Persons (cpersons@sidley.com). In addition, copies of the Bidding Procedures and Sale Motion, the Bidding Procedures Order and this Notice are on file with the Clerk of the Bankruptcy Court, Third Floor, 824 North Market Street, Wilmington, Delaware 19801 and are available on the Debtor’s claims and noticing agent’s website free of charge at <http://kccllc.net/Tricida>.

Dated: _____, 2023
Wilmington, Delaware

/s/

**YOUNG CONAWAY STARGATT &
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Proposed Attorneys for Debtor, Tricida, Inc.

EXHIBIT 3

Assumption and Assignment Notice

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (___)

Docket Ref. No. [●]

**NOTICE OF (I) POTENTIAL ASSUMPTION AND ASSIGNMENT OF
EXECUTORY CONTRACTS AND UNEXPIRED LEASES AND (II) CURE AMOUNTS**

You are receiving this notice because you may be a counterparty to a contract or lease with Tricida, Inc. Please read this notice carefully as your rights may be affected by the transactions described herein.

PLEASE TAKE NOTICE OF THE FOLLOWING:

1. On January 11, 2023, the above-captioned debtor and debtor-in-possession (the “Debtor”) filed a motion seeking approval of the Bidding Procedures for the sale of certain of the Debtor’s assets (the “Assets”) and approval of the sale such Assets (the “Bidding Procedures and Sale Motion”) to the highest or best qualified bidder (the “Successful Bidder”). The Debtor has sought the approval of the Bankruptcy Court (as defined below) of the proposed Bidding Procedures and the form of this notice at a hearing held on January 26, 2023. The Debtor has further requested that a hearing to approve the sale of the Assets (the “Sale Hearing”) for February 21, 2023, at [●]:00 [a./p.]m. (ET) (prevailing Eastern Time) in the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”).

2. Pursuant to the Bidding Procedures and Sale Motion, the Debtor may potentially assume and assign to the Successful Bidder one or more of those executory contracts and unexpired leases listed on **Schedule A** annexed hereto (collectively, the “Potentially Assigned Agreements” and each, a “Potentially Assigned Agreement”), pursuant to section 365 of the Bankruptcy Code.

3. The Debtor has indicated on **Schedule A** annexed hereto the cure amounts, if any, that the Debtor believes must be paid to cure any prepetition defaults and pay all amounts accrued under the Potentially Assigned Agreements (in each instance, the “Cure Amount”).

4. Any party seeking to object to the validity of the Cure Amount as determined by the Debtor or otherwise assert that any other amounts, defaults, conditions or pecuniary losses must be cured or satisfied under any of the Potentially Assigned Agreements in order for such

¹ 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.

contract or lease to be assumed and assigned, must file an objection (the “Assumption/Assignment Objection”) that (a) is in writing, (b) sets forth the specific monetary amount the objector asserts to be due, and the specific types of the alleged defaults, pecuniary losses, accrued amounts and conditions to assignment and the support therefor, (c) is filed with the Clerk of the Bankruptcy Court and (d) is served on (i) proposed counsel to the Debtor, Sidley Austin LLP, 555 West Fifth Street, Los Angeles, CA 90013 (Attn.: Sam Newman (sam.newman@sidley.com), Julia Philips Roth (julia.roth@sidley.com), Charles Persons (cpersons@sidley.com), and Geoffrey Levin (glevin@sidley.com)); (ii) proposed co-counsel to the Debtor, Young Conaway Stargatt & Taylor, LLP, One Rodney Square, 1000 N. King Street, Wilmington, DE 19801 (Attn.: Sean M. Beach (sbeach@ycst.com) and Allison S. Mielke (amielke@ycst.com)); (iii) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, DE 19801 (Attn.: Timothy J. Fox, Jr., Esq. (Timothy.J.Fox@usdoj.gov)); and (iv) counsel to any statutory committee that has been appointed in the Chapter 11 Case (collectively, the “Notice Parties”) by no later than **4:00 p.m. (prevailing Eastern Time) on the date that is fourteen (14) calendar days after the service of this Assumption and Assignment Notice** (the “Assumption/Assignment Objection Deadline”).

5. The Debtor shall file a notice identifying the Successful Bidder with the Bankruptcy Court and serve such notice upon parties in interest by February 16, 2023, at 4:00 p.m. (prevailing Eastern Time). The deadline for objecting to the assignment of the Potentially Assigned Agreements to such Successful Bidder on the basis of adequate assurance of future performance (“Adequate Assurance Objections”) shall be February 17, 2023, at 4:00 p.m. (prevailing Eastern Time) (the “Adequate Assurance Objection Deadline”).

6. Unless an Assumption/Assignment Objection is timely and properly filed and served before the Assumption/Assignment Objection Deadline or an Adequate Assurance Objection is timely raised before the Adequate Assurance Objection Deadline, the non-Debtor party to a Potentially Assigned Agreement shall (a) be forever barred from objecting to the Cure Amount and from asserting any additional cure or other amounts with respect to such Potentially Assigned Agreement, and the Debtor and the Successful Bidder(s) shall be entitled to rely solely upon the Cure Amount; (b) be deemed to have consented to any assumption and assignment of such Potentially Assigned Agreement; and (c) be forever barred and estopped from asserting or claiming against the Debtor or the Successful Bidder(s) that any additional amounts are due or other defaults exist, that conditions to assignment must be satisfied under such Potentially Assigned Agreement or that there is any objection or defense to the assumption and assignment of such Potentially Assigned Agreement. In addition, the proposed Cure Amount set forth in **Schedule A** hereto shall be binding upon the non-Debtor parties to the Potentially Assigned Agreements for all purposes in this Chapter 11 Case and will constitute a final determination of the Cure Amounts required to be paid by the Debtor in connection with any assumption and assignment of the Potentially Assigned Agreements.

7. Where a non-Debtor counterparty to a Potentially Assigned Agreement timely and properly files an objection asserting a cure amount higher or different than the proposed Cure Amount, (the “Disputed Cure Amount”), then (a) the cure amount shall be as agreed between the parties or (b) to the extent the parties are unable to consensually resolve the dispute, then such objection will be adjudicated at the Sale Hearing or at such other date and time as may be

determined by the Debtor or fixed by the Court. All other objections to the proposed assumption and assignment of a Potentially Assigned Agreement will likewise be heard at the Sale Hearing, unless adjourned by agreement of the parties.

8. An Assumption/Assignment Objection shall not constitute an objection to the relief generally requested in the Bidding Procedures and Sale Motion. Parties wishing to otherwise object to the relief requested in the Bidding Procedures and Sale Motion must file and serve a separate objection, stating with particularity such party's grounds for objection, on each of the Notice Parties listed above no later than **fourteen (14) calendar days after service of the Assumption and Assignment Notice at 4:00 p.m. (prevailing Eastern Time)**.

9. If you agree with the Cure Amount indicated on **Schedule A**, and otherwise do not object to the Debtor's assignment of your lease or contract, you need not take any further action.

10. The Debtor's decision to assume and assign the Potentially Assigned Agreements is subject to Bankruptcy Court approval and consummation of the sale of the Assets.

Inclusion of any document on the list of Potentially Assigned Agreements shall not constitute or be deemed to be a determination or admission by the Debtor or the Successful Bidder(s) that such document is, in fact, an executory contract or unexpired lease within the meaning of the Bankruptcy Code, and all rights with respect thereto are being expressly reserved.

Dated: _____, 2023
Wilmington, Delaware

/s/

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Proposed Attorneys for Debtor, Tricida, Inc.

Schedule A

LEASES

Landlord Name / Address	<u>Address of Subject Property</u>	Cure Amount
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EXECUTORY CONTRACTS

<u>Counterparty Name / Address</u>	<u>Description of Contract</u>	Cure Amount
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