

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Re: Docket Nos. 11, 100, 125 & 214

**CERTIFICATION OF COUNSEL REGARDING
FURTHER REVISED PROPOSED EQUIPMENT SALE ORDER**

On January 11, 2023, Tricida, Inc., as debtor and debtor in possession in the above-captioned chapter 11 cases (the “Debtor”) filed 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* [Docket No. 11] (the “Motion”).²

On February 3, 2023, the Debtor filed the *Notice of Filing of Proposed Sale Order* [Docket No. 125] (the “Proposed Order”) with respect to sale of all or substantially all of the Debtor’s assets.

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 defined herein shall have the meaning ascribed to them in the Bidding Procedures approved in the Bidding Procedures Order entered at Docket No. 100, or the Asset Purchase Agreement.



On February 21, 2023, the Debtor filed the *Notice of Filing of Proposed Equipment Sale Order* [Docket No. 214] (the “Equipment Sale Order”) with respect to the equipment assets set forth therein.

The Debtor has further revised the Equipment Sale Order to attach the executed Asset Purchase Agreement, a copy of which is attached hereto as **Exhibit A** (the “Further Revised Proposed Order”). For the convenience of the Court and other interested parties, a blackline comparison of the Equipment Sale Order to the Further Revised Proposed Order is attached hereto as **Exhibit B**. The Debtor has circulated the Further Revised Proposed Order to the Purchaser and the Consultation Parties, who have no objection to its entry. The Debtor submits that the Further Revised Proposed Order, along with the Asset Purchase Agreement attached thereto, is consistent with the record at the Hearing.

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Accordingly, the Debtors respectfully request that the Court enter the Further Revised Proposed Order attached hereto as **Exhibit A** at the Court's earliest convenience.

Dated: February 22, 2023
Wilmington, Delaware

/s/ Allison S. Mielke

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EXHIBIT A

Further Revised Proposed Order

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Re: Docket Nos. 11 & 100

**ORDER (I) AUTHORIZING AND APPROVING WITH RESPECT
TO THE EQUIPMENT ASSETS (A) THE DEBTOR’S ENTRY INTO THE
PURCHASE AGREEMENT AND (B) SELECTION OF A NEXT-HIGHEST BID;
(II) AUTHORIZING THE SALE OF THE EQUIPMENT ASSETS OF THE DEBTOR
FREE AND CLEAR OF ALL CLAIMS; AND (III) GRANTING RELATED RELIEF**

Upon the motion, dated January 11, 2022 [Docket No. 11] (the “Motion”) of Tricida, Inc. (the “Debtor”), as debtor and debtor in possession in the above-captioned case (the “Chapter 11 Case”), pursuant to sections 105, 363 and 365 of title 11 of chapter 11 of the United States Code, §§ 101–1532 (the “Bankruptcy Code”), Rules 2002, 6003, 6004, 6006, and 9006 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”), seeking entry of, among other things, (i) an order (the “Bidding Procedures Order”)² (a) approving the bidding procedures (the “Bidding Procedures”) in connection with the sale or sales (the “Sale”) of all or substantially all of the Debtor’s assets, or any portion thereof (including the Equipment Assets), (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 (the “Auction”) and sale

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² Capitalized terms used but not defined herein shall have the meaning ascribed to them in the Bidding Procedures approved in the Bidding Procedures Order entered at Docket No. 100.

hearing (the “Sale Hearing”) and approving the form and manner of notice thereof, and (d) establishing certain assumption and assignment procedures and approving the manner of notice thereof, and (ii) an order (a) authorizing and approving the Debtor’s entry into an asset purchase agreement with the Successful Bidder(s) or Next-Highest Bidder(s), (b) authorizing the Sale of the Assets to the party or parties that are the Successful Bidder(s) or Next-Highest Bidder(s) at the Auction, free and clear of all claims and encumbrances, except for certain assumed liabilities, (c) authorizing and approving the assumption and assignment of certain executory contracts in connection with the Sale, including proposed cure amounts (if any), and (d) granting related relief; and the Debtor having conducted an Auction of its equipment assets (the “Equipment Assets”) on February 15, 2023, in accordance with the Bidding Procedures; and the Debtor having executed that certain Asset Purchase Agreement for the Equipment Assets by and among the Debtor and Liquidity Services Operations LLC (the “Purchaser”) (as may be amended or modified from time to time in accordance with the terms thereof and this Order, the “Purchase Agreement”); and the Debtor having selected the bid submitted at the Auction by Heritage Global Partners (the “Backup Purchaser”) in the amount of \$225,000 as the Next-Highest Bid; and the Court having considered the Purchase Agreement attached hereto as **Exhibit 1**, for the sale of the Equipment Assets free and clear of any Encumbrances, other than Permitted Encumbrances (the “Sale Transaction”); and the Court having entered the Bidding Procedures Order on January 26, 2023 [Docket No. 100]; and the Debtor having selected the Purchaser as the Successful Bidder and the Backup Purchaser as the Next-Highest Bidder; and the Sale Hearing having been held on February 21, 2023; and the Court having reviewed and considered the relief sought in the Motion, the Purchase Agreement, all objections to the Motion, and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and all parties in interest having been heard or having had the

opportunity to be heard regarding the Sale Transaction and the relief requested in this Order; and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular circumstances of the Chapter 11 Case and in accordance with the Bidding Procedures Order; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion, the First Day Declaration, the *Declaration of Alexander V. Rohan in Support of the Motion* [Docket No. 13] and the *Supplemental Declaration of Alexander V. Rohan in Support of the Motion* [Docket No. 216] (together, the “Rohan Declarations”), and at the Sale Hearing, establish just cause for the relief granted herein; and after due deliberation thereon,

THE COURT HEREBY FINDS AND DETERMINES THAT:³

A. **Jurisdiction and Venue.** This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and proceeding is proper in this District and this Court under 28 U.S.C. §§ 1408 and 1409.

B. **Statutory Predicates.** The statutory predicates for the relief requested in the Motion are sections 105, 363 and 365 of the Bankruptcy Code. Such relief is also warranted

³ The findings and conclusions set forth herein constitute this 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 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 Sale Hearing are hereby incorporated herein to the extent not inconsistent herewith.

pursuant to Bankruptcy Rules 2002, 6003, 6004, 6006, and 9006 and Local Rules 2002-1 and 6004-1.

C. **Final Order.** This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

D. **Notice.** On January 11, 2023 (the "Petition Date"), the Debtor commenced this Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued to operate and manage its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

E. On January 23, 2023, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the official committee of unsecured creditors (the "Committee") pursuant to section 1102 of the Bankruptcy Code [Docket No. 90].

F. The Debtor gave due and proper notice of the proposed Sale, Auction, and Sale Hearing on January 27, 2023 [Docket No. 104] (the "Sale Notice"). The Sale Notice constituted good, sufficient, and appropriate notice of the Sale under the particular circumstances and no further notice need be given with respect to the proposed Sale. As provided by the Sale Notice, a reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities. Other parties interested in bidding on the Equipment Assets were provided, pursuant to the Bidding Procedures Order, sufficient information to make an informed judgment on whether to bid.

G. As evidenced by the affidavits of service [Docket Nos. 39, 102, 108, 141, 163, 164] previously filed with this Court, and based on the representations of counsel at the Sale Hearing, due, proper, timely, adequate and sufficient notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order and the Sale Transaction has

been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 9006, 9007, and 9014, and Local Rules 2002-1 and 6004-1. The Debtor has complied with all obligations to provide notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order, and the Sale Transaction as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order or the Sale Transaction is or shall be required.

H. A reasonable opportunity to object or be heard regarding the relief requested in the Motion and provided in this Order was afforded to all parties in interest.

I. **Compliance with the Bidding Procedures Order.** As demonstrated by the evidence proffered or adduced at the Sale Hearing and the representations of counsel at the Sale Hearing, the Debtor has complied in all material respects with the Bidding Procedures Order. The Debtor and its professionals have adequately and appropriately marketed the Equipment Assets in compliance with the Bidding Procedures and the Bidding Procedures Order, and in accordance with the Debtor's fiduciary duties. Based upon the record of these proceedings, creditors, other parties in interest, and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Equipment Assets.

J. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any person to make a higher or otherwise better offer to purchase the Equipment Assets. The Debtor conducted the sale process without collusion and in accordance with the Bidding Procedures.

K. The Bidding Procedures Order is incorporated herein by reference.

L. The Purchaser is the designated Successful Bidder, and the Purchase Agreement is designated the Successful Bid for the Equipment Assets enumerated therein in accordance with the Bidding Procedures Order. The Purchaser has complied in all respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and entering into the Purchase Agreement, and the Sale Transaction and the Purchase Agreement likewise comply with the Bidding Procedures Order and all other applicable orders of this Court.

M. The Backup Purchaser is designated the Next-Highest Bidder, and the bid submitted by the Next-Highest Bidder at the Auction in the amount of \$225,000 is designated the Next-Highest Bid for the Equipment Assets. The Backup Purchaser has complied in all material respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and submitting the Next-Highest Bid. In the event the sale to the Successful Bidder does not close by the Closing Date (or such later date as agreed to by the parties), the Debtor shall work with the Backup Purchaser to document the Next-Highest Bid in an acceptable form of purchase agreement.

N. **Business Judgment.** The Purchase Agreement, including the form and total consideration to be realized by the Debtor under the Purchase Agreement, (a) constitutes the highest or otherwise best offer received by the Debtor for the Equipment Assets; (b) is fair and reasonable; and (c) is in the best interests of the Debtor, its estate, its creditors and all other parties in interest.

O. The Debtor's determination that the consideration provided by the Purchaser under the Purchase Agreement constitutes the highest or otherwise best offer for the Equipment Assets is reasonable and constitutes a valid and sound exercise of the Debtor's business judgment.

P. The Next-Highest Bid submitted by the Backup Purchaser, including the form and total consideration to be realized by the Debtor, (a) constitutes the next highest or best offer received by the Debtor for the Equipment Assets after the Purchase Agreement; (b) is fair and reasonable; and (c) is in the best interests of the Debtor, its estate, its creditors and all other parties in interest.

Q. The Debtor's determination that the consideration provided by the Backup Purchaser pursuant to the Next-Highest Bid constitutes the next highest or otherwise best offer for the Equipment Assets after the Purchase Agreement is reasonable and constitutes a valid and sound exercise of the Debtor's business judgment.

R. Consistent with its fiduciary duties, the Debtor has demonstrated good, sufficient and sound business reasons and justifications for entering into the Sale Transaction and the performance of its obligations under the Purchase Agreement, including, but not limited to, the fact that (a) the consideration provided by the Purchaser under the Purchase Agreement will provide a greater recovery for the Debtor's estates than would be provided by any other available alternative, including a separate liquidation of the Equipment Assets; and (b) unless the Sale Transaction is concluded expeditiously as provided for in the Motion and pursuant to the Purchase Agreement, creditor recoveries will be diminished.

S. **Corporate Authority.** Subject to entry of this Order, the Debtor (a) has full corporate power and authority to execute and deliver the Purchase Agreement and all other documents contemplated thereby, (b) has all of the necessary corporate power and authority to consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, (c) has taken all corporate action necessary to authorize and approve the Purchase Agreement and the consummation by the Debtor of the transactions

contemplated thereby, including, without limitation, the Sale Transaction, and (d) subject to entry of this Order, need no consents or approvals, including any consents or approvals from any non-Debtor entities, other than those expressly set forth in the Purchase Agreement or this Order, to consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction.

T. **Good Faith.** The sale process engaged in by the Debtor, the Purchaser, and the Backup Purchaser including, without limitation, the Auction, which was conducted in accordance with the Bidding Procedures and the Bidding Procedures Order, and the negotiation of the Purchase Agreement and the Next-Highest Bid, was at arm's length, non-collusive, in good faith, and substantively and procedurally fair to all parties in interest. Neither the Debtor, the Purchaser, nor the Backup Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement or the Sale Transaction to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

U. The Debtor, the Purchaser, and the Backup Purchaser have complied, in good faith, in all respects with the Bidding Procedures Order and the Bidding Procedures. The Debtor, and its management, board of directors, employees, agents, advisors, and representatives, and the Purchaser and Backup Purchaser and their respective employees, agents, advisors and representatives, each actively participated in the bidding process and in the Auction, and each acted in good faith and without collusion or fraud of any kind. The Purchaser and Backup Purchaser subjected their bids to competitive bidding in accordance with the Bidding Procedures and were designated the Successful Bidder and the Next-Highest Bidder, respectively, for the Equipment Assets in accordance with the Bidding Procedures and the Bidding Procedures Order.

V. The Purchaser and the Backup Purchaser are each a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and are therefore entitled to the full protection of that provision in respect of the Sale Transaction, each term of the Purchase Agreement and the Next-Highest Bid (and any ancillary documents executed in connection therewith) and each term of this Order, and otherwise has proceeded in good faith in all respects in connection with this proceeding. Neither the Debtor nor the Purchaser or the Backup Purchaser has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code. The Debtor was free to deal with any other party interested in buying or selling some or all of the Equipment Assets on behalf of the Debtor's estate. The protections afforded by Bankruptcy Code section 363(m) are integral to the Sale Transaction and the Purchaser and the Backup Purchaser would not consummate the Sale Transaction without such protections.

W. The form and total consideration to be realized by the Debtor under the Purchase Agreement or the Next-Highest Bid constitutes fair value, fair, full, and adequate consideration, reasonably equivalent value, and reasonable market value for the Equipment Assets.

X. Neither the Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an "insider" of the Debtor, as that term is defined under section 101(31) of the Bankruptcy Code. No common identity of directors, managers, controlling shareholders, or members exists between the Debtor and the Purchaser.

Y. Neither the Backup Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an "insider" of the Debtor, as that term is defined under section 101(31) of the Bankruptcy Code. No common identity

of directors, managers, controlling shareholders, or members exists between the Debtor and the Backup Purchaser.

Z. **No Fraudulent Transfer.** The consideration provided by the Purchaser or the Backup Purchaser for the Equipment Assets pursuant to the Purchase Agreement or the Next-Highest Bid (a) is fair and reasonable, (b) is the highest and best offer for the Equipment Assets, (c) will provide a greater recovery for the Debtor's creditors and estate than would be provided by any other practical available alternative, and (d) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, and each state, territory, possession, and the District of Columbia.

AA. The Purchase Agreement and the Next-Highest Bid were not entered into, and neither the Debtor nor the Purchaser or the Backup Purchaser has entered into the Purchase Agreement or the Next-Highest Bid or proposes to consummate the Sale Transaction, for the purpose of (a) escaping liability for any of the Debtor's debts or (b) hindering, delaying or defrauding the Debtor's present or future creditors, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

BB. **Free and Clear.** The transfer of the Equipment Assets to the Purchaser or the Backup Purchaser will be a legal, valid, and effective transfer of the Equipment Assets, and will vest the Purchaser or the Backup Purchaser with all right, title, and interest of the Debtor to the Equipment Assets free and clear of all claims (including, without limitation, any and all "claims" as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof), liens (including, without limitation, any statutory lien on real and personal property and any and all

“liens” as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof), liabilities, interests, rights, and Encumbrances relating to, accruing, or arising any time prior to the Closing Date, including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, sublicenses, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, senior or subordinated, whether arising prior to or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor or

transferee liability or related theories (all of the foregoing, but excluding Assumed Liabilities and Permitted Encumbrances, collectively being referred to in this Order as “Claims”).

CC. Those holders of Claims who did not object or who withdrew their objections to the Motion, are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

DD. The Debtor, to the extent permitted by applicable law, may transfer the Equipment Assets free and clear of all Claims, including, without limitation, rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

EE. The Debtor has, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code.

FF. The Purchaser and the Backup Purchaser would not have entered into the Purchase Agreement and the Next-Highest Bid, respectively and would not consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction, (a) if the transfer of the Equipment Assets were not free and clear of all Claims, or (b) if the Purchaser or the Backup Purchaser would, or in the future could, be liable for or subject to any such Claims.

GG. The Purchaser will not consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, unless this Court expressly orders that none of the Purchaser, its respective affiliates, its respective present or contemplated members or shareholders, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.

HH. The Backup Purchaser will not consummate the transactions contemplated by the Next-Highest Bid, including, without limitation, the Sale Transaction, unless this Court expressly orders that none of the Backup Purchaser, its respective affiliates, its respective present or contemplated members or shareholders, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.

II. Not transferring the Equipment Assets free and clear of all Claims would adversely impact the Debtor's efforts to maximize the value of its estate, and the transfer of the Equipment Assets other than pursuant to a transfer that is free and clear of all Claims would be of substantially less benefit to the Debtor's estate.

JJ. Neither the Purchaser nor any of its affiliates are a mere continuation of the Debtor or its estate, there is no continuity or common identity between the Purchaser, the Debtor, or any of their respective affiliates, and there is no continuity of enterprise between the Purchaser, the Debtor, or any of their respective affiliates. Neither the Purchaser nor any of its affiliates are holding themselves out to the public as a continuation of the Debtor. Neither the Purchaser nor any of its affiliates are a successor to the Debtor or its estate and none of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction amounts to a consolidation, merger, or *de facto* merger of the Purchaser or any of its affiliates with or into the Debtor.

KK. Neither the Backup Purchaser nor any of its affiliates are a mere continuation of the Debtor or its estate, there is no continuity or common identity between the Backup Purchaser, the Debtor, or any of their respective affiliates, and there is no continuity of enterprise between the Backup Purchaser, the Debtor, or any of their respective affiliates. Neither the Backup Purchaser

nor any of its affiliates are holding themselves out to the public as a continuation of the Debtor. Neither the Backup Purchaser nor any of its affiliates are a successor to the Debtor or its estate and none of the transactions contemplated by the Next-Highest Bid, including, without limitation, the Sale Transaction amounts to a consolidation, merger, or *de facto* merger of the Backup Purchaser or any of its affiliates with or into the Debtor.

LL. Without limiting the generality of the foregoing, and other than as may be set forth in the Purchase Agreement, none of the Purchaser, its affiliates, the present or contemplated members or shareholders of the Purchaser, and its affiliates, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims relating to any U.S. federal, state or local income tax liabilities, that the Debtor may incur in connection with consummation of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, or that the Debtor has otherwise incurred prior to the consummation of the transactions contemplated by the Purchase Agreement.

MM. **Validity of Transfer.** The consummation of the transactions contemplated by the Purchase Agreement or the Next-Highest Bid, including, without limitation, the Sale Transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) thereof, and all of the applicable requirements of such sections have been complied with in respect of the transactions contemplated under the Purchase Agreement or the Next-Highest Bid.

NN. The Equipment Assets constitute property of the Debtor's estate and good title to the Equipment Assets is vested in the Debtor's estate within the meaning under section 541(a) of the Bankruptcy Code. The Debtor is the sole and lawful owner of the Equipment Assets.

OO. The Purchase Agreement has been duly and validly executed and delivered by the Debtor and, subject to the terms of the Purchase Agreement, shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with its terms. The Purchase Agreement, the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtor and any chapter 7 or chapter 11 trustee appointed in this Chapter 11 Case, and shall not be subject to rejection or avoidance by the foregoing parties or any other person.

PP. **Compelling Circumstances for an Immediate Sale.** To maximize the value of the Equipment Assets, it is essential that the transactions contemplated by the Purchase Agreement occur within the time constraints set forth therein. Time is of the essence in consummating the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

RR. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the transactions contemplated by the Purchase Agreement or the Next-Highest Bid, including, without limitation, the Sale Transaction prior to, and outside of, a chapter 11 plan because, among other things, the Debtor's estates will suffer irreparable harm if the relief requested in the Motion is not granted on an expedited basis. The transactions contemplated by the Purchase Agreement or the Next-Highest Bid neither impermissibly restructure the rights of the Debtor's creditors nor impermissibly dictates the terms of a chapter 11 plan for the Debtor, and therefore, do not constitute a *sub rosa* plan.

SS. The legal and factual bases set forth in the Motion, the Rohan Declarations filed in support thereof, and presented at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the Purchase Agreement attached hereto as **Exhibit 1** and the consummation of the transactions contemplated thereby, including, without limitation, the Sale Transaction, is authorized and approved.

2. Any objections and responses to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such objections and responses, are overruled on the merits and denied with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief granted herein, including for purposes of sections 363(f)(2), 365(c)(1), and 365(e)(2) of the Bankruptcy Code.

A. Approval of the Purchase Agreement

3. The Purchase Agreement, all ancillary documents, the transactions contemplated thereby, including, without limitation, the Sale Transaction, and all the terms and conditions thereof, are approved. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision; the Court hereby authorizes and approves the Purchase Agreement in its entirety.

4. The Debtor and its respective officers, employees and agents are authorized and directed to take any and all actions necessary, appropriate or reasonably requested by the Purchaser to perform, consummate, implement and close the Sale Transaction, including, without limitation, (a) the sale to the Purchaser of all Equipment Assets, in accordance with the terms and conditions set forth in the Purchase Agreement and this Order; and (b) execution, acknowledgment and

delivery of such deeds, assignments, conveyances and other assurance, documents and instruments of transfer and any action for purposes of assigning, transferring, granting, conveying and confirming to the Purchaser, or reducing to possession, the Equipment Assets, all without further order of this Court. The Debtor is further authorized to pay, without further order of this Court, whether before, at or after the Closing Date, any expenses or costs that are required to be paid by the Debtor under the Purchase Agreement, this Order, or the Bidding Procedures Order, in order to consummate the Sale Transaction or perform their obligations under the Purchase Agreement.

5. All persons and entities, including, without limitation, the Debtor, the Debtor's estate, any and all debt security holders, equity security holders, governmental tax and regulatory authorities, lenders, customers, vendors, employees, former employees, litigation claimants, trustees, trade creditors, and any other creditors (or agent of any of the foregoing) who may or do hold Claims against the Debtor or the Equipment Assets, arising under or out of, in connection with, or in any way relating to, the Debtor, the Equipment Assets, the operation or ownership of the Equipment Assets by the Debtor prior to the Closing Date, or the Sale Transaction, are hereby prohibited, forever barred, estopped, and permanently enjoined from asserting or pursuing such Claims against the Purchaser, its affiliates, successors, assigns, or property, or the Equipment Assets, including, without limitation, taking any of the following actions with respect to any Claims: (a) commencing or continuing in any manner any action, whether at law or in equity, in any judicial, administrative, arbitral, or any other proceeding, against the Purchaser, its affiliates, successors, assigns, assets (including the Equipment Assets), and/or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, its affiliates, successors, assigns, assets (including the Equipment Assets), and/or properties; (c) creating, perfecting, or enforcing any Claim against the Purchaser, its affiliates, any

of their respective successors, assigns, assets (including the Equipment Assets), and/or properties;

(d) asserting a Claim as a setoff, right of subrogation, or recoupment of any kind against any obligation due against the Purchaser, its affiliates or any of their respective successors or assigns;

or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order, the Purchase Agreement, or the agreements or actions contemplated or taken in respect thereof, including the Debtor's ability to transfer the Equipment Assets to the Purchaser in accordance with the terms of this Order and the Purchase Agreement. No such Person shall assert or pursue any such Claim against the Purchaser or its affiliates, successors or assigns.

6. The sale of the Equipment Assets to the Purchaser under the Purchase Agreement constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy Code and laws of all applicable jurisdictions, including, without limitation, the laws of each jurisdiction in which the Equipment Assets are located, and the sale of the Equipment Assets to the Purchaser may not be avoided under any statutory or common law fraudulent conveyance and fraudulent transfer theories whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

B. Approval of the Debtor's Selection of the Next-Highest Bid

7. The Court approves the Debtor's selection of the Next-Highest Bid announced at the Auction in the amount of \$225,000. In the event the sale to the Successful Bidder does not close by the Closing Date (or such later date as agreed to by the parties), the Debtor shall work with the Backup Purchaser to document the Next-Highest Bid in an acceptable form of purchase agreement.

C. Transfer of the Equipment Assets Free and Clear

8. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Equipment Assets shall be sold free and clear of all Claims, with all such Claims to attach to the proceeds of the Sale Transaction to be received by the Debtor with the same validity, force, priority and effect which they now have as against the Equipment Assets, subject to any claims and defenses the Debtor may possess with respect thereto; *provided, however*, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Sale Transaction.

9. At Closing, all of the Debtor's right, title and interest in and to, and possession of, the Equipment Assets shall be immediately vested in the Purchaser pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code free and clear of any and all Claims. Such transfer shall constitute a legal, valid, binding and effective transfer of, and shall vest the Purchaser with good and marketable title to, the Equipment Assets. All person or entities, presently or on or after the Closing Date, in possession of some or all of the Equipment Assets are authorized to surrender possession of the Equipment Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

10. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Sale Transaction.

11. Except as otherwise expressly provided in the Purchase Agreement or this Order, all persons and entities (and their respective successors and assigns), including, but not limited to, any and all debt security holders, equity security holders, affiliates, foreign, federal, state and local governmental, tax and regulatory authorities, lenders, customers, vendors, employees, former employees, trade creditors, litigation claimants and other creditors holding Claims against the Debtor or the Equipment Assets arising under or out of, in connection with, or in any way relating to, the Debtor, the Debtor's predecessors or affiliates, the Equipment Assets, the ownership, sale or operation of the Equipment Assets prior to Closing or the transfer of the Equipment Assets to the Purchaser, are hereby forever barred, estopped and permanently enjoined from asserting or prosecuting any cause of action or any process or other act or seeking to collect, offset, or recover on account of any Claims against the Purchaser, its successors or assigns, their property or the Equipment Assets. Following the Closing, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Equipment Assets based on or related to any such Claim, or based on any action or omission of the Debtor, including any action or omission the Debtor may take in the Chapter 11 Case.

12. The Debtor is authorized and directed to execute such documents as may be necessary to release any Claims of any kind against the Equipment Assets as such Claims may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, *lis pendens* or other documents or agreements evidencing Claims against or in the Equipment Assets shall not have delivered to the Debtor prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims that the person or entity has with respect to the Equipment Assets, (a) the Debtor is hereby authorized and directed to execute and

file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Equipment Assets; (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all such Claims against the Purchaser and the applicable Equipment Assets; (c) the Debtor's creditors and the holders of any Claims are authorized to execute such documents and take all other actions as may be necessary to terminate, discharge or release their Claims in the Equipment Assets and (d) the Purchaser may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction and releases of all such Claims with respect to the Equipment Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office, and such agencies, departments and offices are authorized to accept this Order for filing or recording. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Equipment Assets free and clear of Claims shall be self-executing, and neither the Debtor nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

13. To the maximum extent permitted under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtor with respect to the Equipment Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, authorized to be transferred to the Purchaser with respect to the Equipment Assets as of the Closing Date. To the extent the Purchaser cannot operate under any

such license, permit, registration and governmental authorization or approval in accordance with the previous sentence, then to the maximum extent permitted under applicable law, such licenses, permits, registrations and governmental authorizations and approvals shall be in effect while the Purchaser, with assistance from the Debtor (and at the Purchaser's sole cost and expense), works promptly and diligently to apply for and secure all necessary government approvals for new issuance of such licenses, permits, registrations and governmental authorizations and approvals to the Purchaser.

14. No governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any representative thereof may deny, revoke, suspend or refuse to renew any permit, license or similar grant relating to the operation of the Equipment Assets on account of the filing or pendency of the Chapter 11 Case or the consummation of the Sale Transaction to the extent that any such action by a governmental unit or any representative thereof would violate section 525 of the Bankruptcy Code.

D. No Successor or Transferee Liability

15. Upon the Closing Date, except as provided in the Purchase Agreement, the entry of this Order and the approval of the terms of the Purchase Agreement shall mean that the Purchaser (and any of its affiliates, successors, or assigns), as a result of any action taken in connection with the Purchase Agreement, the consummation of the transactions contemplated thereby, including, without limitation, the Sale Transaction, or the transfer or operation of the Equipment Assets, shall not be deemed to: (a) be a legal successor or successor employer to the Debtor (including with respect to any health or benefit plans), or otherwise be deemed a successor to the Debtor, and shall instead be, and be deemed to be, a new employer with respect to all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws; (b) have, *de facto*, or otherwise, merged or consolidated with or into the Debtor; or (c) be an

alter ego or a mere continuation or substantial continuation of the Debtor or the enterprise of the Debtor, including, in the case of each of (a)-(c), without limitation, (i) within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq.) (“WARN”), Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq. or (ii) in respect of (1) any environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to the Closing Date (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, (2) any liabilities, penalties, costs, debts or obligations of or required to be paid by the Debtor for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or (3) any products liability law or doctrine with respect to the Debtor’s liability under such law, rule or regulation or doctrine.

16. Without limiting the generality of the foregoing, and except as otherwise provided in the Purchase Agreement and this Order, neither the Purchaser nor any of its affiliates shall have any responsibility for (a) any liability or other obligation of the Debtor related to the Equipment Assets or (b) any Claims against the Debtor or any of their predecessors or affiliates. By virtue of the Purchaser’s purchase of the Equipment Assets, neither the Purchaser nor any of its affiliates shall have any liability whatsoever with respect to the Debtor’s (or its predecessors’ or affiliates’) respective businesses or operations or any of the Debtor’s (or its predecessors’ or

affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental (including, but not limited to CERCLA), successor or transferee liability, *de facto* merger or substantial continuity, labor and employment (including, but not limited to, WARN) or products liability law, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including any liabilities or non-monetary obligations on account of the Debtor's employment agreements or health or benefit plans, any settlement or injunction or any liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Equipment Assets prior to the Closing (collectively, with the potential claims set forth in paragraph 15, "Successor or Transferee Liability"). The Purchaser would not have acquired the Equipment Assets but for the foregoing protections against Successor or Transferee Liability.

17. None of the Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by the Debtor or any of its estate, predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the Purchase Agreement and the entry into and consummation of the sale of the Equipment Assets, except as expressly provided in the Purchase Agreement and this Order.

18. Nothing in this Order or the Purchase Agreement shall require the Purchaser or any of its affiliates to (a) continue or maintain in effect, or assume any liability in respect of any employee, former employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtor is a party or

have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

19. No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transactions with the Debtor that are approved by this Order, including, without limitation, the Purchase Agreement and the Sale Transaction.

E. Good Faith; Arm's Length Sale

20. The Purchase Agreement has been negotiated and executed, and the transactions contemplated thereby, including, without limitation, the Sale Transaction, are and have been undertaken, by the Debtor, the Purchaser and its respective representatives at arm's length, without collusion and in "good faith," as that term is defined in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction or any term of the Purchase Agreement, and shall not permit the unwinding of the Sale Transaction. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections under section 363(m) of the Bankruptcy Code.

21. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement or the transactions contemplated thereby, including, without limitation, the Sale Transaction, to be avoided, or for costs, or damages or costs, to be imposed, under section 363(n) of the Bankruptcy Code. The consideration provided by the Purchaser for the

Equipment Assets under the Purchase Agreement is fair and reasonable, and the Sale Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

F. Related Relief

22. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Sale Transaction contemplated by the Purchase Agreement.

23. No governmental unit may revoke or suspend any right, license, copyright, patent, trademark or other permission relating to the use of the Equipment Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of the Chapter 11 Case or the consummation of the sale of the Equipment Assets.

24. Except as expressly provided in the Purchase Agreement, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtor or its estate from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any assets or liabilities not constituting an Equipment Asset.

25. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Equipment Assets are hereby directed to surrender possession of the Equipment Assets to the Purchaser on or prior to the Closing Date or such later date that such party and the Purchaser mutually agree.

26. To the extent this Order is inconsistent with any prior order or pleading filed in the Chapter 11 Case related to the Motion, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Purchase Agreement, the terms of this Order shall govern.

27. This Order and the Purchase Agreement shall be binding in all respects upon all pre-petition and post-petition creditors of the Debtor, all interest holders of the Debtor, any Court-appointed committee, all successors and assigns of the Debtor and its affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Chapter 11 Case or upon a conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee, and the Purchase Agreement and Sale Transaction shall not be subject to rejection or avoidance under any circumstances by any party. If any order under section 1112 of the Bankruptcy Code is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that this Order and the rights granted to the Purchaser hereunder shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest. For the avoidance of doubt, the Debtor’s inability to satisfy in full all administrative expense claims of the Debtor’s estate shall not be a basis for termination, rejection or avoidance (as applicable) of the Purchase Agreement or the Sale Transaction.

28. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party or which has been assigned by the Debtor to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale Transaction, including any and all disputes with any counterparty to any executory contract or unexpired lease of the Debtor and any party that has, or asserts, possession, control or other rights in respect of any of the Equipment Assets; *provided, however*, that, in the event the Court abstains from exercising or declines to exercise such jurisdiction with respect to the Purchase Agreement, the Bidding Procedures Order, or this Order, such abstention, refusal, or lack of

jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Court retains jurisdiction to compel delivery of the Equipment Assets, to protect the Debtor and its assets, including the Equipment Assets, against any Claims and successor and transferee liability and to enter orders, as appropriate, pursuant to sections 105(a) or 363 of the Bankruptcy Code (or other applicable provisions) necessary to transfer the Equipment Assets to the Purchaser.

29. At any time prior to the Closing Date, the Purchaser or the Debtor may terminate the Purchase Agreement pursuant to the terms thereof without any penalty or liability to the Purchaser or the Debtor (or its estate), except as set forth in the Purchase Agreement.

30. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

31. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (a) the terms of this Order shall be immediately effective and enforceable upon its entry and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply; (b) the Debtor is not subject to any stay of this Order or in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Debtor and the Purchaser may, each in its discretion and without further delay, take any action and perform any act authorized under this Order.

32. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code, to give any notice permitted by the Purchase Agreement or to enforce any of its remedies under the Purchase Agreement or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is modified solely to the extent necessary to implement the preceding sentence; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

33. The provisions of this Order are non-severable and mutually dependent.

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

Exhibit 1

Purchase Agreement

ASSET PURCHASE AGREEMENT

This **ASSET PURCHASE AGREEMENT** ("**Agreement**") is made as of the Effective Date by and between Liquidity Services Operations LLC, a Delaware limited liability company with a place of business at 6931 Arlington Road, Suite 200, Bethesda, MD 20814 ("**Buyer**"), and Tricida, Inc., a Delaware corporation with a place of business at 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080 ("**Seller**", and together with Buyer, the "**Parties**"). Seller's entry into this Agreement, and all terms of this Agreement, are subject to the approval of the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

IT IS AGREED AS FOLLOWS:

1. DEFINITIONS AND INTERPRETATION

In this Agreement, unless the context otherwise requires, the following words shall have the following meanings:

Affiliate means, in relation to a Party, any entity, individual, firm, or corporation, directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such Party;

Assets means the items listed in Schedule 1 to this Agreement;

Business Day means a day (other than a Saturday, Sunday or holiday) when banks in New York are open for business;

Clearance Date means February 28, 2023;

Customers means the third party customers of Buyer who express an interest in purchasing or acquiring, or purchase or acquire, the Assets from Buyer;

Effective Date means the date on which this Agreement is signed by both Parties;

Encumbrance means any charge, lien, equity, third party right, option, right of pre-emption or any other encumbrance, priority or security interest whether legal or equitable, of any third party (or any agreement or commitment to create any such);

Expiration Date has the meaning given to it in clause 4.2;

Purchase Price has the meaning given to it in clause 2.2;

Site means 7000 Shoreline Court, Suite 201, South San Francisco, CA 94080; and

Transfer Date has the meaning given to it in clause 2.3.

2. AGREEMENT TO SELL AND PURCHASE

2.1 Subject to, and in accordance with, the terms and provisions of this Agreement, Seller hereby sells with full title guarantee and Buyer purchases the Assets free from all Encumbrances of whatsoever nature with effect from the Transfer Date.

2.2 The consideration for the sale of the Assets shall be \$235,000.00 (the "**Purchase Price**"). The Purchase Price shall be paid by Buyer to an account identified by Seller within five (5) business days of the Effective Date, and in any event prior to the removal of Assets from the Site.

2.3 Ownership and risk of loss of the Assets shall pass to Buyer on payment of the Purchase Price (the "**Transfer Date**").

3. BUYER'S OBLIGATIONS

3.1 Buyer shall at its own expense remove all Assets from the Site by the Clearance Date, including by arranging transportation and shipment of the Assets to an alternate location. Buyer shall do so during business hours.

3.2 Subject to clause 3.3, Buyer shall leave the Site in an orderly state as of the Clearance Date.

- 3.3 Buyer shall not be responsible for any damage to the Site which may be revealed in the process of removal but was not caused by Buyer's actions. Buyer also shall not be responsible for removing any of Seller's assets which are not specifically listed on Schedule 1 hereto.
- 3.4 Buyer shall until all of the Assets have been removed from the Site:
- (a) oversee the removal of the Assets from the Site;
 - (b) take all necessary precautions to prevent the occurrence of any injury to persons, property or the environment in connection with the removal of the Assets; and
 - (c) comply with any health and safety rules and insurance requirements applicable to the Site of which Buyer is advised by Seller or which Seller's landlord requires provided Buyer has been made aware of such requirements by Seller or Seller's landlord.
- 3.5 Buyer shall obtain all appropriate and customary insurance necessary in connection with removal of the Assets, on terms and amounts as are sufficient and appropriate, naming Seller and the landlord as additional insureds.
- 3.6 Buyer shall comply with all applicable laws in connection with its actions pursuant to this Agreement.

4. SELLER'S OBLIGATIONS

- 4.1 Seller shall, through the Clearance Date:
- (a) at all times provide such assistance as Buyer may reasonably require (at Buyer's sole cost and expense) in order to market, auction, sell or otherwise dispose of and/or remove the Assets from the Site;
 - (b) ensure that, where applicable, all mains services to the Assets are disconnected;
 - (c) ensure that all Assets are decontaminated, made safe, purged and drained of any and all toxic or potentially hazardous substances and that all such substances are made secure and/or removed from the Site;
 - (d) provide Buyer with all such drawings, manuals, technical records and spare parts as Seller has readily available in relation to the Assets; and
 - (e) maintain the Assets in the condition they are in as of the last date of inspection by Buyer.
- 4.2 Seller shall until the earlier of (i) the Clearance Date; or (ii) the date on which all Assets have been removed from the Site (the "**Expiration Date**"):
- (a) if the Transfer Date is earlier than the Expiration Date, allow Buyer without charge to store any Assets on the Site between the Transfer Date and the Clearance Date;
 - (b) allow Buyer and Buyer's employees, agents, contractors, sub-contractors and Customers without charge at all reasonable times such access of the Site and any buildings on the Site as Buyer may reasonably require in order to auction, sell or otherwise dispose of and/or remove the Assets from the Site;
 - (c) continue to pay any rents, rates, utility charges and any other outgoings in relation to the Site; and
 - (d) maintain adequate insurance of the Site (and any buildings on the Site) and adequate commercial general liability insurance.
- 4.3 Seller shall from the Effective Date until the Transfer Date:
- (a) maintain the Assets in the condition they are in as of the last date of inspection by Buyer; and
 - (b) maintain its existing insurance of the Assets.

5. SELLER WARRANTIES

5.1 Seller warrants to Buyer:

- (a) Subject to approval of the Bankruptcy Court, Seller is authorized to execute and perform this Agreement, and this Agreement constitutes a valid and legally binding obligation of Seller enforceable in accordance with its terms;
- (b) that Seller has, and will at the Transfer Date have, and can prove on request from Buyer, good and marketable title to each Asset and each Asset is, and will at the Transfer Date be, legally and beneficially owned by Seller;
- (c) there are no Encumbrances over any of the Assets, nor will there be any Encumbrances over any of the Assets on the Transfer Date, and Seller has not agreed, nor will Seller have agreed at the Transfer Date, to create any Encumbrances over the Assets or any part of them;
- (d) each Asset is, and will at the Transfer Date be, in the possession or under the control of Seller;
- (e) to the knowledge of Seller, none of the Assets infringe or violate (or contain any parts or components which infringe or violate) a third party's copyright, patent, design rights, trademark, trade secrets or other proprietary and/or intellectual property rights;
- (e) no damage has been done other than through normal wear and tear to any of the Assets and no Assets have left the Site since the date on which they were last inspected by Buyer;
- (f) except as otherwise notified to Buyer, no hazardous substances are contained in or made a part of any of the Assets and, for the purposes of this Agreement, the term "hazardous substances" shall mean, either individually or collectively, any substance or waste designated pursuant to any laws, statutes, or regulations of governmental, local or other statutory authority as presenting an imminent and substantial danger to the public health or welfare or to the environment, or as otherwise requiring special handling, collection, storage, treatment, disposal or transportation; and
- (h) it is in material compliance with all laws, rules and regulations applicable to its performance under this Agreement including the U.S. Foreign Corrupt Practices Act and the UK Bribery Act 2010.

6. BUYER WARRANTIES

6.1 Buyer warrants to Seller:

- (a) Buyer is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization.
- (b) Buyer has full power and authority to execute and deliver and perform its obligations under this Agreement. Buyer has taken all action necessary, to execute and deliver this Agreement and, to consummate the purchase of the Assets and to perform its obligations hereunder and thereunder. The execution and delivery by Buyer of this Agreement and the consummation by Buyer of the purchase of the Assets have been duly authorized by all necessary corporate action. Buyer has duly executed and delivered this Agreement, and upon execution and delivery will constitute a legal, valid and binding obligation of the Buyer, enforceable against Buyer in accordance with its terms.
- (c) No consent, approval, permit or authorization of, or declaration, filing or registration with, any governmental entity is necessary or required to be made or obtained by Buyer in connection with the execution, delivery and performance of this Agreement and the consummation of the purchase of the Assets.
- (d) Neither the execution, delivery or performance of this Agreement by Buyer nor the consummation by Buyer of the purchase of the Assets will (i) conflict with or result in any violation or breach of any provisions of the certificate of formation, bylaws or other organizational documents of Buyer, (ii) conflict with or violate any order or law applicable to Buyer or its rights or assets, except in each case of the foregoing clauses, for breaches, violations, defaults or terminations that would not reasonably be

expected to, individually or in the aggregate, impair or delay Buyer's ability to perform its obligations under this Agreement.

7. DISPOSAL OF THE ASSETS

7.1 Seller acknowledges and agrees that:

- (a) Buyer may commence marketing the Assets for resale with immediate effect from signing this Agreement;
- (b) Buyer is entitled to dispose of the Assets by auction or by any other means as it shall in its absolute discretion determine; and
- (c) there are no restrictions whatsoever as to who can purchase the Assets (other than any restrictions that may be imposed by applicable laws and regulations).

8. LIMITATION OF LIABILITY

- 8.1 Save as otherwise provided in this Agreement, neither Party shall have any liability to the other Party under this Agreement for any consequential losses, loss of profit and/or damage to goodwill, special damages and indirect losses; loss and/or corruption of data; and/or business interruption, loss of business, contracts, opportunity and/or production.
- 8.2 Each Party's total liability to the other Party under this Agreement shall not exceed the aggregate amount actually paid by Buyer as the Purchase Price under this Agreement.
- 8.3 Nothing in this Agreement shall exclude or limit either Party's liability for any liability which it is not permitted to limit as a matter of law.

9. TERM

- 9.1 This Agreement shall commence on the Effective Date and shall remain in effect until the Expiration Date at which time it shall terminate automatically (the "**Term**"). Clause 3, and clauses 5 to 11 inclusive shall survive the termination of this Agreement.

10. CONFIDENTIALITY

- 10.1 Each Party will, during the term of this Agreement and for a period of two years thereafter, keep confidential, and will not use for any purpose (other than the proper exercise of its rights under this Agreement) nor disclose to any third party except (i) as may be required by any law or any legal or regulatory authority; or (ii) to external legal advisors, auditors, business partners, potential investors or financing parties (provided such parties are bound by confidentiality obligations equivalent to those set out in this Agreement) any information of a confidential nature, whether or not expressly identified as such (including, without limitation, trade secrets, technical information, know-how, buyer lists, and other information of commercial value) which may become known to it as a result of this Agreement and which relates to the other Party or to the other Party's business unless: (i) that information is public knowledge or already known to that Party at the time of disclosure or subsequently becomes public knowledge in each case other than by a breach of this Agreement; or (ii) subsequently comes lawfully into its possession from a third party.
- 10.2 Each Party agrees that it will keep the commercial terms of this Agreement confidential and not disclose such terms other than to its professional advisers, business partners or financing parties, or as required by applicable law or regulation, including the rules of any applicable stock exchange.

11. GENERAL

- 11.1 This Agreement supersedes all prior agreements, understandings or arrangements between the Parties, whether oral or written, which shall all cease to have any further force or effect. Neither Party has entered into this Agreement in reliance upon, nor shall either Party have any claim or remedy in respect of, any statement, representation, warranty, undertaking or assurance made by or on behalf of either Party other than those expressly set out in this Agreement. This clause shall not exclude any liability for, or remedy in respect of, fraudulent misrepresentation.

- 11.2 Neither Party shall, nor shall it purport to, assign, transfer, charge or otherwise deal with all or any of its rights under this Agreement without the prior written consent of the other Party, such consent not to be unreasonably withheld or delayed.
- 11.3 This Agreement may not be released, discharged, supplemented, amended, varied or modified except by an instrument in writing signed by or on behalf of each Party.
- 11.4 No failure or delay by either Party in exercising any right or remedy provided by law or under or pursuant to this Agreement shall impair any such right or remedy or operate or be construed as a waiver or variation of it or preclude its exercise at any subsequent time and no single or partial exercise of any such right or remedy shall preclude any further exercise of it or the exercise of any other remedy. The rights and remedies of the Parties under or pursuant to this Agreement are cumulative, may be exercised as often as the Parties consider appropriate and are in addition to their respective rights and remedies under general law.
- 11.5 If at any time any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable in any respect that shall not affect or impair the legality, validity or enforceability of any other provision of this Agreement. If at any time any provision of this Agreement shall be found by any court or administrative body of competent jurisdiction to be illegal, invalid or unenforceable in any respect but would be legal, valid or enforceable if some part of the provision were deleted, the provision shall apply with such modification(s) as may be necessary to make it legal, valid or enforceable.
- 11.6 This Agreement may be executed in any number of counterparts and by the different Parties in different counterparts each of which when executed and delivered is an original but all such counterparts shall be deemed to constitute one and the same instrument.
- 11.7 A person who is not a Party to this Agreement shall have no rights to enforce or enjoy the benefit of any term of this Agreement.
- 11.8 Nothing in this Agreement is intended to, or shall operate to, create a partnership between the Parties, or to authorize either Party to act as agent for the other, and neither Party shall have authority to act in the name or on behalf of or otherwise to bind the other in any way.
- 11.9 The laws of the state in which the Bankruptcy Court is located govern the construction of the Agreement and the performance of the Parties under this Agreement without regard to its conflict of law provisions. Any dispute arising under this Agreement will be litigated exclusively in the Bankruptcy Court, and neither Party will contest the personal jurisdiction of that court.
- 11.10 Each Party hereby waives, to the fullest extent permitted by applicable law, any right it may have to a trial by jury with respect to any litigation directly or indirectly arising out of, under or in connection with this Agreement.

[Remainder of Page Intentionally Left Blank; Signature Page Follows]

IN WITNESS WHEREOF this Agreement has been signed by or on behalf of the Parties as of the Effective Date.

LIQUIDITY SERVICES OPERATIONS LLC

DocuSigned by:
Nick Jimenez
Signature E65700FEEA6842D...

Nick Jimenez
Name
VP Global Business Development
Title
2/22/2023
Date

TRICIDA, INC.

Signature

Name

Title

Date

IN WITNESS WHEREOF this Agreement has been signed by or on behalf of the Parties as of the Effective Date.

LIQUIDITY SERVICES OPERATIONS LLC

Signature

Name

Title

Date

TRICIDA, INC.



Signature

Gerrit Klaerner
Name

Chief Executive Officer
Title

February 21, 2023
Date

Schedule 1

List of Assets

<i>Asset</i>	<i>Make</i>	<i>Model</i>	<i>Quantity</i>
Binder Vaccum Oven (#1)	Binder	VD 53	1
Thermo Lab Line Vacuum oven	Thermo	model 3608, missing one rubber foot	1
Rotary vacuum pump #1	Fisher	Maxima MC6	1
Rotary vacuum pump #2	Edwards	?	1
Solvent evaporator trap	Thermo	RVT400-115 + 2 extra flasks + fluid.	1
Rainin LTS manual pipet 1 mL	Rainin LTS		4+
Rainin LTS manual pipet 200 uL	Rainin LTS		4+
Rainin LTS manual pipet 20 uL	Rainin LTS		4+
Water bath sonicator			1
Agilent HS-GCMS + computer	Agilent	7697A/7890B/5977A - YOM is 2014, Includes Vac Pump, Computer with OS and Consummables	1
Agilent GC-FID + computer	Agilent	7890B w/7693 Autosampler - YOM 2015, with Computer/Software, and Assorted Consummables	1
Thermo Quantis QQQ MS + vac pump + syringe pump	Thermo	Quantis QQQ, YOM 2017	1
Ultimate HPLC + computer	Thermo	Ultimate 3000, 2015 YOM, with Computer Setup and Assorted Consummables Included	1
ICS-5000 DP+ + computer(#1)	Thermo	ICS 5000 DP+ (dual) - 2017, with Computer and Consummables.	1
Agilent GCMS + computer	Agilent	7890B/5977/7693 -2018, with Pfeiffer Vacuum Pump, Computer OS and Consummables	1
ICS-2100 (shared computer)	Thermo	ICS-2100 (with EGC) - 2014 YOM, with Computer	1
ICS-5000 DP+ + computer(#1)	Thermo	ICS 5000 DP+ (dual) - 2014YOM, with Consummables	1
Malvern Mastersizer 3000 + HydroMV + computer	Malvern	Mastersizer 3000 + hydroMV + feed pump	1
Nikon eclipse microscope + CCD + computer	Nikon	Eclipse TS100, 5, 10, 20x objectives	1
Mettler Toledo analytical balance	Mettler Toledo	ME204E	1
Vortexer #1	VWR	Vortex Genie 2	1
Vortexer #2	Fisher Sci	Mini Vortex mixer	1
Ultimate UPLC (dual) + computer	Thermo	Ultimate 3000 UPLC dual (2014)	1
RI detector	ERC	RefractoMax520	1
Deli fridge (4C)	Thermo	IsoTemp (4 ft)	1
neg 80C freezer	Thermo	Forma 900	1
Julabo recirculating heaters/chillers	Julabo	F25 HL + 3 more (isotemp)	7+3
6L jacketed reactor	ACE glass	6 L jacketed	1
0.5L jacketed reactor	ACE glass	0.5 L jacketed	1
Overhead stirrers	Caframo	BDC3030 or Heidolf, Fisher, etc.	6
Computer (julabo control)			
Peristaltic Pumps	Wheaton	Omnispense Elite	3
Moisture balance MX-50 (#1)	AND	MX-50	1
1L jacketed reactor	ACE glass		1+
NIR spectrometer and probe	i-Red		1
multiport syringe pump	Rxnhub	syringe pump	1
Refrigerated centrifuge and rotors	Thermo Sorvall	Legend XTR	1
centrifuge (small tubes)	Eppendorf	5425C	1

Vacuum aspirator	Vacuubrand	BVC control	1
Moisture balance MX-50 (#2)		MX-50	1
Mettler Toledo analytical balance (#2)	Mettler Toledo	ML 204T + printer	1
Electric autopipet Rainin LTS 20 mL	Rainin		2+
Electric autopipet Rainin LTS 10 mL	Rainin		2+
Electric autopipet Rainin LTS 5 mL	Rainin		2+
Electric autopipet Rainin LTS 1 mL	Rainin		2+
Computer			
Mettler Toledo analytical balance (#3)	Mettler Toledo	ML 204T + printer	1
Vortexer (plate)	VWR	Vortex Genie 2	1
vortexer (short)	Thermo	LP Vortex Mixer	1
Electric crimper	Wheaton	Crimpenstein	2
Fire sting oxygen sensor (new)	FireSting	Go2 + Oxsolv probe (new)	1
Turbidity analyzer	Hanh	TL-2310	1
Plate reader + laptop	Molecular Devices	Spectromax 384 Plus	1
Oxygen flask combustion chamber	EAI		1
Oxygen combustion flasks and platinum baskets	EAI	with Flask Combustion Unit	3
Titrator and electrodes	Mettler Toledo	T50	1
Binder Vaccum Oven (#2)	Binder	VD-53 UL	1
Binder Vaccum Oven (#3)	Binder	VD-53 UL	1
rotary vacuum pump	Fisher	Maxima MC6	1
rotary vacuum pump	Fisher	Maxima MC6	1
Lab oven	Thermo	Heratherm OMH60	1
Lab oven	Binder	FP 53 UL	1
Incubator chambers	Fisher	Isotemp incubators model no 6841	2
Orbital shaker	IKA	AS260.1	1
Incubated orbital shaker	IKA	KS 3000 iControl	1
Incubated orbital shaker	IKA	KS 4000 iControl	2
Incubated orbital shaker (220V)	IKA	KS 4000 iControl	1
Thermo Lab Line Vacuum oven	Thermo	Lab Line vac oven model 3608	1
Scroll pump	Vacuubrand	MZ 2 NT pump	1
Binder environmental chamber + water conditioners	Binder	KBF 115 (one with lamp, one without) + water conditioners	2
MilliQ system	Millipore	Direct 16	1
Dishwasher	Lancer	815 LX	1
Reactor Ready Stand	Radleys		1
Hot plates			multiple
Belly dancer shaker			1
Bio safety cabinet Class II Type A/B3			1
Light box	BYK		1
Tap density analyzer	Varian		1
Vibratory sieve shaker and 3" sieves	Gilson	SS-3	2
Soundproof chamber (for sieves)	Gilson		1
Thermogravimetric analyzer (TGA) + computer		TGAQ500	1
Vacuum heat sealer with compressor	Amerivacs	CAVN-20 (one is 220V)	2
Balance (low accuracy)	Mettler Toledo	PM480	3000
Lyophilizer + pump + try dryer	Labconco	7948020 Model	1
Lyophilizer + tray dryer	Labconco		1
VWR dishwasher	VWR	model # 82100-0004	1
pH meters + electrodes (+ conductivity)	Orion	Versastar + Star A222 portable meter, and conductivity module	3
Homogenizer	Brinkmann	Polytron PT 3000	1
Cool / Room temp incubator	Panasonic	MIR-254-PA	1
FBRM probe	Mettler Toledo	Particle Track G400	1
Rotovap	Buchi	R200-B490	1
	Thermo Scientific	ICS-1600	1

	Mettler Toledo	Mixer with Caframo Stirrer	1
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EXHIBIT B

Blackline

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (JTD)

Re: Docket Nos. 11 & 100

ORDER (I) AUTHORIZING AND APPROVING WITH RESPECT TO THE EQUIPMENT ASSETS (A) THE DEBTOR'S ENTRY INTO THE PURCHASE AGREEMENT AND (B) SELECTION OF A NEXT-HIGHEST BID; (II) AUTHORIZING THE SALE OF THE EQUIPMENT ASSETS OF THE DEBTOR FREE AND CLEAR OF ALL CLAIMS; AND (III) GRANTING RELATED RELIEF

Upon the motion, dated January 11, 2022 [Docket No. 11] (the "Motion") of Tricida, Inc. (the "Debtor"), as debtor and debtor in possession in the above-captioned case (the "Chapter 11 Case"), pursuant to sections 105, 363 and 365 of title 11 of chapter 11 of the United States Code, §§ 101–1532 (the "Bankruptcy Code"), Rules 2002, 6003, 6004, 6006, and 9006 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"), seeking entry of, among other things, (i) an order (the "Bidding Procedures Order")² (a) approving the bidding procedures (the "Bidding Procedures") in connection with the sale or sales (the "Sale") of all or substantially all of the Debtor's assets, or any portion thereof (including the Equipment Assets), (b) authorizing, but not directing, the Debtor to designate the Stalking Horse Bidder and approving the Bid Protections in

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 defined herein shall have the meaning ascribed to them in the Bidding Procedures approved in the Bidding Procedures Order entered at Docket No. 100.

accordance with the Bidding Procedures, (c) scheduling an auction (the “Auction”) and sale hearing (the “Sale Hearing”) and approving the form and manner of notice thereof, and (d) establishing certain assumption and assignment procedures and approving the manner of notice thereof, and (ii) an order (a) authorizing and approving the Debtor’s entry into an asset purchase agreement with the Successful Bidder(s) or Next-Highest Bidder(s), (b) authorizing the Sale of the Assets to the party or parties that are the Successful Bidder(s) or Next-Highest Bidder(s) at the Auction, free and clear of all claims and encumbrances, except for certain assumed liabilities, (c) authorizing and approving the assumption and assignment of certain executory contracts in connection with the Sale, including proposed cure amounts (if any), and (d) granting related relief; and the Debtor having conducted an Auction of its equipment assets (the “Equipment Assets”) on February 15, 2023, in accordance with the Bidding Procedures; and the Debtor having executed that certain Asset Purchase Agreement for the Equipment Assets by and among the Debtor and Liquidity Services Operations LLC (the “Purchaser”) (as may be amended or modified from time to time in accordance with the terms thereof and this Order, the “Purchase Agreement”); and the Debtor having selected the bid submitted at the Auction by Heritage Global Partners (the “Backup Purchaser”) in the amount of \$225,000 as the Next-Highest Bid; and the Court having considered the Purchase Agreement attached hereto as **Exhibit 1**, for the sale of the Equipment Assets free and clear of any Encumbrances, other than Permitted Encumbrances (the “Sale Transaction”); and the Court having entered the Bidding Procedures Order on January 26, 2023 [Docket No. 100]; and the Debtor having selected the Purchaser as the Successful Bidder and the Backup Purchaser as the Next-Highest Bidder; and the Sale Hearing having been held on February 21, 2023; and the Court having reviewed and considered the relief sought in the Motion, the Purchase Agreement, all objections to the Motion,

and the arguments of counsel made and the evidence proffered or adduced at the Sale Hearing; and all parties in interest having been heard or having had the opportunity to be heard regarding the Sale Transaction and the relief requested in this Order; and due and sufficient notice of the Sale Hearing and the relief sought therein having been given under the particular circumstances of the Chapter 11 Case and in accordance with the Bidding Procedures Order; and it appearing that no other or further notice need be provided; and it appearing that the relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and all other parties in interest; and it appearing that the Court has jurisdiction over this matter; and it further appearing that the legal and factual bases set forth in the Motion, the First Day Declaration, the *Declaration of Alexander V. Rohan in Support of the Motion* [Docket No. 13] and the *Supplemental Declaration of Alexander V. Rohan in Support of the Motion* [Docket No. ~~14~~216] (together, the “Rohan Declarations”), and at the Sale Hearing, establish just cause for the relief granted herein; and after due deliberation thereon,

THE COURT HEREBY FINDS AND DETERMINES THAT:³

A. **Jurisdiction and Venue.** This Court has jurisdiction to hear and determine the Motion pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012, and this matter is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue of this case and proceeding is proper in this District and this Court under 28 U.S.C. §§ 1408 and 1409.

³ The findings and conclusions set forth herein constitute this 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 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 Sale Hearing are hereby incorporated herein to the extent not inconsistent herewith.

B. **Statutory Predicates.** The statutory predicates for the relief requested in the Motion are sections 105, 363 and 365 of the Bankruptcy Code. Such relief is also warranted pursuant to Bankruptcy Rules 2002, 6003, 6004, 6006, and 9006 and Local Rules 2002-1 and 6004-1.

C. **Final Order.** This Order constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a).

D. **Notice.** On January 11, 2023 (the "Petition Date"), the Debtor commenced this Chapter 11 Case by filing a voluntary petition for relief under chapter 11 of the Bankruptcy Code. Since the Petition Date, the Debtor has continued to operate and manage its business as debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

E. On January 23, 2023, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee") appointed the official committee of unsecured creditors (the "Committee") pursuant to section 1102 of the Bankruptcy Code [Docket No. 90].

F. The Debtor gave due and proper notice of the proposed Sale, Auction, and Sale Hearing on January 27, 2023 [Docket No. 104] (the "Sale Notice"). The Sale Notice constituted good, sufficient, and appropriate notice of the Sale under the particular circumstances and no further notice need be given with respect to the proposed Sale. As provided by the Sale Notice, a reasonable opportunity to object or be heard regarding the requested relief has been afforded to all interested persons and entities. Other parties interested in bidding on the Equipment Assets were provided, pursuant to the Bidding Procedures Order, sufficient information to make an informed judgment on whether to bid.

G. As evidenced by the affidavits of service [Docket Nos. 39, 102, 108, 141, 163, 164] previously filed with this Court, and based on the representations of counsel at the Sale

Hearing, due, proper, timely, adequate and sufficient notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order and the Sale Transaction has been provided in accordance with sections 102(1) and 363 of the Bankruptcy Code, Bankruptcy Rules 2002, 9006, 9007, and 9014, and Local Rules 2002-1 and 6004-1. The Debtor has complied with all obligations to provide notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order, and the Sale Transaction as required by the Bidding Procedures Order. The aforementioned notices are good, sufficient and appropriate under the circumstances, and no other or further notice of the Motion, the Bidding Procedures Order, the Auction, the Sale Hearing, the Purchase Agreement, this Order or the Sale Transaction is or shall be required.

H. A reasonable opportunity to object or be heard regarding the relief requested in the Motion and provided in this Order was afforded to all parties in interest.

I. **Compliance with the Bidding Procedures Order.** As demonstrated by the evidence proffered or adduced at the Sale Hearing and the representations of counsel at the Sale Hearing, the Debtor has complied in all material respects with the Bidding Procedures Order. The Debtor and its professionals have adequately and appropriately marketed the Equipment Assets in compliance with the Bidding Procedures and the Bidding Procedures Order, and in accordance with the Debtor's fiduciary duties. Based upon the record of these proceedings, creditors, other parties in interest, and prospective purchasers were afforded a reasonable and fair opportunity to bid for the Equipment Assets.

J. The Bidding Procedures were substantively and procedurally fair to all parties and all potential bidders and afforded notice and a full, fair, and reasonable opportunity for any

person to make a higher or otherwise better offer to purchase the Equipment Assets. The Debtor conducted the sale process without collusion and in accordance with the Bidding Procedures.

K. The Bidding Procedures Order is incorporated herein by reference.

L. The Purchaser is the designated Successful Bidder, and the Purchase Agreement is designated the Successful Bid for the Equipment Assets enumerated therein in accordance with the Bidding Procedures Order. The Purchaser has complied in all respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and entering into the Purchase Agreement, and the Sale Transaction and the Purchase Agreement likewise comply with the Bidding Procedures Order and all other applicable orders of this Court.

M. The Backup Purchaser is designated the Next-Highest Bidder, and the bid submitted by the Next-Highest Bidder at the Auction in the amount of \$225,000 is designated the Next-Highest Bid for the Equipment Assets. The Backup Purchaser has complied in all material respects with the Bidding Procedures Order and all other applicable orders of this Court in negotiating and submitting the Next-Highest Bid. In the event the sale to the Successful Bidder does not close by the Closing Date (or such later date as agreed to by the parties), the Debtor shall work with the Backup Purchaser to document the Next-Highest Bid in an acceptable form of purchase agreement.

N. **Business Judgment.** The Purchase Agreement, including the form and total consideration to be realized by the Debtor under the Purchase Agreement, (a) constitutes the highest or otherwise best offer received by the Debtor for the Equipment Assets; (b) is fair and reasonable; and (c) is in the best interests of the Debtor, its estate, its creditors and all other parties in interest.

O. The Debtor's determination that the consideration provided by the Purchaser under the Purchase Agreement constitutes the highest or otherwise best offer for the Equipment Assets is reasonable and constitutes a valid and sound exercise of the Debtor's business judgment.

P. The Next-Highest Bid submitted by the Backup Purchaser, including the form and total consideration to be realized by the Debtor, (a) constitutes the next highest or best offer received by the Debtor for the Equipment Assets after the Purchase Agreement; (b) is fair and reasonable; and (c) is in the best interests of the Debtor, its estate, its creditors and all other parties in interest.

Q. The Debtor's determination that the consideration provided by the Backup Purchaser pursuant to the Next-Highest Bid constitutes the next highest or otherwise best offer for the Equipment Assets after the Purchase Agreement is reasonable and constitutes a valid and sound exercise of the Debtor's business judgment.

R. Consistent with its fiduciary duties, the Debtor has demonstrated good, sufficient and sound business reasons and justifications for entering into the Sale Transaction and the performance of its obligations under the Purchase Agreement, including, but not limited to, the fact that (a) the consideration provided by the Purchaser under the Purchase Agreement will provide a greater recovery for the Debtor's estates than would be provided by any other available alternative, including a separate liquidation of the Equipment Assets; and (b) unless the Sale Transaction is concluded expeditiously as provided for in the Motion and pursuant to the Purchase Agreement, creditor recoveries will be diminished.

S. **Corporate Authority.** Subject to entry of this Order, the Debtor (a) has full corporate power and authority to execute and deliver the Purchase Agreement and all other

documents contemplated thereby, (b) has all of the necessary corporate power and authority to consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, (c) has taken all corporate action necessary to authorize and approve the Purchase Agreement and the consummation by the Debtor of the transactions contemplated thereby, including, without limitation, the Sale Transaction, and (d) subject to entry of this Order, need no consents or approvals, including any consents or approvals from any non-Debtor entities, other than those expressly set forth in the Purchase Agreement or this Order, to consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction.

T. **Good Faith.** The sale process engaged in by the Debtor, the Purchaser, and the Backup Purchaser including, without limitation, the Auction, which was conducted in accordance with the Bidding Procedures and the Bidding Procedures Order, and the negotiation of the Purchase Agreement and the Next-Highest Bid, was at arm's length, non-collusive, in good faith, and substantively and procedurally fair to all parties in interest. Neither the Debtor, the Purchaser, nor the Backup Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement or the Sale Transaction to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code.

U. The Debtor, the Purchaser, and the Backup Purchaser have complied, in good faith, in all respects with the Bidding Procedures Order and the Bidding Procedures. The Debtor, and its management, board of directors, employees, agents, advisors, and representatives, and the Purchaser and Backup Purchaser and their respective employees, agents, advisors and representatives, each actively participated in the bidding process and in the Auction, and each acted in good faith and without collusion or fraud of any kind. The Purchaser and Backup

Purchaser subjected their bids to competitive bidding in accordance with the Bidding Procedures and were designated the Successful Bidder and the Next-Highest Bidder, respectively, for the Equipment Assets in accordance with the Bidding Procedures and the Bidding Procedures Order.

V. The Purchaser and the Backup Purchaser are each a good faith buyer within the meaning of section 363(m) of the Bankruptcy Code, and are therefore entitled to the full protection of that provision in respect of the Sale Transaction, each term of the Purchase Agreement and the Next-Highest Bid (and any ancillary documents executed in connection therewith) and each term of this Order, and otherwise has proceeded in good faith in all respects in connection with this proceeding. Neither the Debtor nor the Purchaser or the Backup Purchaser has engaged in any conduct that would prevent the application of section 363(m) of the Bankruptcy Code. The Debtor was free to deal with any other party interested in buying or selling some or all of the Equipment Assets on behalf of the Debtor's estate. The protections afforded by Bankruptcy Code section 363(m) are integral to the Sale Transaction and the Purchaser and the Backup Purchaser would not consummate the Sale Transaction without such protections.

W. The form and total consideration to be realized by the Debtor under the Purchase Agreement or the Next-Highest Bid constitutes fair value, fair, full, and adequate consideration, reasonably equivalent value, and reasonable market value for the Equipment Assets.

X. Neither the Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an "insider" of the Debtor, as that term is defined under section 101(31) of the Bankruptcy Code. No common identity of directors, managers, controlling shareholders, or members exists between the Debtor and the Purchaser.

Y. Neither the Backup Purchaser nor any of its affiliates, officers, directors, managers, shareholders, members or any of their respective successors or assigns is an “insider” of the Debtor, as that term is defined under section 101(31) of the Bankruptcy Code. No common identity of directors, managers, controlling shareholders, or members exists between the Debtor and the Backup Purchaser.

Z. **No Fraudulent Transfer.** The consideration provided by the Purchaser or the Backup Purchaser for the Equipment Assets pursuant to the Purchase Agreement or the Next-Highest Bid (a) is fair and reasonable, (b) is the highest and best offer for the Equipment Assets, (c) will provide a greater recovery for the Debtor’s creditors and estate than would be provided by any other practical available alternative, and (d) constitutes reasonably equivalent value and fair consideration under the Bankruptcy Code and under the laws of the United States, and each state, territory, possession, and the District of Columbia.

AA. The Purchase Agreement and the Next-Highest Bid were not entered into, and neither the Debtor nor the Purchaser or the Backup Purchaser has entered into the Purchase Agreement or the Next-Highest Bid or proposes to consummate the Sale Transaction, for the purpose of (a) escaping liability for any of the Debtor’s debts or (b) hindering, delaying or defrauding the Debtor’s present or future creditors, for the purpose of statutory and common law fraudulent conveyance and fraudulent transfer claims whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

BB. **Free and Clear.** The transfer of the Equipment Assets to the Purchaser or the Backup Purchaser will be a legal, valid, and effective transfer of the Equipment Assets, and will vest the Purchaser or the Backup Purchaser with all right, title, and interest of the Debtor to the

Equipment Assets free and clear of all claims (including, without limitation, any and all “claims” as that term is defined and used in the Bankruptcy Code, including section 101(5) thereof), liens (including, without limitation, any statutory lien on real and personal property and any and all “liens” as that term is defined and used in the Bankruptcy Code, including section 101(37) thereof), liabilities, interests, rights, and Encumbrances relating to, accruing, or arising any time prior to the Closing Date, including, without limitation, the following: all mortgages, restrictions (including, without limitation, any restriction on the use, voting rights, transfer rights, claims for receipt of income or other exercise of any attributes of ownership), hypothecations, charges, indentures, loan agreements, instruments, leases, licenses, sublicenses, options, deeds of trust, security interests, equity interests, conditional sale rights or other title retention agreements, pledges, judgments, demands, rights of first refusal, consent rights, offsets, contract rights, rights of setoff, recoupment rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, exoneration rights, product liability claims, alter-ego claims, environmental rights and claims (including, without limitation, toxic tort claims), labor rights and claims, employment rights and claims, pension rights and claims, tax claims, regulatory violations by any governmental entity, decrees of any court or foreign or domestic governmental entity, charges of any kind or nature, debts arising in any way in connection with any agreements, acts, or failures to act, reclamation claims, obligation claims, demands, guaranties, option rights or claims, rights, contractual or other commitment rights and claims, and all other matters of any kind and nature, whether known or unknown, choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected, allowed or disallowed, contingent or non-contingent, liquidated or unliquidated, matured or unmatured, material or non-material, disputed or undisputed, senior or subordinated, whether arising prior to

or subsequent to the commencement of the Chapter 11 Case, and whether imposed by agreement, understanding, law, equity or otherwise, including claims otherwise arising under any theory, law or doctrine of successor or transferee liability or related theories (all of the foregoing, but excluding Assumed Liabilities and Permitted Encumbrances, collectively being referred to in this Order as “Claims”).

CC. Those holders of Claims who did not object or who withdrew their objections to the Motion, are deemed to have consented to the Sale Transaction pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Claims who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code.

DD. The Debtor, to the extent permitted by applicable law, may transfer the Equipment Assets free and clear of all Claims, including, without limitation, rights or claims based on any successor or transferee liability, because, in each case, one or more of the standards set forth in section 363(f)(1)-(5) of the Bankruptcy Code has been satisfied.

EE. The Debtor has, to the extent necessary, satisfied the requirements of section 363(b)(1) of the Bankruptcy Code.

FF. The Purchaser and the Backup Purchaser would not have entered into the Purchase Agreement and the Next-Highest Bid, respectively and would not consummate the transactions contemplated thereby, including, without limitation, the Sale Transaction, (a) if the transfer of the Equipment Assets were not free and clear of all Claims, or (b) if the Purchaser or the Backup Purchaser would, or in the future could, be liable for or subject to any such Claims.

GG. The Purchaser will not consummate the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, unless this Court expressly orders that none of the Purchaser, its respective affiliates, its respective present or

contemplated members or shareholders, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.

HH. The Backup Purchaser will not consummate the transactions contemplated by the Next-Highest Bid, including, without limitation, the Sale Transaction, unless this Court expressly orders that none of the Backup Purchaser, its respective affiliates, its respective present or contemplated members or shareholders, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims.

II. Not transferring the Equipment Assets free and clear of all Claims would adversely impact the Debtor's efforts to maximize the value of its estate, and the transfer of the Equipment Assets other than pursuant to a transfer that is free and clear of all Claims would be of substantially less benefit to the Debtor's estate.

JJ. Neither the Purchaser nor any of its affiliates are a mere continuation of the Debtor or its estate, there is no continuity or common identity between the Purchaser, the Debtor, or any of their respective affiliates, and there is no continuity of enterprise between the Purchaser, the Debtor, or any of their respective affiliates. Neither the Purchaser nor any of its affiliates are holding themselves out to the public as a continuation of the Debtor. Neither the Purchaser nor any of its affiliates are a successor to the Debtor or its estate and none of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction amounts to a consolidation, merger, or *de facto* merger of the Purchaser or any of its affiliates with or into the Debtor.

KK. Neither the Backup Purchaser nor any of its affiliates are a mere continuation of the Debtor or its estate, there is no continuity or common identity between the Backup Purchaser, the Debtor, or any of their respective affiliates, and there is no continuity of enterprise between the Backup Purchaser, the Debtor, or any of their respective affiliates. Neither the Backup Purchaser nor any of its affiliates are holding themselves out to the public as a continuation of the Debtor. Neither the Backup Purchaser nor any of its affiliates are a successor to the Debtor or its estate and none of the transactions contemplated by the Next-Highest Bid, including, without limitation, the Sale Transaction amounts to a consolidation, merger, or *de facto* merger of the Backup Purchaser or any of its affiliates with or into the Debtor.

LL. Without limiting the generality of the foregoing, and other than as may be set forth in the Purchase Agreement, none of the Purchaser, its affiliates, the present or contemplated members or shareholders of the Purchaser, and its affiliates, or the Equipment Assets will have any liability whatsoever with respect to, or be required to satisfy in any manner, whether at law or equity, or by payment, setoff, or otherwise, directly or indirectly, any Claims relating to any U.S. federal, state or local income tax liabilities, that the Debtor may incur in connection with consummation of the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction, or that the Debtor has otherwise incurred prior to the consummation of the transactions contemplated by the Purchase Agreement.

MM. **Validity of Transfer.** The consummation of the transactions contemplated by the Purchase Agreement or the Next-Highest Bid, including, without limitation, the Sale Transaction is legal, valid and properly authorized under all applicable provisions of the Bankruptcy Code, including, without limitation, sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) thereof, and all of the applicable requirements of such sections have been complied with in respect of the

transactions contemplated under the Purchase Agreement or the Next-Highest Bid.

NN. The Equipment Assets constitute property of the Debtor's estate and good title to the Equipment Assets is vested in the Debtor's estate within the meaning under section 541(a) of the Bankruptcy Code. The Debtor is the sole and lawful owner of the Equipment Assets.

OO. The Purchase Agreement has been duly and validly executed and delivered by the Debtor and, subject to the terms of the Purchase Agreement, shall constitute valid and binding obligations of the Debtor, enforceable against the Debtor in accordance with its terms. The Purchase Agreement, the Sale Transaction, and the consummation thereof shall be specifically enforceable against and binding upon (without posting any bond) the Debtor and any chapter 7 or chapter 11 trustee appointed in this Chapter 11 Case, and shall not be subject to rejection or avoidance by the foregoing parties or any other person.

PP. **Compelling Circumstances for an Immediate Sale.** To maximize the value of the Equipment Assets, it is essential that the transactions contemplated by the Purchase Agreement occur within the time constraints set forth therein. Time is of the essence in consummating the transactions contemplated by the Purchase Agreement, including, without limitation, the Sale Transaction. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004 and 6006.

RR. The Debtor has demonstrated compelling circumstances and a good, sufficient, and sound business purpose and justification for the immediate approval and consummation of the transactions contemplated by the Purchase Agreement or the Next-Highest Bid, including, without limitation, the Sale Transaction prior to, and outside of, a chapter 11 plan because, among other things, the Debtor's estates will suffer irreparable harm if the relief requested in the Motion is not granted on an expedited basis. The transactions contemplated by the Purchase

Agreement or the Next-Highest Bid neither impermissibly restructure the rights of the Debtor's creditors nor impermissibly dictates the terms of a chapter 11 plan for the Debtor, and therefore, do not constitute a *sub rosa* plan.

SS. The legal and factual bases set forth in the Motion, the Rohan Declarations filed in support thereof, and presented at the Sale Hearing establish just cause for the relief granted herein.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

1. The Motion is granted as provided herein, and entry into and performance under, and in respect of, the Purchase Agreement attached hereto as **Exhibit 1** and the consummation of the transactions contemplated thereby, including, without limitation, the Sale Transaction, is authorized and approved.

2. Any objections and responses to the Motion or the relief requested therein that have not been withdrawn, waived, settled, or resolved, and all reservation of rights included in such objections and responses, are overruled on the merits and denied with prejudice. All persons and entities given notice of the Motion that failed to timely object thereto are deemed to consent to the relief granted herein, including for purposes of sections 363(f)(2), 365(c)(1), and 365(e)(2) of the Bankruptcy Code.

A. Approval of the Purchase Agreement

3. The Purchase Agreement, all ancillary documents, the transactions contemplated thereby, including, without limitation, the Sale Transaction, and all the terms and conditions thereof, are approved. The failure specifically to include any particular provision of the Purchase Agreement in this Order shall not diminish or impair the effectiveness of such provision; the Court hereby authorizes and approves the Purchase Agreement in its entirety.

4. The Debtor and its respective officers, employees and agents are authorized and directed to take any and all actions necessary, appropriate or reasonably requested by the Purchaser to perform, consummate, implement and close the Sale Transaction, including, without limitation, (a) the sale to the Purchaser of all Equipment Assets, in accordance with the terms and conditions set forth in the Purchase Agreement and this Order; and (b) execution, acknowledgment and delivery of such deeds, assignments, conveyances and other assurance, documents and instruments of transfer and any action for purposes of assigning, transferring, granting, conveying and confirming to the Purchaser, or reducing to possession, the Equipment Assets, all without further order of this Court. The Debtor is further authorized to pay, without further order of this Court, whether before, at or after the Closing Date, any expenses or costs that are required to be paid by the Debtor under the Purchase Agreement, this Order, or the Bidding Procedures Order, in order to consummate the Sale Transaction or perform their obligations under the Purchase Agreement.

5. All persons and entities, including, without limitation, the Debtor, the Debtor's estate, any and all debt security holders, equity security holders, governmental tax and regulatory authorities, lenders, customers, vendors, employees, former employees, litigation claimants, trustees, trade creditors, and any other creditors (or agent of any of the foregoing) who may or do

hold Claims against the Debtor or the Equipment Assets, arising under or out of, in connection with, or in any way relating to, the Debtor, the Equipment Assets, the operation or ownership of the Equipment Assets by the Debtor prior to the Closing Date, or the Sale Transaction, are hereby prohibited, forever barred, estopped, and permanently enjoined from asserting or pursuing such Claims against the Purchaser, its affiliates, successors, assigns, or property, or the Equipment Assets, including, without limitation, taking any of the following actions with respect to any Claims: (a) commencing or continuing in any manner any action, whether at law or in equity, in any judicial, administrative, arbitral, or any other proceeding, against the Purchaser, its affiliates, successors, assigns, assets (including the Equipment Assets), and/or properties; (b) enforcing, attaching, collecting, or recovering in any manner any judgment, award, decree, or order against the Purchaser, its affiliates, successors, assigns, assets (including the Equipment Assets), and/or properties; (c) creating, perfecting, or enforcing any Claim against the Purchaser, its affiliates, any of their respective successors, assigns, assets (including the Equipment Assets), and/or properties; (d) asserting a Claim as a setoff, right of subrogation, or recoupment of any kind against any obligation due against the Purchaser, its affiliates or any of their respective successors or assigns; or (e) commencing or continuing any action in any manner or place that does not comply, or is inconsistent, with the provisions of this Order, the Purchase Agreement, or the agreements or actions contemplated or taken in respect thereof, including the Debtor's ability to transfer the Equipment Assets to the Purchaser in accordance with the terms of this Order and the Purchase Agreement. No such Person shall assert or pursue any such Claim against the Purchaser or its affiliates, successors or assigns.

6. The sale of the Equipment Assets to the Purchaser under the Purchase Agreement constitutes a transfer for reasonably equivalent value and fair consideration under the Bankruptcy

Code and laws of all applicable jurisdictions, including, without limitation, the laws of each jurisdiction in which the Equipment Assets are located, and the sale of the Equipment Assets to the Purchaser may not be avoided under any statutory or common law fraudulent conveyance and fraudulent transfer theories whether under the Bankruptcy Code or under the laws of the United States, any state, territory, possession thereof or the District of Columbia or any other applicable jurisdiction with laws substantially similar to the foregoing.

B. Approval of the Debtor's Selection of the Next-Highest Bid

7. The Court approves the Debtor's selection of the Next-Highest Bid announced at the Auction in the amount of \$225,000. In the event the sale to the Successful Bidder does not close by the Closing Date (or such later date as agreed to by the parties), the Debtor shall work with the Backup Purchaser to document the Next-Highest Bid in an acceptable form of purchase agreement.

C. Transfer of the Equipment Assets Free and Clear

8. Pursuant to sections 105(a) and 363(f) of the Bankruptcy Code, the Equipment Assets shall be sold free and clear of all Claims, with all such Claims to attach to the proceeds of the Sale Transaction to be received by the Debtor with the same validity, force, priority and effect which they now have as against the Equipment Assets, subject to any claims and defenses the Debtor may possess with respect thereto; *provided, however*, that setoff rights will be extinguished to the extent there is no longer mutuality after the consummation of the Sale Transaction.

9. At Closing, all of the Debtor's right, title and interest in and to, and possession of, the Equipment Assets shall be immediately vested in the Purchaser pursuant to sections 105(a), 363(b), and 363(f) of the Bankruptcy Code free and clear of any and all Claims. Such transfer

shall constitute a legal, valid, binding and effective transfer of, and shall vest the Purchaser with good and marketable title to, the Equipment Assets. All person or entities, presently or on or after the Closing Date, in possession of some or all of the Equipment Assets are authorized to surrender possession of the Equipment Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may request.

10. This Order is and shall be binding upon and govern the acts of all entities, including, without limitation, all filing agents, filing officers, title agents, title companies, recorders of mortgages, recorders of deeds, registrars of deeds, registrars of patents, trademarks or other intellectual property, administrative agencies, governmental departments, secretaries of state, federal and local officials and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register or otherwise record or release any documents or instruments; and each of the foregoing persons and entities is hereby authorized to accept for filing any and all of the documents and instruments necessary and appropriate to consummate the Sale Transaction.

11. Except as otherwise expressly provided in the Purchase Agreement or this Order, all persons and entities (and their respective successors and assigns), including, but not limited to, any and all debt security holders, equity security holders, affiliates, foreign, federal, state and local governmental, tax and regulatory authorities, lenders, customers, vendors, employees, former employees, trade creditors, litigation claimants and other creditors holding Claims against the Debtor or the Equipment Assets arising under or out of, in connection with, or in any way relating to, the Debtor, the Debtor's predecessors or affiliates, the Equipment Assets, the ownership, sale or operation of the Equipment Assets prior to Closing or the transfer of the Equipment Assets to the Purchaser, are hereby forever barred, estopped and permanently

enjoined from asserting or prosecuting any cause of action or any process or other act or seeking to collect, offset, or recover on account of any Claims against the Purchaser, its successors or assigns, their property or the Equipment Assets. Following the Closing, no holder of any Claim shall interfere with the Purchaser's title to or use and enjoyment of the Equipment Assets based on or related to any such Claim, or based on any action or omission of the Debtor, including any action or omission the Debtor may take in the Chapter 11 Case.

12. The Debtor is authorized and directed to execute such documents as may be necessary to release any Claims of any kind against the Equipment Assets as such Claims may have been recorded or may otherwise exist. If any person or entity that has filed financing statements, *lis pendens* or other documents or agreements evidencing Claims against or in the Equipment Assets shall not have delivered to the Debtor prior to the Closing of the Sale Transaction, in proper form for filing and executed by the appropriate parties, termination statements, instruments of satisfaction, releases of all Claims that the person or entity has with respect to the Equipment Assets, (a) the Debtor is hereby authorized and directed to execute and file such statements, instruments, releases and other documents on behalf of the person or entity with respect to the Equipment Assets; (b) the Purchaser is hereby authorized to file, register or otherwise record a certified copy of this Order, which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all such Claims against the Purchaser and the applicable Equipment Assets; (c) the Debtor's creditors and the holders of any Claims are authorized to execute such documents and take all other actions as may be necessary to terminate, discharge or release their Claims in the Equipment Assets and (d) the Purchaser may seek in this Court or any other court to compel appropriate parties to execute termination statements, instruments of satisfaction and releases of all such Claims with respect to the

Equipment Assets. This Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, or local government agency, department or office, and such agencies, departments and offices are authorized to accept this Order for filing or recording. Notwithstanding the foregoing, the provisions of this Order authorizing the sale and assignment of the Equipment Assets free and clear of Claims shall be self-executing, and neither the Debtor nor the Purchaser shall be required to execute or file releases, termination statements, assignments, consents or other instruments in order to effectuate, consummate and implement the provisions of this Order.

13. To the maximum extent permitted under applicable law, the Purchaser shall be authorized, as of the Closing Date, to operate under any license, permit, registration and governmental authorization or approval of the Debtor with respect to the Equipment Assets, and all such licenses, permits, registrations and governmental authorizations and approvals are deemed to have been, and hereby are, authorized to be transferred to the Purchaser with respect to the Equipment Assets as of the Closing Date. To the extent the Purchaser cannot operate under any such license, permit, registration and governmental authorization or approval in accordance with the previous sentence, then to the maximum extent permitted under applicable law, such licenses, permits, registrations and governmental authorizations and approvals shall be in effect while the Purchaser, with assistance from the Debtor (and at the Purchaser's sole cost and expense), works promptly and diligently to apply for and secure all necessary government approvals for new issuance of such licenses, permits, registrations and governmental authorizations and approvals to the Purchaser.

14. No governmental unit (as defined in section 101(27) of the Bankruptcy Code) or any representative thereof may deny, revoke, suspend or refuse to renew any permit, license or

similar grant relating to the operation of the Equipment Assets on account of the filing or pendency of the Chapter 11 Case or the consummation of the Sale Transaction to the extent that any such action by a governmental unit or any representative thereof would violate section 525 of the Bankruptcy Code.

D. No Successor or Transferee Liability

15. Upon the Closing Date, except as provided in the Purchase Agreement, the entry of this Order and the approval of the terms of the Purchase Agreement shall mean that the Purchaser (and any of its affiliates, successors, or assigns), as a result of any action taken in connection with the Purchase Agreement, the consummation of the transactions contemplated thereby, including, without limitation, the Sale Transaction, or the transfer or operation of the Equipment Assets, shall not be deemed to: (a) be a legal successor or successor employer to the Debtor (including with respect to any health or benefit plans), or otherwise be deemed a successor to the Debtor, and shall instead be, and be deemed to be, a new employer with respect to all federal or state unemployment laws, including any unemployment compensation or tax laws, or any other similar federal or state laws; (b) have, *de facto*, or otherwise, merged or consolidated with or into the Debtor; or (c) be an alter ego or a mere continuation or substantial continuation of the Debtor or the enterprise of the Debtor, including, in the case of each of (a)-(c), without limitation, (i) within the meaning of any foreign, federal, state or local revenue law, pension law, the Employee Retirement Income Security Act, the Consolidated Omnibus Budget Reconciliation Act, the WARN Act (29 U.S.C. §§ 2101 et seq.) (“WARN”), Comprehensive Environmental Response Compensation and Liability Act (“CERCLA”), the Fair Labor Standard Act, Title VII of the Civil Rights Act of 1964 (as amended), the Age Discrimination and Employment Act of 1967 (as amended), the Federal Rehabilitation Act of 1973 (as amended), the National Labor Relations Act, 29 U.S.C. § 151, et seq. or (ii) in respect of (1) any environmental liabilities, debts, claims or obligations arising from conditions first existing on or prior to the Closing Date (including, without limitation, the presence of hazardous, toxic, polluting, or contaminating substances or wastes), which may be asserted on any basis, including, without limitation, under CERCLA, (2) any liabilities, penalties, costs, debts or

obligations of or required to be paid by the Debtor for any taxes of any kind for any period, labor, employment, or other law, rule or regulation (including, without limitation, filing requirements under any such laws, rules or regulations), or (3) any products liability law or doctrine with respect to the Debtor's liability under such law, rule or regulation or doctrine.

16. Without limiting the generality of the foregoing, and except as otherwise provided in the Purchase Agreement and this Order, neither the Purchaser nor any of its affiliates shall have any responsibility for (a) any liability or other obligation of the Debtor related to the Equipment Assets or (b) any Claims against the Debtor or any of their predecessors or affiliates. By virtue of the Purchaser's purchase of the Equipment Assets, neither the Purchaser nor any of its affiliates shall have any liability whatsoever with respect to the Debtor's (or its predecessors' or affiliates') respective businesses or operations or any of the Debtor's (or its predecessors' or affiliates') obligations based, in whole or part, directly or indirectly, on any theory of successor or vicarious liability of any kind or character, or based upon any theory of antitrust, environmental (including, but not limited to CERCLA), successor or transferee liability, *de facto* merger or substantial continuity, labor and employment (including, but not limited to, WARN) or products liability law, whether known or unknown as of the Closing, now existing or hereafter arising, asserted or unasserted, fixed or contingent, liquidated or unliquidated, including any liabilities or non-monetary obligations on account of the Debtor's employment agreements or health or benefit plans, any settlement or injunction or any liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Equipment Assets prior to the Closing (collectively, with the potential claims set forth in paragraph 15, "Successor or Transferee

Liability”). The Purchaser would not have acquired the Equipment Assets but for the foregoing protections against Successor or Transferee Liability.

17. None of the Purchaser or its affiliates, successors, assigns, equity holders, employees or professionals shall have or incur any liability to, or be subject to any action by the Debtor or any of its estate, predecessors, successors, or assigns, arising out of the negotiation, investigation, preparation, execution, delivery of the Purchase Agreement and the entry into and consummation of the sale of the Equipment Assets, except as expressly provided in the Purchase Agreement and this Order.

18. Nothing in this Order or the Purchase Agreement shall require the Purchaser or any of its affiliates to (a) continue or maintain in effect, or assume any liability in respect of any employee, former employee, collective bargaining agreement, pension, welfare, fringe benefit or any other benefit plan, trust arrangement or other agreements to which the Debtor is a party or have any responsibility therefor including, without limitation, medical, welfare and pension benefits payable after retirement or other termination of employment; or (b) assume any responsibility as a fiduciary, plan sponsor or otherwise, for making any contribution to, or in respect of the funding, investment or administration of any employee benefit plan, arrangement or agreement (including but not limited to pension plans) or the termination of any such plan, arrangement or agreement.

19. No bulk sales law or similar law of any state or other jurisdiction shall apply in any way to the transactions with the Debtor that are approved by this Order, including, without limitation, the Purchase Agreement and the Sale Transaction.

E. Good Faith; Arm's Length Sale

20. The Purchase Agreement has been negotiated and executed, and the transactions contemplated thereby, including, without limitation, the Sale Transaction, are and have been undertaken, by the Debtor, the Purchaser and its respective representatives at arm's length, without collusion and in "good faith," as that term is defined in section 363(m) of the Bankruptcy Code. Accordingly, the reversal or modification on appeal of the authorization provided herein to consummate the Sale Transaction shall not affect the validity of the Sale Transaction or any term of the Purchase Agreement, and shall not permit the unwinding of the Sale Transaction. The Purchaser is a good faith purchaser within the meaning of section 363(m) of the Bankruptcy Code and, as such, is entitled to the full protections under section 363(m) of the Bankruptcy Code.

21. Neither the Debtor nor the Purchaser has engaged in any conduct that would cause or permit the Purchase Agreement or the transactions contemplated thereby, including, without limitation, the Sale Transaction, to be avoided, or for costs, or damages or costs, to be imposed, under section 363(n) of the Bankruptcy Code. The consideration provided by the Purchaser for the Equipment Assets under the Purchase Agreement is fair and reasonable, and the Sale Transaction may not be avoided under section 363(n) of the Bankruptcy Code.

F. Related Relief

22. Each and every federal, state and governmental agency or department, and any other person or entity, is hereby authorized to accept any and all documents and instruments in connection with or necessary to consummate the Sale Transaction contemplated by the Purchase Agreement.

23. No governmental unit may revoke or suspend any right, license, copyright, patent, trademark or other permission relating to the use of the Equipment Assets sold, transferred or conveyed to the Purchaser on account of the filing or pendency of the Chapter 11 Case or the consummation of the sale of the Equipment Assets.

24. Except as expressly provided in the Purchase Agreement, nothing in this Order shall be deemed to waive, release, extinguish or estop the Debtor or its estate from asserting, or otherwise impair or diminish, any right (including, without limitation, any right of recoupment), claim, cause of action, defense, offset or counterclaim in respect of any assets or liabilities not constituting an Equipment Asset.

25. All entities that are presently, or on the Closing Date may be, in possession of some or all of the Equipment Assets are hereby directed to surrender possession of the Equipment Assets to the Purchaser on or prior to the Closing Date or such later date that such party and the Purchaser mutually agree.

26. To the extent this Order is inconsistent with any prior order or pleading filed in the Chapter 11 Case related to the Motion, the terms of this Order shall govern. To the extent there is any inconsistency between the terms of this Order and the terms of the Purchase Agreement, the terms of this Order shall govern.

27. This Order and the Purchase Agreement shall be binding in all respects upon all pre-petition and post-petition creditors of the Debtor, all interest holders of the Debtor, any Court-appointed committee, all successors and assigns of the Debtor and its affiliates and subsidiaries, and any trustees, examiners, “responsible persons” or other fiduciaries appointed in the Chapter 11 Case or upon a conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, including a chapter 7 trustee, and the Purchase Agreement and Sale

Transaction shall not be subject to rejection or avoidance under any circumstances by any party. If any order under section 1112 of the Bankruptcy Code is entered, such order shall provide (in accordance with sections 105 and 349 of the Bankruptcy Code) that this Order and the rights granted to the Purchaser hereunder shall remain effective and, notwithstanding such dismissal, shall remain binding on parties in interest. For the avoidance of doubt, the Debtor's inability to satisfy in full all administrative expense claims of the Debtor's estate shall not be a basis for termination, rejection or avoidance (as applicable) of the Purchase Agreement or the Sale Transaction.

28. This Court shall retain jurisdiction to, among other things, interpret, implement, and enforce the terms and provisions of this Order and the Purchase Agreement, all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith to which the Debtor is a party or which has been assigned by the Debtor to the Purchaser, and to adjudicate, if necessary, any and all disputes concerning or relating in any way to the Sale Transaction, including any and all disputes with any counterparty to any executory contract or unexpired lease of the Debtor and any party that has, or asserts, possession, control or other rights in respect of any of the Equipment Assets; *provided, however*, that, in the event the Court abstains from exercising or declines to exercise such jurisdiction with respect to the Purchase Agreement, the Bidding Procedures Order, or this Order, such abstention, refusal, or lack of jurisdiction shall have no effect upon and shall not control, prohibit, or limit the exercise of jurisdiction of any other court having competent jurisdiction with respect to any such matter. This Court retains jurisdiction to compel delivery of the Equipment Assets, to protect the Debtor and its assets, including the Equipment Assets, against any Claims and successor and transferee liability and to enter orders, as appropriate, pursuant to sections 105(a) or 363 of the

Bankruptcy Code (or other applicable provisions) necessary to transfer the Equipment Assets to the Purchaser.

29. At any time prior to the Closing Date, the Purchaser or the Debtor may terminate the Purchase Agreement pursuant to the terms thereof without any penalty or liability to the Purchaser or the Debtor (or its estate), except as set forth in the Purchase Agreement.

30. The Purchase Agreement and any related agreements, documents, or other instruments may be modified, amended or supplemented by the parties thereto and in accordance with the terms thereof, without further order of the Court, provided that any such modification, amendment, or supplement does not have a material adverse effect on the Debtor's estate.

31. This Order constitutes a final order within the meaning of 28 U.S.C. § 158(a). Notwithstanding any provision in the Bankruptcy Rules to the contrary, including but not limited to Bankruptcy Rules 6004(h) and 6006(d), the Court expressly finds there is no reason for delay in the implementation of this Order and, accordingly: (a) the terms of this Order shall be immediately effective and enforceable upon its entry and the 14-day stay provided in Bankruptcy Rules 6004(h) and 6006(d) is hereby expressly waived and shall not apply; (b) the Debtor is not subject to any stay of this Order or in the implementation, enforcement or realization of the relief granted in this Order; and (c) the Debtor and the Purchaser may, each in its discretion and without further delay, take any action and perform any act authorized under this Order.

32. The Purchaser shall not be required to seek or obtain relief from the automatic stay under section 362 of the Bankruptcy Code, to give any notice permitted by the Purchase Agreement or to enforce any of its remedies under the Purchase Agreement or any other sale-related document. The automatic stay imposed by section 362 of the Bankruptcy Code is

modified solely to the extent necessary to implement the preceding sentence; *provided, however*, that this Court shall retain exclusive jurisdiction over any and all disputes with respect thereto.

33. The provisions of this Order are non-severable and mutually dependent.

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