

Fill in this information to identify the case:

Debtor Tricida, Inc.

United States Bankruptcy Court for the: _____ District of Delaware
(State)

Case number 23-10024

**Official Form 410
Proof of Claim**

04/22

Read the instructions before filling out this form. This form is for making a claim for payment in a bankruptcy case. Do not use this form to make a request for payment of an administrative expense. Make such a request according to 11 U.S.C. § 503.

Filers must leave out or redact information that is entitled to privacy on this form or on any attached documents. Attach redacted copies or any documents that support the claim, such as promissory notes, purchase orders, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements. **Do not send original documents;** they may be destroyed after scanning. If the documents are not available, explain in an attachment.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Fill in all the information about the claim as of the date the case was filed. That date is on the notice of bankruptcy (Form 309) that you received.

Part 1: Identify the Claim

<p>1. Who is the current creditor?</p>	<p><u>David Bonita</u> Name of the current creditor (the person or entity to be paid for this claim)</p> <p>Other names the creditor used with the debtor _____</p>	
<p>2. Has this claim been acquired from someone else?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. From whom? _____</p>	
<p>3. Where should notices and payments to the creditor be sent?</p> <p>Federal Rule of Bankruptcy Procedure (FRBP) 2002(g)</p>	<p>Where should notices to the creditor be sent?</p> <p><u>David Bonita</u> <u>c/o OrbiMed Advisors LLC</u> <u>601 Lexington Ave., 54th Floor</u> <u>New York, New York 10022, USA</u></p> <p>Contact phone <u>212-739-6400</u></p> <p>Contact email <u>Legal@OrbiMed.com</u></p>	<p>Where should payments to the creditor be sent? (if different)</p> <p>Contact phone _____</p> <p>Contact email _____</p>
<p>(see summary page for notice party information)</p> <p>Uniform claim identifier for electronic payments in chapter 13 (if you use one): _____</p>		
<p>4. Does this claim amend one already filed?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Claim number on court claims registry (if known) _____ Filed on _____ MM / DD / YYYY</p>	
<p>5. Do you know if anyone else has filed a proof of claim for this claim?</p>	<p><input checked="" type="checkbox"/> No</p> <p><input type="checkbox"/> Yes. Who made the earlier filing? _____</p>	



Part 2: Give Information About the Claim as of the Date the Case Was Filed

6. Do you have any number you use to identify the debtor? No
 Yes. Last 4 digits of the debtor's account or any number you use to identify the debtor: ____ _ _ _ _

7. How much is the claim? \$ Undetermined; see addendum. Does this amount include interest or other charges?
 No
 Yes. Attach statement itemizing interest, fees, expenses, or other charges required by Bankruptcy Rule 3001(c)(2)(A).

8. What is the basis of the claim? Examples: Goods sold, money loaned, lease, services performed, personal injury or wrongful death, or credit card.
Attach redacted copies of any documents supporting the claim required by Bankruptcy Rule 3001(c).
Limit disclosing information that is entitled to privacy, such as health care information.
Indemnification; see addendum

9. Is all or part of the claim secured? No
 Yes. The claim is secured by a lien on property.
Nature or property:
 Real estate: If the claim is secured by the debtor's principle residence, file a *Mortgage Proof of Claim Attachment* (Official Form 410-A) with this *Proof of Claim*.
 Motor vehicle
 Other. Describe: _____
Basis for perfection: _____
Attach redacted copies of documents, if any, that show evidence of perfection of a security interest (for example, a mortgage, lien, certificate of title, financing statement, or other document that shows the lien has been filed or recorded.)
Value of property: \$ _____
Amount of the claim that is secured: \$ _____
Amount of the claim that is unsecured: \$ _____ (The sum of the secured and unsecured amount should match the amount in line 7.)
Amount necessary to cure any default as of the date of the petition: \$ _____
Annual Interest Rate (when case was filed) _____ %
 Fixed
 Variable

10. Is this claim based on a lease? No
 Yes. Amount necessary to cure any default as of the date of the petition. \$ _____

11. Is this claim subject to a right of setoff? No
 Yes. Identify the property: _____



12. Is all or part of the claim entitled to priority under 11 U.S.C. § 507(a)?

No

Yes. Check all that apply:

	Amount entitled to priority
<input type="checkbox"/> Domestic support obligations (including alimony and child support) under 11 U.S.C. § 507(a)(1)(A) or (a)(1)(B).	\$ _____
<input type="checkbox"/> Up to \$3,350* of deposits toward purchase, lease, or rental of property or services for personal, family, or household use. 11 U.S.C. § 507(a)(7).	\$ _____
<input type="checkbox"/> Wages, salaries, or commissions (up to \$15,150*) earned within 180 days before the bankruptcy petition is filed or the debtor's business ends, whichever is earlier. 11 U.S.C. § 507(a)(4).	\$ _____
<input type="checkbox"/> Taxes or penalties owed to governmental units. 11 U.S.C. § 507(a)(8).	\$ _____
<input type="checkbox"/> Contributions to an employee benefit plan. 11 U.S.C. § 507(a)(5).	\$ _____
<input type="checkbox"/> Other. Specify subsection of 11 U.S.C. § 507(a)() that applies.	\$ _____

* Amounts are subject to adjustment on 4/01/25 and every 3 years after that for cases begun on or after the date of adjustment.

13. Is all or part of the claim pursuant to 11 U.S.C. § 503(b)(9)?

No

Yes. Indicate the amount of your claim arising from the value of any goods received by the debtor within 20 days before the date of commencement of the above case, in which the goods have been sold to the Debtor in the ordinary course of such Debtor's business. Attach documentation supporting such claim.

\$ _____

Part 3: Sign Below

The person completing this proof of claim must sign and date it. FRBP 9011(b).

If you file this claim electronically, FRBP 5005(a)(2) authorizes courts to establish local rules specifying what a signature is.

A person who files a fraudulent claim could be fined up to \$500,000, imprisoned for up to 5 years, or both. 18 U.S.C. §§ 152, 157, and 3571.

Check the appropriate box:

I am the creditor.

I am the creditor's attorney or authorized agent.

I am the trustee, or the debtor, or their authorized agent. Bankruptcy Rule 3004.

I am a guarantor, surety, endorser, or other codebtor. Bankruptcy Rule 3005.

I understand that an authorized signature on this *Proof of Claim* serves as an acknowledgement that when calculating the amount of the claim, the creditor gave the debtor credit for any payments received toward the debt.

I have examined the information in this *Proof of Claim* and have reasonable belief that the information is true and correct.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on date 07/07/2023
MM / DD / YYYY

/s/Greg Laufer
Signature

Print the name of the person who is completing and signing this claim:

Name Greg Laufer
First name Middle name Last name

Title Partner

Company Paul, Weiss, Rifkind, Wharton and Garrison LLP
Identify the corporate servicer as the company if the authorized agent is a servicer.

Address 1285 Avenue of the Americas, New York, New York, 10019, USA

Contact phone 212-373-3441 Email glaufer@paulweiss.com



KCC ePOC Electronic Claim Filing Summary

For phone assistance: Domestic 866-476-0898 | International 001-310-823-9000

Debtor: 23-10024 - Tricida, Inc.		
District: District of Delaware		
Creditor: David Bonita c/o OrbiMed Advisors LLC 601 Lexington Ave., 54th Floor New York, New York, 10022 USA Phone: 212-739-6400 Phone 2: Fax: Email: Legal@OrbiMed.com	Has Supporting Documentation: Yes, supporting documentation successfully uploaded	
	Related Document Statement:	
	Has Related Claim: No	
	Related Claim Filed By:	
	Filing Party: Authorized agent	
Disbursement/Notice Parties: Paul, Weiss, Rifkind, Wharton and Garrison LLP Attn: Greg Laufer 1285 Avenue of the Americas New York, New York, 10019 USA Phone: 212-373-3441 Phone 2: Fax: E-mail: glaufer@paulweiss.com		
Other Names Used with Debtor:	Amends Claim: No	
	Acquired Claim: No	
Basis of Claim: Indemnification; see addendum	Last 4 Digits: No	Uniform Claim Identifier:
Total Amount of Claim: Undetermined; see addendum	Includes Interest or Charges: None	
Has Priority Claim: No	Priority Under:	
Has Secured Claim: No	Nature of Secured Amount:	
Amount of 503(b)(9): No	Value of Property:	
Based on Lease: No	Annual Interest Rate:	
Subject to Right of Setoff: No	Arrearage Amount:	
	Basis for Perfection:	
	Amount Unsecured:	
Submitted By: Greg Laufer on 07-Jul-2023 3:09:44 p.m. Eastern Time Title: Partner Company: Paul, Weiss, Rifkind, Wharton and Garrison LLP		

Optional Signature Address:

Greg Laufer
1285 Avenue of the Americas

New York, New York, 10019
USA

Telephone Number:

212-373-3441

Email:

glauder@paulweiss.com

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

In re:)	Chapter 11
)	
TRICIDA, INC., ¹)	Case No. 23-10024 (JTD)
)	
Debtor.)	

**ADDENDUM TO PROOF OF CLAIM FILED BY
DAVID BONITA**

David Bonita (the “**Indemnitee**”) files this addendum to his proof of claim (the “**Proof of Claim**”) against Tricida, Inc. (the “**Debtor**”). This addendum and the documents referenced in it are incorporated by reference in, and an integral part of, the Proof of Claim.

On January 11, 2023 (the “**Petition Date**”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On May 22, 2023, the Debtor filed the *Fifth Amended Chapter 11 Plan of Liquidation for Tricida, Inc.* [Docket No. 509] (the “**Plan**”).² On May 23, 2023, the Court entered the *Findings of Fact, Conclusions of Law, and Order Confirming the Fifth Amended Chapter 11 Plan of Liquidation for Tricida, Inc.* [Docket No. 515] (the “**Confirmation Order**”).

Pursuant to the Plan, any proof of claim asserting a claim resulting from the rejection of an executory contract pursuant to the Plan (a “**Rejection Claim**”) must be filed within thirty days of the Effective Date. On June 12, 2023, the Debtor filed the *Notice of (I) Confirmation and Effective Date of the Fifth Amended Chapter 11 Plan of Liquidation for Tricida, Inc.; (II) Filing Requests for Notice of Pleadings Following the Effective Date; and (III) Deadline*

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

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

Under the Plan and Confirmation Order to File Administrative Claims, Professional Fee Claims, and Rejection Damages Claims [Docket No. 550] (the “**Notice of Effective Date**”). The Notice of Effective Date stated that the Effective Date occurred on June 12, 2023, and that any proofs of claim asserting a Rejection Claim must be filed no later than 4:00 p.m. prevailing Eastern Time on July 12, 2023.

SUMMARY OF CLAIM

1. The Indemnitee is a party to an indemnification agreement with the Debtor dated as of July 2, 2018 (the “**Indemnification Agreement**”), a copy of which is attached hereto as **Exhibit A**. Pursuant to the Indemnification Agreement, among other things, the Indemnitee is obligated to serve as a director or officer of the Company, and the Debtor is obligated to indemnify the Indemnitee against all Losses and Expenses (as defined in the Indemnification Agreement), to maintain an insurance policy covering the Indemnitee, and to take all necessary or desirable action to cause the applicable insurers to make payments on behalf of the Indemnitee.

2. As stated by the Third Circuit, an executory contract is “a contract under which the obligation of both the bankrupt and the other party to the contract are so far unperformed that the failure of either to complete performance would constitute a material breach excusing performance of the other.” *In re Columbia Gas Sys. Inc.*, 50 F.3d 233, 239 (3d Cir. 1995). “The time for testing whether there are material unperformed obligations on both sides is when the bankruptcy petition is filed.” *Id.* at 240.

3. The Indemnification Agreement is an executory contract, as both parties had material unperformed obligations as of the Petition Date. As described above, as of the Petition Date, among other obligations, the Indemnitee had the continuing obligation to serve as a director or officer of the Company, and the Debtor had the continuing obligation to indemnify

the Indemnitee against all Losses and Expenses (as defined in the Indemnification Agreement), to maintain an insurance policy covering the Indemnitee, and to take all necessary or desirable action to cause the applicable insurers to make payments on behalf of the Indemnitee.

4. As the Indemnification Agreement is an executory contract that was rejected under the Plan, the deadline to file this Proof of Claim is 4:00 p.m. prevailing Eastern Time on July 12, 2023.

5. Through this Proof of Claim, the Indemnitee asserts a claim against the Debtor (the “**Claim**”) for (a) all damages, costs, and expenses arising from the Debtor’s rejection of the Indemnification Agreement and (b) any and all other remedies that may be available to the Indemnitee arising under or in connection with the Indemnification Agreement, including any remedies available under the Indemnification Agreement, as a matter of law or equity, or otherwise.

RESERVATION OF RIGHTS

6. The Indemnitee files this Proof of Claim without waiver and with full reservation of all rights, including all rights in connection with the Debtor’s chapter 11 case and all rights in connection with any litigation brought by the Liquidating Trustee. The assertion of the Claim pursuant to this Proof of Claim is not intended as, and should not be deemed or construed as, a waiver of any position asserted or that may be asserted by the Indemnitee in this chapter 11 case, in any litigation brought by the Liquidating Trustee, or otherwise.

7. The Indemnitee’s reservation of rights also includes the right to amend, clarify, or supplement this Proof of Claim at any time, and for any reason, including amendments to (a) fix or liquidate any claims stated herein, (b) specify claims for ongoing obligations of the Debtor that are not expressly described herein, (c) assert additional claims, including claims for secured status or priority (including pursuant to section 507(b) of the Bankruptcy Code), claims for

subrogation (equitable or otherwise), claims arising under state and common law, and claims for interest on any such claims, and (d) file additional proofs of claim at any time, and for any reason, either before or after any applicable bar date established in this chapter 11 case.

8. The Indemnitee's reservation of rights also includes a reservation of all procedural and substantive defenses and rights, including a right to demand a jury trial, with respect to any claim that may be asserted against them by the Debtor, any trustee for the Debtor's estate, any other party-in-interest in this chapter 11 case, the Liquidating Trustee, or any other person or entity.

9. The Indemnitee has and/or may have postpetition administrative expense claims against the Debtor for amounts to which they are entitled under the Indemnification Agreement and applicable law, including, without limitation, amounts owed pursuant to sections 503 and 507 of the Bankruptcy Code. By filing this Proof of Claim, the Indemnitee does not waive, but expressly reserves, any of the postpetition administrative expense claims it has and/or may have against the Debtor.

10. This Proof of Claim is not intended as an admission of the validity, accuracy, or amount of any claim against the Indemnitee; rather, if any such claim exists, the Indemnitee denies such claim in all respects.

11. The Indemnitee's reservation of rights also includes a reservation of all respective rights of setoff or recoupment, the right to assert a constructive trust against assets or cash held by the Debtor, and the right to assert any other claim that the Indemnitee has or may have against the Debtor, the Liquidating Trustee, or any other person or entity.

12. By filing this Proof of Claim, the Indemnitee does not, and does not intend to, (a) waive, release, or otherwise prejudice any of its rights against any entity or person liable for

all or part of the Claim, (b) consent to, or waive, release, or otherwise prejudice any of its defenses with respect to the jurisdiction of this Court with respect to any action brought by the Debtor, any trustee for the Debtor's estate, the Liquidating Trustee, or any other action, proceeding, claim, cause of action, dispute, or other matter, whether commenced in this chapter 11 case or otherwise, (c) consent to, or waive, release, or otherwise prejudice any of its defenses with respect to any authority of this Court to finally adjudicate any action brought by the Debtor, any trustee for the Debtor's estate, the Liquidating Trustee, or any other action, proceeding, claim, cause of action, dispute, or other matter, whether commenced in this chapter 11 case or otherwise, (d) waive, release, or otherwise prejudice any of its rights to (1) have any and all final orders in any and all non-core matters entered after *de novo* review by a United States District Court judge or (2) demand a jury trial, (e) waive, release, or otherwise prejudice any of its rights to withdraw the reference with respect to the subject matter of the Claim, any objection or other proceeding commenced with respect thereto, or any other claim, cause of action, dispute, proceeding, or other matter commenced in this case against or otherwise involving the Indemnitee, (f) exercise an election of remedy that would waive, release, or otherwise prejudice any other remedy to which the Indemnitee is entitled, (g) waive, release, or otherwise prejudice any of its rights and remedies under applicable law, including (without limitation) under the Indemnification Agreement, (h) waive, release, or otherwise prejudice any rights of action it has or may have against the Debtor, the Liquidating Trustee, or any other person or entity, (i) waive, release, or otherwise prejudice any of their rights against any third party, or (j) waive, release, or otherwise prejudice any defense of the Indemnitee, including with respect to any claims or causes of action held by any person or entity.

13. Notwithstanding anything to the contrary in this Proof of Claim, this Proof of Claim expressly excludes any claim, cause of action, dispute, or other matter, whether commenced in this chapter 11 case or otherwise, that the Indemnitee has against any entity or person other than the Debtor.

NOTICES

14. All notices to the Indemnitee concerning this Proof of Claim should be sent to:

David Bonita
c/o OrbiMed Advisors LLC
601 Lexington Ave., 54th Floor
New York, NY 10022

Telephone: 212-739-6400
Email: Legal@OrbiMed.com

with a copy to:

PAUL, WEISS, RIFKIND, WHARTON & GARRISON LLP
Attn: Greg Laufer
1285 Avenue of the Americas
New York, NY 10019

Telephone: 212-373-3441
Email: glaufer@paulweiss.com

15. The request for copies of notices to be sent to Paul, Weiss, Rifkind, Wharton & Garrison LLP does not constitute, and will not be deemed, authorization of Paul, Weiss, Rifkind, Wharton & Garrison LLP to accept service of process on behalf of the Indemnitee.

[Remainder of page intentionally left blank]

Exhibit A

Indemnification Agreement

TRICIDA, INC.

FORM OF INDEMNIFICATION AGREEMENT

This Indemnification Agreement ("**Agreement**") is made as of July 2, 2018 by and between Tricida, Inc., a Delaware corporation (the "**Company**"), and David Bonita, M.D., an individual ("**Indemnitee**").

RECITALS

WHEREAS, the Company desires to attract and retain the services of highly qualified individuals, such as Indemnitee, to serve the Company;

WHEREAS, in order to induce Indemnitee to continue to provide services to the Company, the Company wishes to provide for the indemnification of, and advancement of expenses to, Indemnitee to the maximum extent permitted by law;

WHEREAS, the Bylaws of the Company, as amended from time to time (the "**Bylaws**") require, and the Certificate of Incorporation of the Company, as amended from time to time (the "**Certificate**" and together with the Bylaws, the "**Charter Documents**") permit, indemnification of the officers and directors of the Company, and Indemnitee may also be entitled to indemnification pursuant to the General Corporation Law of the State of Delaware (the "**DGCL**");

WHEREAS, the Charter Documents and the DGCL expressly provide that the indemnification provisions set forth therein are not exclusive, and thereby contemplate that contracts may be entered into between the Company and members of the board of directors, officers and other persons with respect to indemnification;

WHEREAS, the Company and Indemnitee recognize the continued difficulty in obtaining on attractive terms liability insurance for the Company's directors, officers, employees, agents and fiduciaries, the significant and frequent increases in the cost of such insurance and the general trend of insurance companies to reduce the scope of coverage of such insurance;

WHEREAS, the Company and Indemnitee further recognize the continuing risks of corporate litigation in general, subjecting directors, officers, employees, agents and fiduciaries to expensive litigation risks at the same time as the availability and scope of coverage of liability insurance provide increasing challenges for the Company;

WHEREAS, Indemnitee does not regard the protection currently provided by applicable law, the Company's governing documents and available insurance as adequate under the present circumstances, and the Indemnitee and certain other directors, officers, employees, agents and fiduciaries of the Company may not be willing to continue to serve in such capacities without additional protection;

WHEREAS, this Agreement is a supplement to and in furtherance of the indemnification provided in the Charter Documents and any resolutions adopted pursuant thereto, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder;

WHEREAS, the board of directors of the Company (the "**Board**") has determined that the increased difficulty in attracting and retaining highly qualified persons such as Indemnitee is detrimental to the best interests of the Company's stockholders and that the Company should act to assure such persons that there will be increased certainty of such protection in the future;

WHEREAS, Indemnitee has certain rights to indemnification and/or insurance provided by OrbiMed Private Investments V, LP and its affiliates (collectively, the "**Fund**") which Indemnitee and the Fund intend to be secondary to the primary obligation of the Company to indemnify Indemnitee as provided in this Agreement, with the Company's acknowledgment and agreement to the foregoing being a material condition to Indemnitee's willingness to serve or continue to serve on the Board; and

WHEREAS, it is reasonable, prudent and necessary for the Company contractually to obligate itself to indemnify, and to advance expenses on behalf of, such persons to the fullest extent permitted by applicable law so that they will serve or continue to serve the Company free from undue concern that they will not be so indemnified;

NOW, THEREFORE, in consideration of the premises and the covenants contained herein, the Company and Indemnitee do hereby covenant and agree as follows:

Section 1. Services to the Company. Indemnitee will serve or continue to serve as a director or officer of the Company for so long as Indemnitee is duly elected or appointed or until Indemnitee is removed or terminated, as applicable, or tenders his or her resignation. Indemnitee may tender the resignation at any time in his or her sole and absolute discretion. Notwithstanding anything to the contrary in this Agreement, the Company and the Indemnitee acknowledge that the Indemnitee's employment, if any, is and shall continue to be at-will, as defined under applicable law.

Section 2. Definitions

As used in this Agreement:

(a) "**Corporate Status**" describes the status of a person as a current or former member of the Company's board of directors ("director") or a current or former officer of the Company or a current or former director, manager, partner, officer, employee, agent or trustee of any other Enterprise.

(b) "**Enterprise**" shall mean the Company and any other corporation (other than the Company), limited liability company, partnership, joint venture, trust, employee benefit plan or other enterprise of which Indemnitee is or was serving at the request of the Company as a director, officer, employee, agent or fiduciary.

(c) "**Expenses**" shall include all reasonable attorneys' fees, retainers, court costs, transcript costs, fees of experts, witness fees, travel expenses, duplicating costs, printing and binding costs, telephone charges, postage, delivery service fees, and all other disbursements or expenses of the types customarily incurred in connection with defending, preparing to defend, investigating, being or preparing to be a witness in, or otherwise participating in, a Proceeding. Expenses also shall include Expenses incurred in connection with any appeal resulting from any Proceeding, including without limitation the premium, security for, and other costs relating to any cost bond, supersedes bond, or other appeal bond or its equivalent. Expenses, however, shall not include amounts paid in settlement by Indemnitee or the amount of judgments or fines against Indemnitee.

(d) "**Independent Counsel**" means a law firm, or a partner (or, if applicable, member) of such a law firm, selected by Indemnitee that is experienced in matters of corporation law and neither presently is, nor in the past five years has been, retained to represent: (i) the Company or Indemnitee in any matter material to either such party (other than with respect to indemnification matters), or (ii) any other party to the Proceeding giving rise to a claim for indemnification hereunder. Notwithstanding the foregoing, the term "Independent Counsel" shall not include any person who, under the applicable standards of professional conduct then prevailing, would have a conflict of interest in representing either the Company or Indemnitee in an action to determine Indemnitee's rights under this Agreement. The Company agrees to pay the reasonable fees and expenses of the Independent Counsel referred to above and to fully indemnify such counsel against any and all Expenses, claims, liabilities and damages arising out of or relating to this Agreement or its engagement pursuant hereto.

(e) "**Losses**" means any losses or liabilities including, without limitation, damages, judgments, fines, penalties, excise taxes, and amounts paid in settlement.

(f) The term "**Proceeding**" shall include any threatened, pending or completed action, suit, arbitration, alternate dispute resolution mechanism, formal or informal government or self-regulatory agency investigation or inquiry, administrative hearing or any other actual, threatened or completed proceeding, whether brought in the right of the Company or otherwise and whether of a civil, criminal, administrative or investigative nature, in which Indemnitee was, is or is threatened to be involved as a party or otherwise by reason of the Indemnitee's Corporate Status, by reason of any action taken, or failure to act, by Indemnitee or of any action taken, or failure to take action, on the Indemnitee's part while acting as director or officer of the Company, or by reason the Indemnitee's Corporate Status, in each case whether or not serving in such capacity at the time any liability or Expense is incurred for which indemnification, reimbursement, or any Advance of Expenses can be provided under this Agreement; provided, however, that the term "Proceeding" shall not include any action, suit or arbitration initiated by Indemnitee to enforce Indemnitee's rights under this Agreement.

Section 3. Indemnity in Third-Party Proceedings. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 3 if Indemnitee is, or is threatened to be made, a party to or a participant (as a witness or otherwise) in any Proceeding, other than a Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 3, Indemnitee shall be indemnified to the full extent permitted by the laws of the State of

Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against any and all Losses and Expenses (including all interest, assessments and other charges paid or payable in connection with or in respect of such Losses and Expenses) actually and reasonably incurred by Indemnitee or on his or her behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company and, in the case of a criminal Proceeding, had no reasonable cause to believe that his or her conduct was unlawful. Indemnitee shall not enter into any settlement in connection with such Proceeding without prior written consent of the Company, and the Company shall not be liable to indemnify Indemnitee under this Agreement for such settlement without prior written consent of the Company. The Company shall be permitted to enter into a settlement on behalf of Indemnitee in connection with such Proceeding except that such settlement shall not impose any penalty, adverse admission, or limitation on Indemnitee without Indemnity's prior written consent.

Section 4. Indemnity in Proceedings by or in the Right of the Company. The Company shall indemnify Indemnitee in accordance with the provisions of this Section 4 if Indemnitee is, or is threatened to be made, a party to or a participant in any Proceeding by or in the right of the Company to procure a judgment in its favor. Pursuant to this Section 4, Indemnitee shall be indemnified to the full extent permitted by the laws of the State of Delaware in effect on the date hereof, or as such laws may from time to time hereafter be amended to increase the scope of such permitted indemnification, against all Expenses (including all interest, assessments and other charges paid or payable in connection with or in respect of such Expenses) actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with such Proceeding or any claim, issue or matter therein, if Indemnitee acted in good faith and in a manner he or she reasonably believed to be in or not opposed to the best interests of the Company. No indemnification for Expenses shall be made under this Section 4 in respect of any claim, issue or matter as to which Indemnitee shall have been finally adjudged by a court to be liable to the Company unless and only to the extent that the Delaware Court of Chancery (the "Delaware Court") or any court in which the underlying Proceeding, whether brought by the Company or a third party, was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, Indemnitee is fairly and reasonably entitled to indemnification for such expenses as the Delaware Court or such other court shall deem proper, which determination shall, for the avoidance of doubt, satisfy the requirements of the immediately preceding sentence.

Section 5. Indemnification for Expenses of a Party Who is Wholly or Partly Successful. Without limiting any other rights of the Indemnitee pursuant to this Agreement, (a) to the extent that Indemnitee is a party to or a participant in and is successful, on the merits or otherwise, in any Proceeding or in defense of any claim, issue or matter therein, in whole or in part, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee in connection therewith; and (b) if Indemnitee is not wholly successful in such Proceeding but is successful, on the merits or otherwise, as to one or more but less than all claims, issues or matters in such Proceeding, the Company shall indemnify Indemnitee against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection with each successfully resolved claim, issue or matter. For purposes of this Section

the term "successful" shall include, but not be limited to, (i) any termination, withdrawal, or dismissal (with or without prejudice) of such Proceeding without any express finding of liability or guilt against Indemnitee, (ii) the expiration of 120 days after the making of such Proceeding without the institution of the same and without any promise or payment made to induce a settlement, or (iii) the settlement of such Proceeding pursuant to which the Indemnitee pays less than \$10,000 irrespective of whether other parties make payments which may be deemed to be on behalf of Indemnitee.

Section 6. Indemnification For Expenses of a Witness. Notwithstanding any other provision of this Agreement, to the extent that Indemnitee is or may reasonably expect to be, by reason of his or her Corporate Status, a witness in any Proceeding to which Indemnitee is not a party, Indemnitee shall be indemnified against all Expenses actually and reasonably incurred by Indemnitee or on Indemnitee's behalf in connection therewith.

Section 7. Exclusions. Notwithstanding any provision in this Agreement to the contrary, the Company shall not be obligated under this Agreement to make any indemnity:

(a) for which payment has actually been made to or on behalf of Indemnitee under any insurance policy or other indemnity provision, except with respect to (i) any excess beyond the amount paid under any insurance policy or other indemnity provision or (ii) with respect to any insurance policy to the extent paid for by the Indemnitee, any increase in premiums resulting from the amount paid under such policy provided that the foregoing shall not affect the rights of Indemnitee or the Secondary Indemnitors as set forth in Section 13(c);

(b) for disgorgement or return of profits made from the purchase and sale (or sale and purchase) by Indemnitee of securities of the Company within the meaning of Section 16(b) of the Securities Exchange Act of 1934, as amended, or similar provisions of state statutory law or common law;

(c) for any claim, issue or matter initiated or brought by Indemnitee, except (i) with respect to counterclaims or affirmative defenses or to actions or proceedings brought to establish or enforce a right to receive Expenses or indemnification under this Agreement or any other agreement or insurance policy or under the Charter Documents now or hereafter in effect relating to indemnification or (ii) if the Board has approved the initiation or bringing of such claim;

(d) for which payment is prohibited by applicable law; or

(e) for any claim, issue or matter as to which Indemnitee shall have (a) entered a plea of guilty or nolo contendere to a felony or (b) received a final, unappealable judgment or verdict of guilty or its equivalent in any criminal proceeding.

Section 8. Advances of Expenses Prior to or During a Proceeding. The Company shall pay in advance, to the extent not prohibited by law, the Expenses incurred by Indemnitee in connection with any Proceeding prior to disposition of such Proceeding (an "Advance"). The Company shall pay from time to time any Advance within thirty (30) days after the receipt by the

Company of a statement or statements requesting such Advance (which shall include invoices received by Indemnitee in connection with such Expenses but, in the case of invoices in connection with legal services, any references to legal work performed or to expenditures made that would cause Indemnitee to waive any privilege accorded by applicable law shall not be included with the invoice). Advances shall be unsecured and interest free. Advances shall be made without regard to Indemnitee's (i) ability to repay the expenses, (ii) ultimate entitlement to indemnification under Sections 10 and 11 and the other applicable provisions of this Agreement, or (iii) entitlement to and availability of insurance coverage, including advancement, payment or reimbursement of defense costs, expenses of covered loss under the provisions of any applicable insurance policy (including, without limitation, whether such advancement, payment or reimbursement is withheld, conditioned or delayed by the insurer(s)). Advances shall include any and all reasonable Expenses incurred pursuing an action to enforce this right to an Advance, whether such Expenses are incurred before or after the disposition of the Proceeding for which enforcement of this right to an Advance is pursued. The Indemnitee shall qualify for Advances upon the execution and delivery to the Company of this Agreement which shall constitute an undertaking providing that the Indemnitee undertakes to the fullest extent required by law to repay all Advances if and to the extent that it is determined by a court of competent jurisdiction, regardless of whether such determination is subject to appeal, that Indemnitee is not entitled to be indemnified by the Company. This Section 8 shall not apply to any claim made by Indemnitee for which indemnity is excluded pursuant to Section 7.

Section 9. Procedure for Notification. To obtain indemnification under this Agreement, Indemnitee shall submit to the Company a written request therefor specifying the Proceeding or basis for the claim, the amounts, if known, for which Indemnitee is seeking payment under this Agreement, and all documentation related thereto as reasonably requested by the Company that is reasonably available to Indemnitee; provided that documentation and information need not be so provided to the extent that the provision thereof would undermine or otherwise jeopardize attorney client privilege; provided the Company and Indemnitee shall cooperate in good faith with respect to protections to avoid the waiver of such privilege, including the use of joint defense agreements and similar arrangements. The failure by Indemnitee to timely notify the Company or provide such documentation shall not relieve the Company from any liability hereunder unless, and only to the extent that, the Company's ability to participate in the defense of such claim was materially and adversely affected by such failure.

Section 10. Procedure to Determine Indemnification and Any Repayment of Advances After Disposition of a Proceeding.

(a) After the Indemnitee has made a written request for indemnification pursuant to Section 9, then promptly following disposition of a Proceeding, a determination with respect to Indemnitee's entitlement to indemnification and to retain any Advances given to Indemnitee shall be made in the specific case by one of the following methods: (x) if a Change in Control shall have occurred, by Independent Counsel in a written opinion to the Board; or (y) if a Change in Control shall not have occurred, by majority vote of the directors who are neither parties nor threatened to be made parties, to any Proceeding, even though less than a quorum, or by a committee of such directors designated by majority vote of such directors, even though less than a quorum (in either case, the "Disinterested Directors") or, if there are no Disinterested

Directors, by Independent Counsel and, if it is so determined that Indemnitee is entitled to indemnification, payment to Indemnitee shall be made within thirty (30) days after such determination. Indemnitee shall cooperate with the Disinterested Directors or Independent Counsel, as applicable, making such determination with respect to Indemnitee's entitlement to indemnification, including providing to the Disinterested Directors or Independent Counsel, as applicable, upon reasonable advance request any documentation or information which is not privileged or otherwise protected from disclosure and which is reasonably available to Indemnitee and reasonably necessary to such determination. Any costs or expenses (including attorneys' fees and disbursements) incurred by Indemnitee in so cooperating with the Disinterested Directors or Independent Counsel, as applicable, shall be borne by the Company (irrespective of the determination as to Indemnitee's entitlement to indemnification) and the Company hereby indemnifies and agrees to hold Indemnitee harmless therefrom.

(b) If the determination of entitlement to indemnification is to be made by Independent Counsel pursuant to Section 10(a), the Independent Counsel shall be selected by the Board if a Change in Control shall not have occurred or, if a Change in Control shall have occurred, by Indemnitee. The Indemnitee or the Company, as the case may be, may within ten (10) days after written notice of such selection, deliver to the Company or the Indemnitee, as the case may be, a written objection to such selection; provided, however, that such objection may be asserted only on the ground that the Independent Counsel so selected does not meet the requirements of "Independent Counsel" as defined in Section 2 of this Agreement, and the objection shall set forth with particularity the factual basis of such assertion. Absent a proper and timely objection, the person so selected shall act as Independent Counsel. If such written objection is so made and substantiated, the Independent Counsel so selected may not serve as Independent Counsel unless and until such objection is withdrawn or a court has determined that such objection is without merit. If, within 20 days after the later of submission by Indemnitee of a written request for indemnification pursuant to Section 9(a) hereof, and the final disposition of the Proceeding, including any appeal therein, no Independent Counsel shall have been selected and not objected to, either the Company or the Indemnitee may petition a court of competent jurisdiction for resolution of any objection which shall have been made by the Indemnitee or the Company to the selection of Independent Counsel and/or for the appointment as Independent Counsel of a person selected by the court or by such other person as the court shall designate, and the person with respect to whom all objections are so resolved or the person so appointed shall act as Independent Counsel under Section 10(a) hereof. Upon the due commencement of any judicial proceeding or arbitration pursuant to Section 12(a) of this Agreement, Independent Counsel shall be discharged and relieved of any further responsibility in such capacity (subject to the applicable standards of professional conduct then prevailing).

Section 11. Presumptions and Effect of Certain Proceedings.

(a) In making a determination with respect to entitlement to indemnification hereunder, the Disinterested Directors or Independent Counsel, as applicable, making such determination shall presume that Indemnitee is entitled to indemnification under this Agreement if Indemnitee has submitted a request for indemnification. Neither the failure of the Company nor of the Disinterested Directors or Independent Counsel, as applicable, to have made a determination prior to the commencement of any Advance or indemnification action pursuant to

this Agreement that indemnification is proper in the circumstances because Indemnitee has met the applicable standard of conduct, nor an actual determination by the Company or by the Disinterested Directors or Independent Counsel, as applicable, that Indemnitee has not met such applicable standard of conduct, shall be a defense available to the Company to the Advance or indemnification action or create a presumption that Indemnitee has not met the applicable standard of conduct necessary to obtain an Advance or indemnification.

(b) The termination of any Proceeding or of any claim, issue or matter therein, by judgment, order, settlement or conviction, or upon a plea of guilty or nolo contendere other than to a felony, shall not (except as otherwise expressly provided in this Agreement) of itself create a presumption that Indemnitee did not act in good faith and in a manner which he or she reasonably believed to be in or not opposed to the best interests of the Company or, with respect to any criminal Proceeding, that Indemnitee had reasonable cause to believe that his or her conduct was unlawful.

(c) For purposes of this Agreement, and without creating any presumption as to a lack of good faith if the following circumstances do not exist, Indemnitee shall be deemed to have acted in good faith (i) in any action that does not require, as an element of the claim or cause of action, the establishment of any state of mind inconsistent with a finding of good faith or (ii) if Indemnitee's action or failure to act, is based on the records or books of account of the Company or other applicable Enterprise, including financial statements, or on information supplied to Indemnitee by the officers of the Company or other applicable Enterprise in the course of their duties, or on the advice of legal counsel for the Company or other applicable Enterprise or the Board or counsel selected by any committee of the Board or on information or records given or reports made to the Company or other applicable Enterprise by an independent certified public accountant or by an appraiser, investment banker or other expert selected with reasonable care by the Company or the Board or any committee of the Board. The provisions of this Section 11(c) shall not be deemed to be exclusive or to limit in any way the other circumstances in which the Indemnitee may be deemed to have met the applicable standard of conduct set forth in this Agreement.

(d) The knowledge and/or actions, or failure to act, of any director, officer, manager, partner, employee, agent or trustee of the Company, any subsidiary of the Company or any Enterprise shall not be imputed to Indemnitee for purposes of determining the right to indemnification under this Agreement.

Section 12. Remedies of Indemnitee.

(a) Subject to Section 12(c), in the event that (i) a determination is made by the Disinterested Directors (and, for the avoidance of doubt, not by the Independent Counsel) pursuant to Section 11 of this Agreement that Indemnitee is not entitled to indemnification under this Agreement, (ii) any Advance of Expenses is not timely made pursuant to Section 10 of this Agreement, (iii) no determination of entitlement to indemnification shall have been made pursuant to Section 10(a) of this Agreement within sixty (60) days after receipt by the Company of the request for indemnification, (iv) payment of indemnification is not made pursuant to Section 5 or 6 or the last sentence of Section 10(a) of this Agreement within thirty (30) days after receipt by the Company of a written request therefor, or (v) payment of indemnification pursuant

to Section 3 or 4 of this Agreement is not made within thirty (30) days after a determination has been made that Indemnitee is entitled to indemnification, Indemnitee shall be entitled to an adjudication by the Delaware Court of his or her entitlement to such indemnification or any Advance of Expenses. Alternatively, Indemnitee, at his or her option, may seek an award in arbitration to be conducted by a single arbitrator pursuant to the Commercial Arbitration Rules of the American Arbitration Association. Indemnitee shall commence such proceeding seeking an adjudication or an award in arbitration within one hundred eighty (180) days following the date on which Indemnitee first has the right to commence such proceeding pursuant to this Section 12(a); provided, however, that the foregoing clause shall not apply in respect of a proceeding brought by Indemnitee to enforce his or her rights under Section 5 of this Agreement. The Company shall not oppose Indemnitee's right to seek any such adjudication or award in arbitration.

(b) In the event that a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is not entitled to indemnification, any judicial proceeding or arbitration commenced pursuant to this Section 12 shall be conducted in all respects as a de novo trial, or arbitration, on the merits and Indemnitee shall not be prejudiced by reason of that adverse determination. In any judicial proceeding or arbitration commenced pursuant to this Section 12, the Company shall have the burden of proving Indemnitee is not entitled to indemnification or an Advance of Expenses, as the case may be.

(c) If a determination shall have been made pursuant to Section 10(a) of this Agreement that Indemnitee is entitled to indemnification, the Company shall be bound by such determination in any judicial proceeding or arbitration commenced pursuant to this Section 12, absent (i) a misstatement by Indemnitee of a material fact, or an omission of a material fact necessary to make Indemnitee's statement not materially misleading, in connection with the request for indemnification, or (ii) a prohibition of such indemnification under applicable law.

(d) The Company shall be precluded from asserting in any judicial proceeding or arbitration commenced pursuant to this Section 12 that the procedures and presumptions of this Agreement are not valid, binding and enforceable and shall stipulate in any such court or before any such arbitrator that the Company is bound by all the provisions of this Agreement. The Company shall indemnify Indemnitee against any and all Expenses which are incurred by Indemnitee in connection with any action brought by Indemnitee for indemnification or any Advance of Expenses from the Company under this Agreement or under any directors' and officers' liability insurance policies maintained by the Company only if Indemnitee ultimately is determined to be entitled to such indemnification, Advance of Expenses or insurance recovery, as the case may be, in the suit for which indemnification or an Advance is being sought.

(e) Notwithstanding anything in this Agreement to the contrary but without in any way limiting the Indemnitee's right to Advances under Section 8, no determination as to entitlement to indemnification under this Agreement shall be required to be made prior to the disposition of the Proceeding, including any appeal therein.

Section 13. Non-exclusivity; Survival of Rights; Insurance; Reasonable Assistance; Subrogation.

(a) No amendment, alteration or repeal of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee in his or her Corporate Status prior to such amendment, alteration or repeal. To the extent that after the date of this Agreement a change in Delaware law, whether by statute or judicial decision, permits greater indemnification or Advances of Expenses than would be afforded currently under the Charter Documents and this Agreement, it is the intent of the parties hereto that Indemnitee shall enjoy by this Agreement the greater benefits so afforded by such change. No right or remedy herein conferred is intended to be exclusive of any other right or remedy, and every other right and remedy shall be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of any other right or remedy.

(b) The Company shall use commercially reasonable best efforts to (a) maintain an insurance policy or policies providing liability insurance for directors, officers, employees, or agents of the Company or of any other Enterprise and (b) to provide that until at least the sixth (6th) anniversary of the date of expiration of the Indemnitee's period of service with the Company (the "**Six-Year Period**"), Indemnitee shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage available for any such director, officer, employee or agent under such policy or policies. If, at the time of the receipt of a notice of a claim pursuant to the terms hereof, the Company has director and officer liability insurance in effect, the Company shall give prompt notice of the commencement of such proceeding to the insurers in accordance with the procedures set forth in the respective policies. The Company shall thereafter take all necessary or desirable action to cause such insurers to pay, on behalf of the Indemnitee, all amounts payable as a result of such proceeding in accordance with the terms of such policies.

(c) The Company hereby acknowledges that Indemnitee has certain rights to Indemnification, advancement of expenses and/or insurance provided by the Fund and certain of its affiliates (collectively, the "**Secondary Indemnitors**"). The Company hereby agrees (i) that it is the indemnitor of first resort (*i.e.*, its obligations to Indemnitee are primary and any obligation of the Secondary Indemnitors to advance expenses or to provide indemnification for the same expenses or liabilities incurred by Indemnitee are secondary), (ii) that it shall be required to advance the full amount of expenses incurred by Indemnitee and shall be liable for the full amount of all Losses and Expenses, to the extent legally permitted and as required by the terms of this Agreement and the Charter Documents (or any other agreement between the Company and Indemnitee), without regard to any rights Indemnitee may have against the Secondary Indemnitors, and (iii) that it irrevocably waives, relinquishes and releases the Secondary Indemnitors from any and all claims against the Secondary Indemnitors for contribution, subrogation or any other recovery of any kind in respect thereof. The Company further agrees that no advancement or payment by the Secondary Indemnitors on behalf of Indemnitee with respect to any claim for which Indemnitee has sought indemnification from the Company shall affect the foregoing and the Secondary Indemnitors shall have a right of contribution and/or be subrogated to the extent of such advancement or payment to all of the rights of recovery of

Indemnitor against the Company. The Company and Indemnitor agree that the Secondary Indemnitors are express third party beneficiaries of the terms of this Section 13(c).

(d) Indemnitor hereby agrees that during the Six-Year Period he or she shall provide reasonable assistance to the Company in investigating, responding to, pursuing, or defending against a Proceeding, including the giving of truthful oral or written testimony, provided that (x) the Company compensates the Indemnitor at a daily rate commensurate with the Indemnitor's final salary with the Company (or in the case of a former director of the Company a cash per diem determined by the Board in its sole discretion but in no event less than the then actual cash rate payable to directors per Board ordinary meeting or if no such rate, the recurring annual cash rate divided by the number of ordinary Board meetings) for all time spent by the Indemnitor at the Company's request on such assistance; and (y) the Indemnitor's cooperation does not waive or impair her or his rights under the Fifth Amendment to the United States Constitution, or any like privilege or immunity against self-incrimination; provided further, that an assertion of such privilege or immunity shall not create a presumption that the Indemnitor has not met an applicable standard of conduct.

(e) Except as provided in paragraph (c) above, in the event of any payment under this Agreement, the Company shall be subrogated to the extent of such payment to all of the rights of recovery of Indemnitor (other than against the Secondary Indemnitors), who shall execute all papers required and take all action necessary to secure such rights, including execution of such documents as are necessary to enable the Company to bring suit to enforce such rights.

(f) The Company shall not be liable under this Agreement to make any payment of amounts otherwise indemnifiable hereunder (or for which any Advances are provided hereunder) if and to the extent that Indemnitor has otherwise actually received such payment under any other indemnification or contribution agreement or any insurance policy, contract, agreement or otherwise except, with respect to any insurance policy to the extent paid for by the Indemnitor, any increase in premiums resulting from the amount paid under such policy.

(g) The Company's obligation to provide indemnification or any Advance of Expenses hereunder to Indemnitor who is or was serving at the request of the Company as a director, officer, employee or agent of any other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise shall be reduced by any amount Indemnitor has actually received as indemnification or an Advance of Expenses from such other corporation, partnership, joint venture, trust, employee benefit plan or other enterprise.

Section 14. Survival; Successors and Assigns. This Agreement shall be binding upon the Company and its successors and assigns and shall inure to the benefit of Indemnitor and Indemnitor's heirs, executors and administrators. The Company shall require and cause any successor (whether direct or indirect by purchase, merger, consolidation or otherwise) to all, substantially all or a substantial part, of the business and/or assets of the Company, by written agreement in form and substance satisfactory to the Indemnitor, expressly to assume and agree to perform this Agreement in the same manner and to the same extent that the Company would be required to perform if no such succession had taken place. The indemnification provided under

this Agreement shall continue as to Indemnitee for any action taken or not taken while serving in Corporate Status even though Indemnitee may have ceased to serve in such capacity at the time of any Proceeding.

Section 15. Severability. If any provision or provisions of this Agreement shall be held to be invalid, illegal or unenforceable for any reason whatsoever: (a) the validity, legality and enforceability of the remaining provisions of this Agreement (including without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall not in any way be affected or impaired thereby and shall remain enforceable to the fullest extent permitted by law; (b) such provision or provisions shall be deemed reformed to the extent necessary to conform to applicable law and to give the maximum effect to the intent of the parties hereto; and (c) to the fullest extent possible, the provisions of this Agreement (including, without limitation, each portion of any Section of this Agreement containing any such provision held to be invalid, illegal or unenforceable, that is not itself invalid, illegal or unenforceable) shall be construed so as to give effect to the intent manifested thereby.

Section 16. Enforcement; Entire Agreement.

(a) The Company expressly confirms and agrees that it has entered into this Agreement and assumed the obligations imposed on it hereby in order to induce Indemnitee to serve or continue to serve as a director or officer of the Company, as applicable, and the Company acknowledges that Indemnitee is relying upon this Agreement in serving as a director or officer of the Company, as applicable.

(b) This Agreement constitutes the entire agreement between the parties hereto with respect to the subject matter hereof and supersedes all prior agreements and understandings, oral, written and implied, between the parties hereto with respect to the subject matter hereof; provided, however, that this Agreement is a supplement to and in furtherance of the Charter Documents and applicable law, and shall not be deemed a substitute therefor, nor to diminish or abrogate any rights of Indemnitee thereunder.

Section 17. Modification and Waiver. No supplement, modification, waiver, or amendment of this Agreement or any provisions of this Agreement shall be binding unless executed in writing by the parties thereto. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions of this Agreement nor shall any waiver constitute a continuing waiver. No supplement, modification or amendment of this Agreement or of any provision hereof shall limit or restrict any right of Indemnitee under this Agreement in respect of any action taken or omitted by such Indemnitee prior to such supplement, modification or amendment.

Section 18. Notice by Indemnitee. Indemnitee agrees promptly to notify the Company in writing upon being served with any summons, citation, subpoena, complaint, indictment, information or other document relating to any Proceeding or matter which may be subject to indemnification or any Advance of Expenses covered hereunder. The failure of Indemnitee to so notify the Company shall not relieve the Company of any obligation which it may have to the Indemnitee under this Agreement or otherwise.

Section 19. Notices. All notices, requests, demands and other communications under this Agreement shall be in writing and shall be deemed to have been duly given if (a) delivered by hand and received for by the party to whom said notice or other communication shall have been directed, (b) mailed by certified or registered mail with postage prepaid, on the third business day after the date on which it is so mailed, (c) mailed by reputable overnight courier and received for by the party to whom said notice or other communication shall have been directed or (d) when sent by confirmed electronic mail or facsimile if sent during normal business hours of the recipient, and if not so confirmed, then on the next business day:

(a) If to Indemnitee, at such address as Indemnitee shall provide to the Company.

(b) If to the Company to:

Tricida, Inc.
7000 Shoreline Court
Suite 201
South San Francisco, CA 94080
Attn: Chief Financial Officer
Facsimile: +1 415 592 1601
Email: gparker@tricida.com

or to any other address as may have been furnished to Indemnitee by the Company.

with a copy to (which shall not constitute notice):

Sidley Austin LLP
787 Seventh Avenue
New York, NY 10019
Attn: Geoffrey W. Levin
Facsimile: +1 212 839 5300
Email: glevin@sidley.com

Section 20. Contribution. To the fullest extent permissible under applicable law, if the indemnification provided for in this Agreement is unavailable to Indemnitee for any reason whatsoever other than under the express limitations set forth in this Agreement, the Company, in lieu of indemnifying Indemnitee, shall, upon approval or order of the Delaware Court, contribute to the amount incurred by Indemnitee, whether for judgments, fines, penalties, excise taxes, amounts paid or to be paid in settlement and/or for Expenses, in connection with any claim relating to an indemnifiable event under this Agreement, in such proportion as is deemed fair and reasonable in light of all of the circumstances of such Proceeding in order to reflect (i) the relative benefits received by the Company and Indemnitee as a result of the event(s) and/or transaction(s) giving cause to such Proceeding; and/or (ii) the relative fault of the Company (and its directors, officers, employees and agents) and Indemnitee in connection with such event(s) and/or transaction(s).

Section 21. Internal Revenue Code Section 409A. The Company intends for this Agreement to comply with the Indemnification exception under Section 1.409A-1(b)(10) of the regulations promulgated under the Internal Revenue Code of 1986, as amended (the "Code"), which provides that indemnification of, or the purchase of an insurance policy providing for payments of, all or part of the expenses incurred or damages paid or payable by Indemnitee with respect to a bona fide claim against Indemnitee or the Company do not provide for a deferral of compensation, subject to Section 409A of the Code, where such claim is based on actions or failures to act by Indemnitee in his or her capacity as a service provider of the Company. The parties intend that this Agreement be interpreted and construed with such intent.

Section 22. Applicable Law and Consent to Jurisdiction. This Agreement and the legal relations among the parties shall be governed by, and construed and enforced in accordance with, the laws of the State of Delaware, without regard to its conflict of laws rules. Except with respect to any arbitration commenced by Indemnitee pursuant to Section 12(a) of this Agreement, the Company and Indemnitee hereby irrevocably and unconditionally (i) agree that any action or proceeding arising out of or in connection with this Agreement shall be brought only in the Delaware Court, and not in any other state or federal court in the United States of America or any court in any other country, (ii) consent to submit to the exclusive jurisdiction of the Delaware Court for purposes of any action or proceeding arising out of or in connection with this Agreement, (iii) appoint, to the extent such party is not otherwise subject to service of process in the State of Delaware, The Corporation Trust Company, Wilmington, Delaware as its agent in the State of Delaware as such party's agent for acceptance of legal process in connection with any such action or proceeding against such party with the same legal force and validity as if served upon such party personally within the State of Delaware, (iv) waive any objection to the laying of venue of any such action or proceeding in the Delaware Court, and (v) waive, and agree not to plead or to make, any claim that any such action or proceeding brought in the Delaware Court has been brought in an improper or inconvenient forum.


Section 23. Identical Counterparts. This Agreement may be executed in two (2) or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same the same instrument. Counterparts may be delivered via facsimile, electronic mail (including pdf or any electronic signature complying with the U.S. federal ESIGN Act of 2000, *e.g.*, www.docusign.com) or other transmission method and any counterpart so delivered shall be deemed to have been duly and validly delivered and be valid and effective for all purposes.

Section 24. Miscellaneous. The headings of the paragraphs of this Agreement are inserted for convenience only and shall not be deemed to constitute part of this Agreement or to affect the construction thereof.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

TRICIDA, INC.

By: 
Name: Gerrit Klaerner
Its: President and Chief Executive Officer

INDEMNITEE

Signature: _____
Name: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be signed as of the day and year first above written.

TRICIDA, INC.

By: _____
Name: _____
Its: _____

INDEMNITEE

Signature: 
Name: David Bouiza