

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (___)

**DEBTOR’S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS
(I) AUTHORIZING THE DEBTOR (A) TO CONTINUE USE OF ITS EXISTING
CASH MANAGEMENT SYSTEM, BANK ACCOUNTS, CHECKS, CREDIT CARD
PROGRAM, AND BUSINESS FORMS, AND (B) TO PAY RELATED PREPETITION
OBLIGATIONS; (II) WAIVING CERTAIN INVESTMENT AND DEPOSIT
GUIDELINES; AND (III) GRANTING RELATED RELIEF**

Tricida, Inc., as the debtor in possession in the above-captioned chapter 11 case (the “Debtor”), hereby submits this motion (this “Motion”), under sections 105, 345, 363 and 364 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), the Bankruptcy Local Rules (as defined below), and the *Operating Guidelines for Chapter 11 Cases* (the “Guidelines”) promulgated by the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), for entry of interim and final orders, (I) authorizing, but not directing, the Debtor to continue (a) use of its existing cash management system, bank accounts, checks, corporate credit card, and business forms, and (b) payment of related prepetition obligations, (II) waiving certain investment and deposit guidelines, and (III) granting related relief. In support of this Motion, the Debtor submits the *Declaration of Lawrence Perkins in Support of the Debtor’s Chapter 11 Petition and First Day*

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.



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

STATUS OF THE CASE AND JURISDICTION

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

2. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012 (Sleet, C.J.). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2), and the Debtor confirms its consent, pursuant to rules 2015-2 and 9013-1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Local Rules”), to the entry of a final order or judgment by the Court in connection with this Motion if it is determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

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

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

4. The statutory and other bases for the relief requested in this Motion are sections 105, 345, 363 and 364 of the Bankruptcy Code, Bankruptcy Rules 6003 and 6004, and Bankruptcy Local Rule 2015-2.

BACKGROUND OF THE DEBTOR

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

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

RELIEF REQUESTED

7. By this Motion, the Debtor seeks entry of an interim order and a final order (together, the "Proposed Orders"), substantially in the forms attached hereto as Exhibit A and Exhibit B, respectively, granting, among other things, the following relief:

- a. authorizing, but not directing, the Debtor to continue:
 - i. use of its existing cash management system, bank accounts, checks, corporate credit card, and business forms, and;
 - ii. payment of related prepetition obligations;
- b. waiving certain investment and deposit requirements under the Guidelines; and
- c. granting related relief, including scheduling a hearing to consider approval of the Motion on a final basis.

8. In sum, the Debtor seeks authority to pay the Bank Fees and amounts due under the Credit Card Program (each as defined below) that come due in the ordinary course of business, up to a cap of \$50,000, of which \$30,000 is expected to come due and owing within twenty-one (21) days after the Petition Date.

9. The Debtor also requests that the Proposed Orders (a) authorize all applicable banks and other financial institutions (collectively, the “Banks”), when requested by the Debtor, to receive, process, honor, and pay any and all checks, drafts, credit card payments, processing fees, and other forms of payment, including fund transfers on account of the Cash Management System (as defined below) (collectively, the “Payments”), whether such Payments were submitted before, on, or after the Petition Date; *provided* that sufficient funds are on deposit in the applicable accounts to cover such Payments and that any such Bank shall not have any liability to any party for relying on such direction by the Debtor, (b) authorize the Banks to rely on any directions and representations of the Debtor as to which Payments are subject to any orders entered hereon and provide that any such Bank shall not have any liability to any party for relying on such directions or representations by the Debtor, (c) authorize, but not direct, the Debtor to issue new postpetition checks or effect new postpetition fund transfers or other new postpetition Payments to replace any checks, drafts, and other forms of Payment, including fund transfers, which may have been inadvertently dishonored or rejected, and (d) authorize, but not direct, the Debtor to continue in its ordinary course to make Payments and to pay certain fees on account of its Cash Management System.

10. For the reasons set forth herein, the Debtor submits that the relief requested is in the best interests of the Debtor, its estate and creditors, and other parties in interest, and therefore should be granted.

THE DEBTOR'S CASH MANAGEMENT SYSTEM

11. To facilitate the efficient operation of its business, the Debtor uses a system of bank accounts to collect, transfer, and disburse funds generated by its operations (the "Cash Management System"). An illustrative schematic of the Cash Management System is attached as Schedule 1 to the interim order attached hereto as Exhibit A. The Debtor's Controller and senior accounting manager maintain oversight over the Cash Management System and implement cash management controls and procedures for entering, processing, and reconciling funds. The Debtor's officers oversee the approval of all payments from the Cash Management System.

12. The Cash Management System facilitates cash monitoring, forecasting, and reporting and enables the Debtor to maintain control over the administration of four bank accounts (the "Bank Accounts"), three of which are located at Silicon Valley Bank ("SVB") and the other is located at U.S. Bancorp ("U.S. Bank"). In connection with the Cash Management System and the Bank Accounts, the Debtor relies on a Credit Card Program (as defined below) to pay certain work-related expenses and uses a variety of correspondence and business forms, including checks and letterhead (collectively, the "Business Forms").

13. The Cash Management System is comparable to cash management systems used by other similarly sized and situated pharmaceutical companies. Any disruption to the Cash Management System would have an immediate adverse effect on both the Debtor's wind-down operations and implementation of its sale process to the detriment of its estate and stakeholders. Accordingly, to minimize the disruption caused by the filing of this chapter 11 case and to maximize the value of the Debtor's estate, the Debtor requests authorization to continue to use its existing Cash Management System during the pendency of this chapter 11 case, subject to the terms described herein.

I. Bank Accounts and Flow of Funds

14. The Cash Management System is tailored to meet the Debtor's operating needs, thereby enabling the Debtor to control and monitor funds, ensure cash availability and liquidity, fund its operations, and reduce administrative expenses by facilitating the efficient movement of funds and the development of accurate account balances.

15. The following table summarizes the current Bank Accounts. As referenced above, an illustrative schematic of the Cash Management System is attached hereto as Schedule 1 to the interim order.

Bank Accounts	Description of Bank Accounts
<p><u>Investment Account</u> U.S. Bank Acct No. x4395</p>	<p>The Debtor maintains an account used to hold excess funds and debt proceeds (the "<u>Investment Account</u>"). The Investment Account holds debt securities in accordance with the Debtor's corporate investment policy and is overseen by the Board of Directors, the Audit Committee, the CEO and the CFO.³</p> <p>Funds are transferred from the Investment Account to the Operating Account (as defined below), as required, to fund operations.</p> <p>As of the Petition Date, the balance of the Investment Account was approximately \$45,412,679.30.</p>
<p><u>Payroll Account</u> Silicon Valley Bank Acct. No. x9912</p>	<p>The Debtor maintains a zero-balance account for purposes of making disbursement on account of employee benefit obligations (the "<u>Payroll Account</u>"). Benefit obligations are deducted from the Payroll Account by authorized benefits providers. After disbursements are debited from the Payroll Account, funds are automatically transferred</p>

³ The investment policy limits investments to ensure the safety and preservation of its invested funds by observing such criteria as, but not limited to, the following: (a) U.S. Government Treasury and Agency issues; (b) Taxable Securities; (c) Municipal Securities; (d) qualified Repurchase Agreements; (e) rating of A1 or P1; (f) portfolio concentration limits; and (g) maturity restrictions. The Debtor is currently in the process of liquidating all positions in the Investment Account and converting all Investment Account holdings to cash and cash equivalents.

	from the Operating Account (as defined below) to maintain a zero-balance account.
<u>Adequate Assurance Account</u> Silicon Valley Bank Acct. No. x6340	The Debtor maintains an account with a balance of \$0.00 as of the Petition Date, which is used to hold the Adequate Assurance Deposit, as defined in the Utilities Motion ⁴ (the “ <u>Adequate Assurance Account</u> ”).
<u>Operating Account</u> Silicon Valley Bank Acct. No. x4984	The Debtor maintains an account, funded by the Investment Account, to pay operating expenses and payroll (the “ <u>Operating Account</u> ”). Funds are generally transferred manually into the Operating Account on a bi-weekly basis based on a cash forecast of anticipated expenses. As of the Petition Date, the balance of the Operating Account was approximately \$1,735,333.41.

II. Bank Fees

16. The Debtor incurs periodic service charges and other fees in connection with the maintenance of the Cash Management System (the “Bank Fees”). The Bank Fees are paid monthly by automatic deduction from the Bank Accounts. As of the Petition Date, the Debtor believes there are approximately \$9,000 in Bank Fees that may become due and payable within twenty-one (21) days of the Petition Date.

III. The Credit Card Program

17. In the ordinary course of business, the Debtor maintains a company-sponsored credit card program (the “Credit Card Program”) through SVB. The Credit Card Program is used by the Debtor’s executives and certain managers to pay business expenses, such as payment to

⁴ See Debtor’s Motion for Entry of Interim and Final Orders (I) Prohibiting the Debtor’s Utility Providers From Altering, Refusing, or Discontinuing Services, (II) Determining Adequate Assurance of Payment for Postpetition Services, (III) Establishing Procedures for Determining Adequate Assurance; and (IV) Granting Related Relief (the “Utilities Motion”).

vendors that only accept credit cards, office supplies, and travel and hotel expenses pursuant to policies and procedures established by the Debtor. As of the Petition Date, the Debtor maintains five (5) cardholder accounts associated with the Credit Card Program— four (4) accounts are held by executives of the Debtor and the remaining account is a general account held by the Debtor for travel-related expenses. The Debtor maintains oversight over the Credit Card Program and tracks transactions pursuant to established policies. The aggregate credit limit of the Credit Card Program in its entirety is \$800,000.00. The aggregate limit of the five (5) active cardholder accounts is \$230,000.00. The credit limit for each of the accounts held by executives varies, but does not exceed \$50,000.00.⁵

18. On average, the Debtor has incurred a total monthly average spend of approximately \$15,000 to \$30,000 on account of the Credit Card Program. As of the Petition Date, the Debtor estimates that the amount of accrued but unpaid Credit Card Program expenses is approximately \$27,691.00, all of which is expected to become due and payable within twenty-one (21) days of the Petition Date.

19. The Credit Card Program is critical to the Debtor's ability to maintain wind-down operations, because it enables eligible executives to pay for small, critical, time-sensitive expenses (e.g., key business partners who provide critical infrastructure support to the Debtor) incurred in the Debtor's day-to-day business without undue delay. Accordingly, the Debtor seeks authorization, but not direction, to continue to pay amounts incurred on account of the Credit Card Program and to continue the program in the ordinary course of business on a postpetition basis. Discontinuing the use of the Credit Card Program would significantly disrupt the Debtor's business

⁵ The credit limits associated with the cardholder accounts are as follows: (a) one account with a limit of \$10,000; (b) one account with a limit of \$20,000; and (c) two accounts with a limit of \$50,000. The general credit card account (not associated with any individual) maintained for travel expenses has a credit limit of approximately \$100,000.

operations by preventing the Debtor from engaging in ordinary business transactions and having access to an unsecured line of credit used in the ordinary course of business. Further, failure to honor and maintain the Credit Card Program would likely impact employee morale by forcing employees to personally incur business-related expenses pending reimbursement. In addition, discontinuation of the Credit Card Program may halt the Debtor's ability to pay certain critical business partners who accept only credit card payments on a postpetition basis, potentially disrupting the sale process and the wind-down of the business to the detriment of all parties in interest. The Debtor therefore seeks authority to pay accrued prepetition expenses and continue use of its Credit Card Program in the ordinary course.

BASIS FOR RELIEF REQUESTED

I. Maintaining the Existing Cash Management System, Including the Bank Accounts and Credit Card Program, Is Essential to Maximizing the Value of the Debtor's Estate

20. Maintaining the Cash Management System, including the Bank Accounts and Credit Card Program, constitutes an ordinary course and essential business practice of the Debtor. The Cash Management System provides significant benefits to the Debtor including, without limitation, enabling the Debtor to (a) control corporate funds, (b) ensure the maximum availability of funds when and where necessary, and (c) reduce costs and administrative expenses by facilitating the movement of funds and the development of timely and accurate account information.

21. The Debtor requests authority to continue using the Cash Management System in the same manner as before the Petition Date and to implement ordinary course changes to the Cash Management System, such as opening new bank accounts or closing existing Bank Accounts, consistent with past practices. Here, requiring the Debtor to adopt a new cash management system during this chapter 11 case would be expensive, burdensome, and unnecessarily disruptive to the

Debtor's operations. Importantly, the Cash Management System provides the Debtor with the ability to, among other things, quickly assess the location and amount of funds, which, in turn, allows management to track and control such funds and ensure cash availability to satisfy the Debtor's obligations. Maintaining the current Cash Management System will facilitate the Debtor's smooth transition into chapter 11 by, among other things, minimizing delays in paying postpetition debts and eliminating administrative inefficiencies. Additionally, maintaining the current Cash Management System will allow the Debtor's employees to focus on their daily responsibilities as opposed to the non-accretive task of reconstructing the Cash Management System. Authorizing the Debtor to continue operating under the existing Cash Management System is necessary to avoid severe disruptions to the Debtor's wind-down operations and ability to successfully implement a sale, which ultimately would frustrate the Debtor's ability to maximize the value of its estate. Maintaining the existing Cash Management System is therefore in the best interests of the Debtor's creditors and all parties in interest, and, for these reasons, should be approved. Such relief is additionally appropriate under sections 363(c) and 105(a) of the Bankruptcy Code.

22. Section 363(c)(1) of the Bankruptcy Code authorizes a debtor to "use property of the estate in the ordinary course of business without notice or a hearing."⁶ The purpose of this section is to provide a debtor with the flexibility to engage in the ordinary course transactions required to operate its business without unnecessary oversight by its creditors or the court.⁷

⁶ 11 U.S.C. § 363(c)(1).

⁷ See *In re Roth Am., Inc.*, 975 F.2d 949, 952 (3d Cir. 1992) ("Section 363 is designed to strike [a] balance, allowing a business to continue its daily operations without excessive court or creditor oversight and protecting secured creditors and others from dissipation of the estate's assets.") (citations omitted); *In re Vision Metals, Inc.*, 325 B.R. 138, 145 (Bankr. D. Del. 2005) (same).

Included within the purview of section 363(c) of the Bankruptcy Code is a debtor's ability to continue "routine transactions" necessitated by a debtor's cash management system.⁸

23. Additionally, the Court may rely on its equitable powers to grant the relief requested herein. Specifically, section 105(a) of the Bankruptcy Code authorizes the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title."⁹ Under section 105(a) and the doctrine of necessity, the Court may exercise its broad grant of equitable powers to approve this Motion, including the payment of prepetition obligations when such payment is essential to the continued operation of a debtor's business.¹⁰ Therefore, it is within the Court's equitable power under section 105(a) to approve the continued use of the Cash Management System.

24. The Cash Management System, including the Bank Accounts and Credit Card Program, constitutes an ordinary course and essential business practice providing significant benefits to the Debtor. The use of the Cash Management System has historically reduced administrative complexity and created efficiencies by enabling the Debtor to use funds in an optimal and efficient manner. Accordingly, the continued use of the Cash Management System without interruption is vital to the Debtor's wind-down operations and the success of this chapter 11 case.

⁸ See, e.g., *In re Nellson Nutraceutical, Inc.*, 369 B.R. 787, 796 (Bankr. D. Del. 2007) (noting that courts have shown a reluctance to interfere in a debtor's routine, day-to-day business decisions) (citations omitted); *In re Vision Metals*, 325 B.R. at 142 ("[W]hen a chapter 11 debtor in possession continues to operate its business, as permitted by section 1108, no court authorization is necessary for the debtor to enter transactions that fall within the ordinary course of its business.").

⁹ 11 U.S.C. § 105(a).

¹⁰ See, e.g., *In re Just for Feet, Inc.*, 242 B.R. 821, 824-25 (D. Del. 1999) (holding that section 105(a) of the Bankruptcy Code provides a statutory basis for the payment of prepetition claims under the doctrine of necessity and noting that "[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court's power to authorize payment of pre-petition claims when such payment is necessary for the debtor's survival during chapter 11").

25. Further, any disruption of the Cash Management System could have a negative effect on the Debtor's chapter 11 case. New bank accounts would increase operating costs, and the delays that would result from opening new accounts, revising cash management procedures, and redirecting revenues would negatively impact the Debtor's ability to wind-down its operations and run a value-maximizing sale process while pursuing these arrangements. The Debtor would also be subject to undue administrative burden and expense, given that it would need to execute new signatory cards and depository agreements and create an entirely new manual system for issuing checks and paying postpetition obligations, all as would be required by the Guidelines. By contrast, maintaining the current Cash Management System will facilitate the Debtor's transition into chapter 11 by, among other things, minimizing delays in making disbursements, tracking cash transactions, and eliminating administrative inefficiencies.

26. In furtherance of the foregoing, the Debtor requests that all Banks at which the Bank Accounts are maintained be authorized to continue administering such Bank Accounts as they were maintained prepetition, without interruption, and in the ordinary course of business. The Banks should also be authorized to pay any and all checks, drafts, wires, and ACH transfers issued on the Bank Accounts for payment of any claims arising on or after the Petition Date, or before the Petition Date to the extent such claims are approved by an order of the Bankruptcy Court, in each case as long as sufficient funds exist in the relevant accounts.

27. For the foregoing reasons, continuation of the Cash Management System, including the Bank Accounts and Credit Card Program, is necessary, appropriate, and in the best interests of the Debtor and the Debtor's estate, its creditors, and all other parties in interest in this chapter 11 case and should be authorized pursuant to sections 363(c)(1) and 105(a) of the Bankruptcy Code.

II. Cause Exists to Waive Certain Deposit Requirements Under the Guidelines and Section 345(b) of the Bankruptcy Code

28. To the extent the Cash Management System does not strictly comply with the Guidelines and section 345 of the Bankruptcy Code, the Debtor seeks a waiver of the deposit requirements set forth therein. Section 345 of the Bankruptcy Code governs a debtor's deposit and investment of cash during a chapter 11 case and authorizes deposits or investments of money as "will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment."¹¹ For deposits or investments that are not "insured or guaranteed by the United States or by a department, agency, or instrumentality of the United States or backed by the full faith and credit of the United States," section 345(b) requires the estate to obtain from the entity with which the money is deposited or invested a bond in favor of the United States and secured by the undertaking of an adequate corporate surety, unless the court orders for "cause" otherwise.¹² In addition, the Guidelines require, among other things, chapter 11 debtors to deposit all estate funds in an account with an Authorized Depository that agrees to comply with the U.S. Trustee's requirements.

29. Courts may waive compliance with section 345(b) of the Bankruptcy Code and the Guidelines for "cause." In evaluating whether "cause" exists, courts have considered a number of factors, such as: (a) the sophistication of the debtor's business, (b) the size of the debtor's business operations, (c) the amount of the investments involved, (d) the bank rating (Moody's and Standard & Poor's) of the financial institution where the debtor-in-possession funds are held, (e) the complexity of the case, (f) the safeguards in place within the debtor's own business for ensuring the safety of the funds, (g) the debtor's ability to reorganize in the face of a failure of one or more

¹¹ 11 U.S.C. § 345(a).

¹² *Id.* § 345(b).

of the financial institutions, (h) the benefit to the debtor, (i) the harm, if any, to the estate, and (j) the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.¹³

30. Here, "cause" exists because each Bank having custody over the Bank Accounts is a stable financial institution that is insured by the FDIC, and all of the funds that will be held in the Debtor's Bank Accounts will be in accounts with Banks that are Authorized Depositories under the Guidelines.

31. Moreover, with respect to the investments maintained in the Investment Account, the Debtor maintains a corporate investment policy (the "Investment Policy"), which establishes strict guidelines to govern the investment of the Debtor's corporate cash that is not required for near term financial obligations. The Investment Account holds cash and investments in accordance with the Investment Policy. Under the Investment Policy, the Debtor invests certain of its cash in securities or other financial products that have a credit rating of A1 (Moody's) or P1 (Standard & Poor's). If a security has no short term rating, the Investment Policy permits investment only if the security has a long term rating that is now lower than A3/A- or an equivalent rating. In addition, the Debtor permits its corporate cash to be invested only in certain categories of investments, which it deems secure, including U.S. Government Treasuries (a class of security which itself complies with section 345 of the Bankruptcy Code), commercial paper, bankers acceptances, certificates of deposit, medium term notes, corporate bonds, asset backed securities, various municipal securities, and repurchase agreements with member banks of the Federal Reserve System and primary dealers limited to U.S. Government securities. Additionally, the Debtor maintains a myriad of other safeguards in its Investment Policy, including, but not limited

¹³ See *In re Serv. Merch. Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999).

to, mandated maturity restrictions, concentration limits, mandatory review of any securities that are downgraded in credit rating, and quarterly reporting requirements to the Debtor's audit committee.

32. Regardless, the Debtor has commenced liquidating all non-money market fund holdings in the Investment Account and placing the entirety of those cash proceeds into a government money market fund managed to meet the requirements of Rule 2A-7 under the Investment Company Act of 1940. The money market fund invests only in government securities, repurchase agreements collateralized solely by government securities and/or cash, and cash.

33. Given the Debtor's strict Investment Policy, the undertaking to liquidate all non-money market fund holdings in the Investment Account and that all the Bank Accounts are maintained at financial institutions that are counterparty to an Authorized Depository Agreement, the Debtor submits that its funds will not be sufficiently at risk to necessitate strict adherence to the requirements of section 345(b). Moreover, a bond secured by undertaking of a corporate surety would likely be unduly expensive, assuming such a bond were available, and could offset much of the financial gain derived from investing in the investment account. Further, in light of the structure of the overall Cash Management System and the path of this chapter 11 case, it would be especially disruptive, unnecessary, and wasteful to require the posting of a bond to the extent that the balances of the Bank Accounts exceed applicable insurance limits at a given time.

34. Accordingly, the Court should authorize the Debtor to continue to deposit funds in the Bank Accounts and, to the extent that the requirements of section 345(b) are inconsistent with these practices, the Debtor requests a 30-day period following entry of a final order to (a) come into compliance with its obligations under section 345(b) of the Bankruptcy Code, (b) otherwise reach agreement with the U.S. Trustee, without prejudice to the Debtor's right to seek an extension

of such period, or (c) return to the Court to argue that cause exists to waive the requirements of section 345(b) of the Bankruptcy Code and the Guidelines to the extent such requirements remain inconsistent with the Debtor's cash management practices.

III. Continued Use of the Credit Card Program Is Appropriate and Warranted

35. Under section 364(a) of the Bankruptcy Code, where the trustee or debtor in possession is authorized to operate the business of the debtor under section 1108 of the Bankruptcy Code, they "may obtain unsecured credit and incur unsecured debt in the ordinary course of business allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense." 11 U.S.C. § 364(a). As discussed above, the Debtor utilizes the Corporate Credit Cards Program to extend credit for the Debtor's benefit in connection with business expenses. Consistent with its prepetition, ordinary course practices and, as permitted under section 363(c) of the Bankruptcy Code, the Debtor wishes to continue to utilize the Corporate Credit Card Program on a postpetition basis. The Debtor requests that the Court grant administrative expense status to postpetition credit extended by SVB and permit the Debtor to satisfy the prepetition amounts owed to SVB so that the Debtor may continue to utilize this source of unsecured credit and maintain, without disruption, this vital component of the Cash Management System.

36. Granting administrative expense status to postpetition extensions of credit by SVB is permitted under sections 364(a) and 503(b) of the Bankruptcy Code and, accordingly, the Debtor requests that it be granted. In addition, ample authority exists to support authorizing the payment of the prepetition amounts owed to SVB. The Corporate Credit Card Program is an integral part of the Cash Management System, which the Debtor relies upon for the continued operation of its business. It is likely that, given the prepetition credit exposure, SVB would be unwilling to continue to advance amounts to the Debtor postpetition absent the relief set forth in this Motion. It would be extremely difficult, disruptive, and time-consuming to replace SVB, and such

difficulties would be compounded if the Debtor was required to replace SVB on an expedited basis, particularly in the opening days of this chapter 11 case—a critical time for the Debtor. Should the Debtor lose the ability to use the Corporate Credit Card Program, such loss could seriously harm its business at the outset of this chapter 11 case. Based on the foregoing, a sound business purpose exists to maintain the Corporate Credit Card Program postpetition. Doing so is consistent with the Debtor's fiduciary duty to preserve the value of its estate, and satisfying the SVB prepetition claims is necessary to ensure SVB's postpetition provision of credit. Given the critical nature of the SVB relationship, the Debtor submits that the relief requested with respect to the Corporate Credit Card Program and prepetition claims is warranted and necessary.

IV. The Court Should Authorize the Debtor to Pay Prepetition Bank Fees

37. The Debtor's inability to pay certain prepetition or postpetition Bank Fees in the ordinary course could disrupt the Cash Management System and harm the Debtor's estate, so out of an abundance of caution, the Debtor seeks approval to pay any such Bank Fees. In the thirty days prior to the Petition Date, the Debtor paid Bank Fees in the approximate total amount of \$9,000. Moreover, because SVB and U.S. Bank likely have setoff rights for the Bank Fees, payment of any prepetition Bank Fees should not alter the rights of any unsecured creditors in this chapter 11 case. Accordingly, by this Motion, the Debtor seeks authority, pursuant to sections 105(a) and 363(b) of the Bankruptcy Code and Bankruptcy Rules 6003 and 6004, to pay any prepetition or postpetition Bank Fees necessary to maintain the Cash Management System.

V. The Court Should Authorize the Debtor to Continue to Use Its Existing Business Forms and Checks

38. The Debtor also requests permission to use its existing Business Forms and stationary. Local Rule 2015-2(a) provides:

Where the debtor uses pre-printed checks, upon motion of the debtor, the Court may, without notice and hearing, permit the debtor to use its existing

checks without the designation “Debtor-in-Possession” and use its existing bank accounts. However, once the debtor’s existing checks have been used, the debtor shall, when reordering checks, require the designation “Debtor-in-Possession” and the corresponding bankruptcy number on all such checks.¹⁴

39. To minimize expenses to the estate, the Debtor seeks authorization to continue using the Business Forms existing immediately prior to the Petition Date, without reference to the Debtor’s status as a debtor in possession. Modifying existing Business Forms would be burdensome and expensive. The Debtor does not believe modifying its Business Forms would benefit those dealing with the Debtor, most of whom will be aware of the commencement of this chapter 11 case and the Debtor’s status as a debtor in possession. However, once the Debtor’s current check stock is depleted, the Debtor will ensure all new checks ordered or printed by the Debtor indicate its status as debtor in possession and include the bankruptcy case number.

THE REQUIREMENTS OF BANKRUPTCY RULE 6003 ARE SATISFIED

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

¹⁴ Del. Bankr. L.R. 2015-2(a).

REQUEST FOR BANKRUPTCY RULE 6004 WAIVERS

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

RESERVATION OF RIGHTS

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

NOTICE

43. Notice of this Motion has been provided by email, facsimile, or overnight courier to: (a) the U.S. Trustee; (b) the holders of the 20 largest unsecured claims against the Debtor;

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

[Remainder of page intentionally left blank.]

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

Dated: January 11, 2023
Wilmington, Delaware

/s/ Sean M. Beach

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Proposed Attorneys for Debtor, Tricida, Inc.

Exhibit A

Proposed Interim Order

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (___)

Re: Docket No. ___

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR
(A) TO CONTINUE USE OF ITS EXISTING
CASH MANAGEMENT SYSTEM, BANK ACCOUNTS,
CHECKS, CREDIT CARD PROGRAM, AND BUSINESS
FORMS, AND (B) TO PAY RELATED PREPETITION
OBLIGATIONS; (II) WAIVING CERTAIN INVESTMENT
AND DEPOSIT GUIDELINES; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the "Motion")² of Tricida, Inc., as debtor and debtor in possession in the above-captioned chapter 11 case (the "Debtor"), for entry of an interim order (I) authorizing, but not directing, the Debtor to continue (a) use of its existing cash management system, bank accounts, checks, corporate credit card, and business forms, and (b) payment of related prepetition obligations, (II) waiving certain investment and deposit guidelines, and (III) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion 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 otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

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

IT IS HEREBY ORDERED THAT:

1. The relief requested in the Motion is GRANTED on an interim basis as set forth herein.

2. The final hearing on the Motion shall be held on _____, 2023 at _____ (prevailing Eastern Time) (the "Final Hearing"). Any objections or responses to entry of the proposed final order shall be filed on or before 4:00 p.m. (prevailing Eastern Time) on _____, 2023. In the event no objections to entry of a final order on the Motion are timely received, this Court may enter a final order without need for the Final Hearing.

3. The Debtor is authorized, but not directed, to (a) designate, maintain, and continue to use its Cash Management System and any or all of its existing Bank Accounts in the names and with the account numbers existing immediately before the Petition Date, (b) deposit funds in and withdraw funds from such accounts by all usual means, including checks, wire transfers, ACH transfer, and other debits, (c) maintain the Credit Card Program and to pay all balances outstanding, up to a cap of \$50,000, whether arising before or after the Petition Date, in the ordinary course of

business, (d) pay prepetition and ordinary course Bank Fees for the Bank Accounts, and (e) treat its prepetition Bank Accounts for all purposes as debtor-in-possession accounts.

4. The Debtor is authorized to continue using its existing Business Forms without alteration; *provided, however*, that once the Debtor's existing check stock has been used, the Debtor shall, when reordering checks, require the designation "Debtor in Possession" and the bankruptcy case number on all checks; *provided further* that with respect to checks that the Debtor or its agents print themselves, the Debtor shall begin printing the "Debtor in Possession" legend and the bankruptcy case number on such items within ten (10) business days of the date of entry of this interim order.

5. The Debtor is authorized to open any new bank accounts or close its existing Bank Accounts as it may deem necessary and appropriate in its sole discretion and make ordinary-course changes to the Bank Accounts in a manner consistent with prepetition practices without further order of the Court; *provided, however*, that the Debtor shall give notice of the opening or closing of any such bank account within fifteen (15) days to (a) the U.S. Trustee and (b) counsel to any statutory committee appointed in this chapter 11 case, and as consistent with this interim order. Any new bank account opened by the Debtor shall be established at an institution that is a party to a Uniform Depository Agreement with the U.S. Trustee or is willing to immediately execute a Uniform Depository Agreement.

6. The Banks with which the Debtor maintains Bank Accounts as of the Petition Date are authorized and directed to continue to maintain, service, and administer the Bank Accounts without interruption and in the usual and ordinary course and to receive, process, honor, and pay all checks presented for payment and honor all fund transfer requests made by the Debtor related thereto, to the extent that sufficient funds are on deposit in those accounts; *provided, however*, that

nothing contained herein shall authorize any Bank to honor any check, draft, wire, or other transfer issued or dated prior the Petition Date, except as otherwise provided by order of this Court; *provided further* that any financial institution is authorized to accept and rely on all representations made by the Debtor with respect to which checks, drafts, wires, or ACH transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or ACH transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

7. The Debtor shall maintain accurate records of all transfers into and out of the Bank Accounts so that all postpetition transfers and transactions shall be adequately and promptly documented in, and readily ascertainable from, its books and records, to the same extent maintained by the Debtor before the Petition Date.

8. The requirement in the Guidelines that the Debtor establish a specific new bank account for tax payments is waived. The Debtor is granted an extension of the time to comply with the requirements of 11 U.S.C. § 345(b) until a final order with respect to the Motion is entered, without prejudice to the Debtor's right to seek additional time through further order of this Court.

9. For all Banks at which the Debtor maintains Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee, within five (5) business days of the date of entry of this interim order, the Debtor shall (a) contact each such Bank, (b) provide each such Bank with the Debtor's employer identification number, and (c) identify each of its Bank Accounts held at such Banks as being held by a debtor in possession in a chapter 11 case.

10. To the extent applicable, for Banks at which the Debtor holds Bank Accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtor shall use its

good-faith effort to cause such Banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this interim order.

11. The Debtor is authorized, but not directed, to (a) obtain credit through its use of the Credit Card Program on an uninterrupted and ongoing basis pursuant to section 364 of the Bankruptcy Code and continue the Credit Card Program, subject to any terms and conditions under the applicable servicing agreements, on a postpetition basis consistent with its past practices.

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

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

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

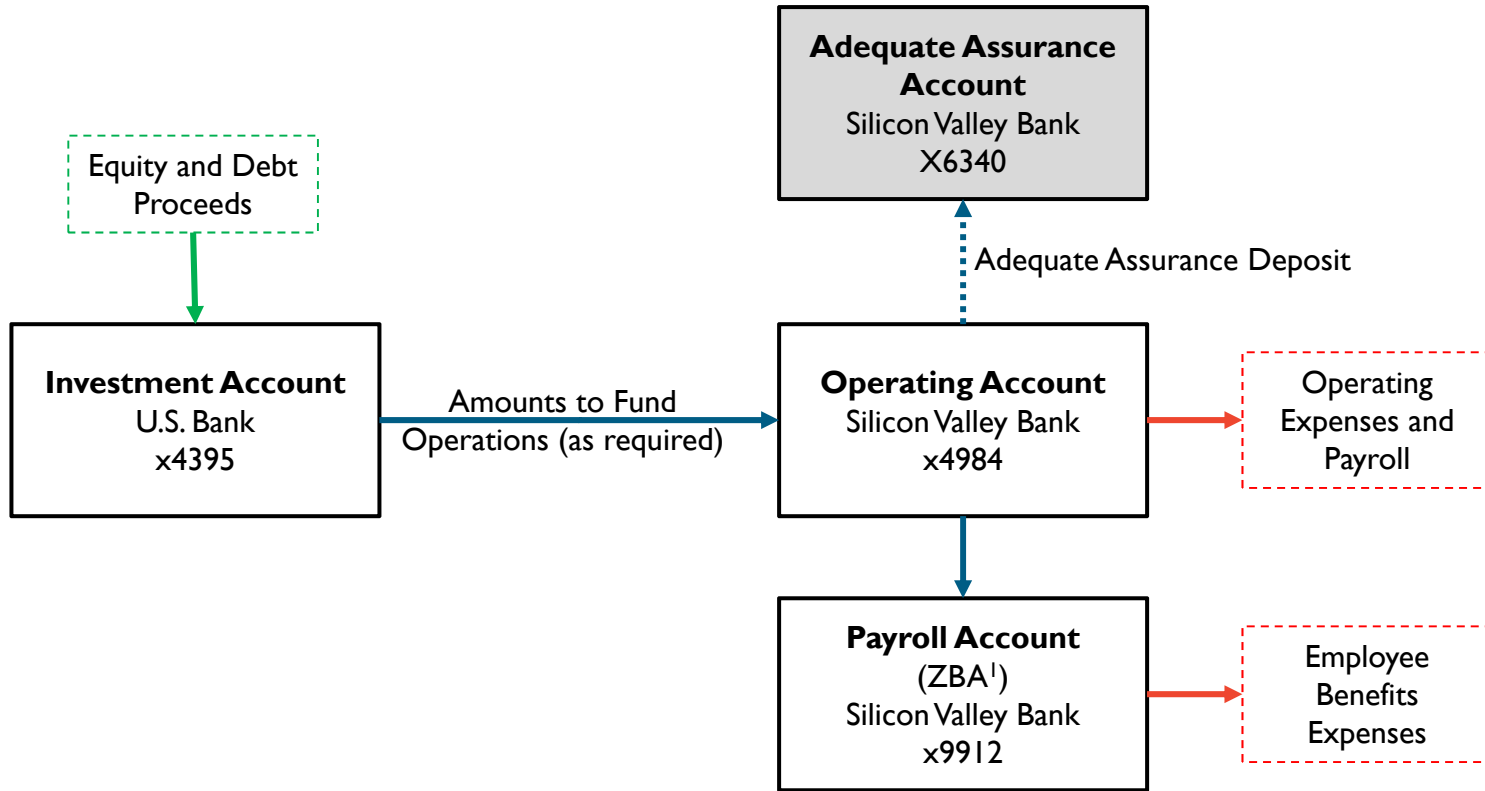
15. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this interim order are immediately effective and enforceable upon its entry.

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

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

Schedule 1

Tricida Cash Management System – Flow of Funds Schematic



Key:

- Transfer within Cash Management System
- ⋯→ Proposed transfer within Cash Management System
- Cash receipt from non-debtor party
- Disbursement to non-debtor party
- Active Account
- Inactive Account

Notes:

- I. ZBA = zero-balance account.

Exhibit B

Proposed Final Order

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

In re:

TRICIDA, INC.,¹

Debtor.

Chapter 11

Case No. 23-10024 (___)

Re: Docket No. ___

**FINAL ORDER (I) AUTHORIZING THE DEBTOR
(A) TO CONTINUE USE OF ITS EXISTING
CASH MANAGEMENT SYSTEM, BANK ACCOUNTS,
CHECKS, CREDIT CARD PROGRAM, AND BUSINESS
FORMS, AND (B) TO PAY RELATED PREPETITION
OBLIGATIONS; (II) WAIVING CERTAIN INVESTMENT
AND DEPOSIT GUIDELINES; AND (III) GRANTING RELATED RELIEF**

Upon consideration of the motion (the “Motion”)² of Tricida, Inc., as debtor and debtor in possession in the above-captioned chapter 11 case (the “Debtor”), for entry of a final order (I) authorizing, but not directing, the Debtor to continue (a) use of its existing cash management system, bank accounts, checks, corporate credit card, and business forms, and (b) payment of related prepetition obligations, (II) waiving certain investment and deposit guidelines, and (III) granting related relief, each as more fully set forth in the Motion; and upon consideration of the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and this matter being a core proceeding within the meaning of 28 U.S.C. § 157(b)(2); and the Court being able to issue a final order consistent with Article III of the United States Constitution; and venue of this proceeding and the Motion 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 otherwise defined herein shall have the respective meanings ascribed to them in the Motion.

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

1. The relief requested in the Motion is GRANTED on a final basis as set forth herein.
2. The Debtor is authorized, but not directed, to (a) designate, maintain, and continue to use its Cash Management System and any or all of its existing Bank Accounts in the names and with the account numbers existing immediately before the Petition Date; (b) deposit funds in and withdraw funds from such accounts by all usual means, including checks, wire transfers, ACH transfer, and other debits; (c) maintain the Credit Card Program and to pay all balances outstanding, up to a cap of \$50,000, whether arising before or after the Petition Date, in the ordinary course of business, (d) pay prepetition and ordinary course Bank Fees for the Bank Accounts, and (e) treat its prepetition Bank Accounts for all purposes as debtor-in-possession accounts.
3. The Debtor is authorized to continue using its existing Business Forms without alteration; *provided, however*, that once the Debtor's existing check stock has been used, the Debtor shall, when reordering checks, require the designation "Debtor in Possession" and the bankruptcy case number on all checks; *provided further* that with respect to checks that the Debtor or its agents print themselves, the Debtor print the "Debtor in Possession" legend and the bankruptcy case number on such items.

4. The Debtor is authorized to open any new bank accounts or close its existing Bank Accounts as it may deem necessary and appropriate in its sole discretion and make ordinary-course changes to the Bank Accounts in a manner consistent with prepetition practices without further order of the Court; *provided, however*, that the Debtor shall give notice of the opening or closing of any such bank account within fifteen (15) days to (a) the U.S. Trustee and (b) counsel to any statutory committee appointed in this chapter 11 case, and as consistent with this final order. Any new bank account opened by the Debtor shall be established at an institution that is a party to a Uniform Depository Agreement with the U.S. Trustee or is willing to immediately execute a Uniform Depository Agreement.

5. The Banks with which the Debtor maintains Bank Accounts as of the Petition Date are authorized and directed to continue to maintain, service, and administer the Bank Accounts without interruption and in the usual and ordinary course and to receive, process, honor, and pay all checks presented for payment and honor all fund transfer requests made by the Debtor related thereto, to the extent that sufficient funds are on deposit in those accounts; *provided, however*, that nothing contained herein shall authorize any Bank to honor any check, draft, wire, or other transfer issued or dated prior the Petition Date, except as otherwise provided by order of this Court; *provided further* that any financial institution is authorized to accept and rely on all representations made by the Debtor with respect to which checks, drafts, wires, or ACH transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or ACH transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

6. The Debtor shall maintain accurate records of all transfers into and out of the Bank Accounts so that all postpetition transfers and transactions shall be adequately and promptly

documented in, and readily ascertainable from, its books and records, to the same extent maintained by the Debtor before the Petition Date.

7. The requirement in the Guidelines that the Debtor establish a specific new bank account for tax payments is waived. The Debtor shall have thirty (30) days (or such additional time as the U.S. Trustee may agree to or this Court may order) from the date of the entry of this final order within which to either comply with section 345(b) of the Bankruptcy Code or to make such other arrangements as agreed to by the U.S. Trustee; *provided, however*, that such extension is without prejudice to the Debtor's right to request a further extension or waiver of the requirements of section 345(b) of the Bankruptcy Code.

8. The Debtor is authorized, but not directed, to (a) obtain credit through its use of the Credit Card Program on an uninterrupted and ongoing basis pursuant to section 364 of the Bankruptcy Code and continue the Credit Card Program, subject to any terms and conditions under the applicable servicing agreements, on a postpetition basis consistent with its past practices.

9. The Debtor is authorized, but not directed, to issue new postpetition checks, or effect new electronic funds transfers, on account of prepetition obligations and claims as set forth in an order of this Court, and to replace any prepetition checks or electronic fund transfer requests that may be lost or dishonored or rejected as a result of the commencement of this chapter 11 case.

10. Nothing in this final order constitutes (a) an admission as to the validity of any claim against the Debtor; (b) a waiver of the Debtor's or any party in interest's rights to dispute the amount of, basis for, or validity of any claim or interest under applicable law or nonbankruptcy law; (c) a promise or requirement to pay any claim; (d) a waiver of the Debtor's or any other party in interest's rights under the Bankruptcy Code or any other applicable law; or (e) a request for or granting of approval for assumption of any agreement, contract, program, policy, or lease under

section 365 of the Bankruptcy Code. Any payment made pursuant to this order is not intended to be nor should it be construed as an admission as to the validity of any claim or a waiver of the Debtor's rights to subsequently dispute such claim.

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

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

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

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