

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

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In re	:	Chapter 11
	:	
INSYS THERAPEUTICS, INC., et al.,	:	Case No. 19-_____ ()
	:	
Debtors.¹	:	Joint Administration Requested
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MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a) AND 366 REQUESTING ENTRY OF AN ORDER (I) APPROVING DEBTORS’ PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT TO UTILITY PROVIDERS, (II) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES, AND (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICE

Insys Therapeutics, Inc. (“**Insys**”) and its affiliated debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Relief Requested

1. By this Motion, pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors request entry of an Order (a) approving the Debtors’ proposed form of adequate assurance of payment to Utility Providers (as defined below), (b) establishing procedures for determining adequate assurance of payment for future Utility Services (as defined below), and (c) prohibiting Utility Providers from altering, refusing, or

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors’ mailing address is 1333 South Spectrum Blvd #100, Chandler, Arizona 85286.

discontinuing Utility Service on account of the commencement of the Chapter 11 Cases or outstanding prepetition invoices.

2. A proposed form of order granting the relief requested herein on an interim basis, is annexed hereto as **Exhibit A** (the “**Proposed Interim Order**”).

Jurisdiction

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Pursuant to Rule 9013–1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

5. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases.

6. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

7. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and the Debtors' business and capital structure is set forth in the declaration of Andrew G. Long, the Debtors' Chief Executive Officer, filed contemporaneously herewith, in support of the Debtors' chapter 11 petitions and related first day relief (the "**Long Declaration**").²

The Debtors' Utilities

A. Utility Providers

8. In the ordinary course of business, the Debtors incur expenses for utilities, including electricity, natural gas, water, sewage, information technology, and waste. Approximately thirteen utility providers (collectively, the "**Utility Providers**") provide services to the Debtors directly or indirectly through a landlord (the "**Utility Services**"). A non-exhaustive list of the Debtors' Utility Providers that provide Utility Services to the Debtors as of the Petition Date (the "**Utility Service List**") and the proposed Adequate Assurance Deposit (as defined herein) for each such Utility Provider is attached hereto as **Exhibit B**.³

9. On average, the Debtors spend approximately \$72,000 each month on utility costs and estimate that, as of the Petition Date, approximately \$27,000 of utility costs are outstanding and will come due during the period between the Petition Date and the final hearing on the Motion.

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

³ The Debtors reserve the right to amend or supplement the Utility Service List to include any Utility Provider omitted. The inclusion of any entity on the Utility Service List is not an admission that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future.

10. The Debtors rely on the Utility Providers to provide Utility Services to their business offices, manufacturing, and research and development facilities located in Arizona and Texas and to provide necessary support to their employees, vendors, and customers. Preserving the Utility Services on an uninterrupted basis is essential to the Debtors' ongoing operations and restructuring and sale process. Indeed, any interruption in Utility Services—even for a brief period of time—would seriously disrupt the Debtors' ability to continue operations. This disruption would adversely impact, among other things, the Debtors' sale efforts, manufacturing and testing of pharmaceutical products, and research and development. Any such interruption would negatively impact the Debtors' restructuring efforts to the detriment of all parties in interest. Therefore, it is critical that Utility Services continue uninterrupted during these Chapter 11 Cases.

B. Proposed Adequate Assurance

11. The Debtors intend to pay all postpetition obligations owed to the Utility Providers in a timely manner and expect that cash flows from operations and cash on hand will be sufficient to do so.

12. Furthermore, the Debtors propose to deposit cash into a segregated bank account (the “**Adequate Assurance Account**”) in an amount equal to the cost of two weeks' worth of the average utility cost for each Utility Provider, based on the Debtors' average usage for the fiscal year ending 2018 (collectively, the “**Adequate Assurance Deposit**”). The Adequate Assurance Deposit may be increased or decreased by the Debtors if the Debtors terminate services with any of the Utility Providers, make other arrangements with certain Utility Providers for adequate assurance of payment, determine that an entity listed on the Utility Service List is not a utility company as defined by section 366 of the Bankruptcy Code, or supplement the Utility Service List to include additional Utility Providers. As of the Petition Date, the Debtors estimate

that the total amount of the Adequate Assurance Deposit will be \$36,000. Such Adequate Assurance Deposit will further assure the Utility Providers of payment for postpetition services.

13. Although the Adequate Assurance Deposit will be placed in a single bank account, each Utility Provider's portion of the Adequate Assurance Deposit set forth in **Exhibit B** will be separately allocated for, and payable to, such Utility Provider.

14. The Debtors submit that the Adequate Assurance Deposit, in conjunction with cash flow from operations and cash on hand, demonstrates the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "**Proposed Adequate Assurance**") and constitutes sufficient adequate assurance to the Utility Providers.

C. Proposed Adequate Assurance Procedures

15. The Debtors intend to implement the Proposed Adequate Assurance utilizing the procedures described below (the "**Adequate Assurance Procedures**"):⁴

- a. The Debtors will mail a copy of this Motion and the Proposed Interim Order (upon entry, the "**Interim Utilities Order**") to each Utility Provider within two (2) business days after entry of the Interim Utilities Order.
- b. The Debtors will deposit the Adequate Assurance Deposit in the aggregate amount of \$36,000 in the Adequate Assurance Account within twenty (20) calendar days of entry of the Interim Utilities Order; provided that, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, upon agreement with the Utility Provider, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account for such Utility Provider by such amount.
- c. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors upon the earlier of (i) the Debtors having satisfied in full all postpetition obligations due and owing to the applicable Utility Provider, (ii) the occurrence of the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases, and (iii) the Debtors'

⁴ To the extent that there are any discrepancies between this Motion and the Order, the Order shall control in all respects.

termination of Utility Services with the Utility Provider, if not applied earlier.⁵

- d. Any Utility Provider desiring additional assurances of payment in the form of deposits or prepayments or otherwise must serve a request for additional assurance (an “**Additional Assurance Request**”) so that it is received by the following parties at the following addresses: (i) Insys Therapeutics, Inc., 1333 South Spectrum Blvd #100, Chandler, Arizona 85286 (Attn.: Andrew G. Long); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn.: Candace M. Arthur and Alyssa Kutner); and (iii) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the “**Adequate Assurance Notice Parties**”).
- e. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the type of Utility Services provided to the Debtors, any account numbers, and the location for which Utility Services are provided to the Debtors, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s) of such Utility Provider, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Any Additional Assurance Request must be made and actually received by all of the Adequate Assurance Notice Parties. If a Utility Provider fails to serve an Additional Assurance Request on the Adequate Assurance Notice Parties, such Utility Provider shall be: (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse service to, or discriminate against, the Debtors on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.
- g. Upon the Adequate Assurance Notice Parties’ receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request.
- h. The Debtors may, in their sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments, or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.

⁵ In the event that a Utility Provider has more than one account with the Debtors, then, upon termination of an account by the Debtors, only that portion of the Adequate Assurance Deposit attributable to such terminated account will be returned.

- i. If the Debtors determine that the Additional Assurance Request is not reasonable and they are not able to reach a resolution with the Utility Provider, the Debtors will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code, and such Determination Hearing shall be scheduled for the next omnibus hearing date for which shortened notice is not required or such later hearing date as may be agreed to between the Debtors and such Utility Provider.
- j. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider that made such Additional Assurance Request shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services, and/or any objections to the Proposed Adequate Assurance.
- k. Absent compliance with the procedures set forth in the Motion and the Proposed Order, the Debtors’ Utility Providers are prohibited from discontinuing, altering, or refusing service on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

D. Subsequent Modifications of Utility Services List

16. The Debtors have made an extensive and good faith effort to identify all of their Utility Providers and include them on the Utility Service List. Nonetheless, certain Utility Providers may not be listed on the Utility Service List. To the extent that the Debtors subsequently identify additional Utility Providers, the Debtors seek authority, in their sole discretion, to amend the Utility Service List to add or remove any Utility Provider before or after entry of an order by the Court granting this Motion. Any such amended Utility Service List shall be filed with the Court. The Debtors further request that such order of the Court be deemed to apply to any such subsequently identified Utility Provider, regardless of when such Utility Provider is added to the Utility Service List. The Debtors will serve a copy of this Motion and any order hereon on any such Utility Provider subsequently added to the Utility Service List and deposit two weeks’ worth

of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider.

17. The Debtors propose that any Utility Provider subsequently added to the Utility Service List that objects to the entry of an order granting the relief requested herein shall be required to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

18. The Debtors request that all Utility Providers, including Utility Providers subsequently added to the Utility Service List, be prohibited from altering, refusing, or discontinuing utility services to the Debtors absent further order of the Court.

The Relief Requested Should be Granted

19. The relief requested will ensure the continuation of the Debtors' business during the pendency of these Chapter 11 Cases. The Debtors believe that the Utility Providers will be adequately assured of payment for future services by the relief requested herein, without which the Debtors could be forced to address multiple requests by Utility Providers in a disorganized manner when the Debtors' efforts should be more productively focused on continuing operations and maximizing value for their estates and creditors.

A. The Proposed Adequate Assurance Deposit is Sufficient.

20. Congress enacted section 366 of the Bankruptcy Code for the dual purpose of protecting debtors from utility service cutoffs upon a bankruptcy filing and providing utility companies with adequate assurance that the debtor will be able to pay for postpetition services. *See* H.R. Rep. No. 95-595 at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Accordingly, section 366(c) of the Bankruptcy Code provides that during the first thirty days of a chapter 11 case, a utility company may not alter, refuse, or discontinue services to a debtor solely

because of any unpaid prepetition amounts. After the first thirty days, however, the utility company may alter, refuse, or discontinue service if a debtor does not provide “adequate assurance” of payment for postpetition utility services in satisfactory form.

21. Section 366(c)(1)(A) of the Bankruptcy Code defines “assurance of payment” to mean several enumerated forms of security (*e.g.*, a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or other mutually agreed upon security), while section 366(c)(1)(B) expressly excludes from such definition an administrative expense priority for a utility’s claim. In addition, section 366(c)(3)(B) of the Bankruptcy Code provides a list of factors that courts are *not* to consider when evaluating whether a proposed adequate assurance payment is in fact adequate. The factors not to be considered are: (i) the absence of security before the petition date; (ii) a debtor’s history of timely payments; and (iii) the availability of administrative expense priority.

22. Although section 366(c) of the Bankruptcy Code clarifies what does and does not constitute “assurance of payment” and what can be considered in determining whether such assurance is adequate, Congress, in enacting that section, did not divest this Court of its power to determine what amount, if any, is necessary to provide adequate assurance of payment to a Utility Provider. *See* 11 U.S.C. § 366(c)(3)(A). Specifically, section 366(c)(3)(A) states that, “[o]n request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment . . .” Thus, there is nothing to prevent a court from deciding that, on the facts of the case before it, the amount required of the debtor to provide adequate assurance of payment to a utility company should be nominal or even zero. *See, e.g., In re Pac-West Telecomm., Inc.*, Case No. 07-10562 (BLS) (Bankr. D. Del. May 2, 2007) [D.I. No.

39] (approving adequate assurance in the form of a one-time supplemental prepayment to each utility company equal to the prorated amount of one week’s charges).

23. Although section 366(c)(2) of the Bankruptcy Code allows a utility provider to take action if a debtor fails to provide adequate assurance of payment that is “satisfactory” to the utility, it is the Court and not the utility provider that is the ultimate arbiter of what is “satisfactory” assurance after taking into consideration the needs of the debtor as well as the utility. *See, e.g., In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming the bankruptcy court’s decision that no utility deposit was necessary if such deposit would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already [were] reasonably protected”); *see In re Heard*, 84 B.R. 454, 459 (Bankr. W.D. Tex. 1987) (holding that because the utility had not had any difficulty with the debtors during 14 years of service, “the utility need[ed] no adequate assurance”). Indeed, section 366 only requires that assurance of payment be “adequate” and courts have not construed section 366 to require an absolute guarantee of a debtor’s ability to pay. *See, e.g., In re Caldor, Inc. – N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) (“Section 366(b) requires the Bankruptcy Court to determine whether the circumstances are sufficient to provide a utility with ‘adequate assurance’ of payment. The statute does not require an ‘absolute guarantee of payment.’”) (citation omitted), *aff’d sub nom. Va. Elec. & Power Co. v. Caldor, Inc. – N.Y.*, 117 F.3d 646 (2d Cir. 1997); *In re New Rochelle Tel. Corp.*, 397 B.R. 633, 639 (Bankr. E.D.N.Y. 2008) (“Adequate assurance, however, is not a guarantee of payment; rather, it is intended to guard against the utility assuming an unreasonable risk of non-payment.”) (citation omitted).

24. Furthermore, courts consider what is “need[ed] of the utility for assurance, and . . . require that the debtor supply *no more than that*, since the debtor almost perforce has a

conflicting need to conserve scarce financial resources.” *Va. Elec. & Power*, 117 F.3d at 650 (emphasis in original); *see also In re Penn Central*, 467 F.2d 100, 103–04. Indeed, “[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full.” *In re The Great Atl. & Pac. Tea Co.*, Case No. 11-CV-1338 (CS), 2011 WL 5546954, at *5 (S.D.N.Y. Nov. 14, 2011) (citations omitted).

25. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Debtors have a good historical payment record with the Utility Providers. To the best of the Debtors’ knowledge, there are no material defaults or arrearages of any significance for the Debtors’ undisputed invoices for prepetition Utility Services, other than payment interruptions that may be caused by the commencement of these Chapter 11 Cases. Accordingly, the Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provide assurance of the Debtors’ payment of their future obligations to the Utility Providers. Moreover, termination of the Utility Services could result in the Debtors’ inability to operate their business to the detriment of all stakeholders. *See In re Pilgrim’s Pride Corp.*, No. 08-45664 (DML), 2009 WL 7313309, at *2 (Bankr. N.D. Tex. Jan 4, 2009) (“The consequences of an unexpected termination of utility service to [the debtors] could be catastrophic.”); *In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321-22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it.”).

26. In light of the foregoing, the Debtors respectfully submit that the Proposed Adequate Assurance is sufficient to assure the Utility Providers of future payment.

B. The Adequate Assurance Procedures Are Reasonable, Necessary, and Appropriate

27. The proposed Adequate Assurance Procedures are necessary for the Debtors to effectuate their chapter 11 strategy. As noted above, if the proposed Adequate Assurance Procedures are not approved, the Debtors likely will be confronted with and forced to address numerous requests by their Utility Providers at a critical point in their Chapter 11 Cases. Moreover, the Debtors could be blindsided by a Utility Provider unilaterally deciding on or after the thirtieth day following the Petition Date that it is not adequately protected and, therefore, either making an exorbitant demand for payment to continue service or discontinuing providing service to the Debtors altogether. Such an outcome could severely jeopardize the Debtors' operations and asset values.

28. Absent the approval of the Adequate Assurance Procedures, Utility Providers could discontinue service, without warning, thirty days from the Petition Date, if they claim they have not yet received a "satisfactory" adequate assurance payment. Under the Adequate Assurance Procedures, to eliminate such uncertainty, any Utility Provider that fails to file a timely Additional Assurance Request shall be deemed to consent to the Adequate Assurance Procedures and shall be bound by the order by the Court granting this Motion. *See In re Syroco, Inc.*, 374 B.R. 60, 62 (Bankr. D.P.R. 2007) (a utility provider's lack of objection, response or counter-demand after receiving notice of hearing on utilities motion, notice of interim order and notice of final hearing constitutes tacit acceptance of the debtor's proposed two-week cash deposit as adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code).

29. Under the circumstances of these cases, the Debtors believe that the establishment of a cash reserve in a bank account, in an amount that is substantially relative to the

Debtors' average usage for two weeks for the fiscal year ending 2018, constitutes adequate assurance of payment under section 366(c) of the Bankruptcy Code.

30. The Court has the power to approve these Adequate Assurance Procedures pursuant to section 105(a) of the Bankruptcy Code, which provides that a bankruptcy court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. The Adequate Assurance Procedures are necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code without prejudicing the Utility Providers. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”).

31. For the foregoing reasons, the Debtors respectfully submit that the relief requested by this Motion is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases.

Bankruptcy Rule 6003(b) Has Been Satisfied

32. Bankruptcy Rule 6003 provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” before twenty-one (21) days

after filing of the petition. Fed. R. Bankr. P. 6003(b). As described above and in the Long Declaration, the Debtors would suffer immediate and irreparable harm if the relief sought herein is not promptly granted. Any lapse in utility services could severely disrupt the Debtors' business operations, essentially bringing their operations to a standstill, and thus jeopardize the Debtors' ability to successfully reorganize. If any Utility Provider were to refuse or discontinue service, even for a brief period, the Debtors' estates would suffer immediate and irreparable harm if the relief sought herein were not promptly granted. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

Request for Bankruptcy Rule 6004(a) and (h) Waivers

33. To implement the foregoing successfully, the Debtors request a waiver of the 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 Long Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

Reservation of Rights

34. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement,

contract, lease, program, or policy between the Debtors and any third party 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 Debtors' rights to dispute such claim subsequently.

Notice

35. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware (Attn: Jane M. Leamy); (b) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) the Department of Justice; (g) the Utility Providers; and (h) any other party entitled to notice pursuant to Local Rule 9013-1(m) (the "**Notice Parties**"). The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no further notice is required.

36. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Interim Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: June 10, 2019
Wilmington, Delaware

/s/ Paul N. Heath
RICHARDS, LAYTON & FINGER, P.A.
Mark D. Collins (No. 2981)
John H. Knight (No. 3848)
Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
Zachary I. Shapiro (No. 5103)
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

-and-

WEIL, GOTSHAL & MANGES LLP
Gary T. Holtzer (*pro hac vice* pending)
Ronit J. Berkovich (*pro hac vice* pending)
Candace M. Arthur (*pro hac vice* pending)
Olga F. Peshko (*pro hac vice* pending)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

*Proposed Attorneys for the Debtors
and Debtors in Possession*

Exhibit A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X		
	:		
In re	:		Chapter 11
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INSYS THERAPEUTICS, INC., et al.,	:		Case No. 19-_____ (___)
	:		
Debtors.¹	:		Jointly Administered
	:		
	X		

**INTERIM ORDER PURSUANT TO 11 U.S.C.
§§ 105(a) AND 366 (I) APPROVING DEBTORS’ PROPOSED
FORM OF ADEQUATE ASSURANCE OF PAYMENT TO
UTILITY PROVIDERS, (II) ESTABLISHING PROCEDURES
FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT
FOR FUTURE SERVICES, AND (III) PROHIBITING UTILITY PROVIDERS
FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICE**

Upon the motion (the “**Motion**”)², dated June 10, 2019, of Insys Therapeutics, Inc. and its affiliated debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors request entry of an order (a) approving the Debtors’ proposed form of adequate assurance of payment to Utility Providers (as defined below), (b) establishing procedures for determining adequate assurance of payment for future utility services, and (c) prohibiting Utility Providers from altering, refusing, or discontinuing utility service on account of outstanding prepetition invoices (the “**Interim Order**”), all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors’ mailing address is 1333 South Spectrum Blvd #100, Chandler, Arizona 85286.

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

and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the Long Declaration, filed contemporaneously with the Motion, and the record of the Hearing; 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 it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis, to the extent provided herein.
2. As adequate assurance, the Debtors shall deposit cash in an amount of \$36,000 (the “**Adequate Assurance Deposit**”) into a segregated bank account (the “**Adequate Assurance Account**”), which shall be separately allocated for, and payable to, each Utility Provider in the amount set forth on **Exhibit B** to the Motion or as otherwise agreed; provided that the Adequate Assurance Deposit maintained in the Adequate Assurance Account may be increased

or decreased by the Debtors if the Debtors terminate services with any of the Utility Providers, make other arrangements with certain Utility Providers for adequate assurance of payment, determine that an entity listed on the Utility Service List is not a utility company as defined by section 366 of the Bankruptcy Code, or supplement the Utility Service List to include additional Utility Providers.

3. The Adequate Assurance Deposits, in conjunction with cash flow from operations and cash on hand, demonstrate the Debtors' ability to pay for future Utility Services in the ordinary course of business (together, the "**Proposed Adequate Assurance**") and constitute sufficient adequate assurance to the Utility Providers.

4. The Proposed Adequate Assurance is hereby approved and is deemed adequate assurance of payment as the term is used in section 366 of the Bankruptcy Code.

5. The Debtors' Utility Providers, including those that provide Utility Services to the Debtors through a landlord (the "**Utility Providers**"), including without limitation those listed on **Exhibit B** to the Motion (the "**Utility Service List**"), are prohibited from altering, refusing, or discontinuing services to the Debtors (the "**Utility Services**") on account of any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

6. The following Adequate Assurance Procedures are hereby approved:

- i. The Debtors will mail a copy of this Motion and the Proposed Interim Order (upon entry, the "**Interim Utilities Order**") to each Utility Provider within two (2) business days after entry of the Interim Utilities Order.
- ii. The Debtors will deposit the Adequate Assurance Deposit in the aggregate amount of \$36,000 in the Adequate Assurance Account within twenty (20) calendar days of entry of the Interim Utilities Order; provided that, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, upon agreement with the Utility Provider, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account for such Utility Provider by such amount.

- iii. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors upon the earlier of (i) the Debtors having satisfied in full all postpetition obligations due and owing to the applicable Utility Provider, (ii) the occurrence of the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases, and (iii) the Debtors' termination of Utility Services with the Utility Provider, if not applied earlier.³
- iv. Any Utility Provider desiring additional assurances of payment in the form of deposits or prepayments or otherwise must serve a request for additional assurance (an "**Additional Assurance Request**") so that it is received by the following parties at the following addresses: (i) Insys Therapeutics, Inc., 1333 South Spectrum Blvd #100, Chandler, Arizona 85286 (Attn.: Andrew G. Long); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn.: Candace M. Arthur and Alyssa Kutner); and (iii) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the "**Adequate Assurance Notice Parties**").
- v. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the type of Utility Services provided to the Debtors, any account numbers, and the location for which Utility Services are provided to the Debtors, (iii) include a summary of the Debtors' payment history relevant to the affected account(s) of such Utility Provider, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- vi. Any Additional Assurance Request must be made and actually received by all of the Adequate Assurance Notice Parties. If a Utility Provider fails to serve an Additional Assurance Request on the Adequate Assurance Notice Parties, such Utility Provider shall be: (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse service to, or discriminate against, the Debtors on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.
- vii. Upon the Adequate Assurance Notice Parties' receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- viii. The Debtors may, in their sole discretion, resolve any Additional Assurance

³ In the event that a Utility Provider has more than one account with the Debtors, then, upon termination of an account by the Debtors, only that portion of the Adequate Assurance Deposit attributable to such terminated account will be returned.

Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments, or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.

- ix. If the Debtors determine that the Additional Assurance Request is not reasonable and they are not able to reach a resolution with the Utility Provider, the Debtors will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code, and such Determination Hearing shall be scheduled for the next omnibus hearing date for which shortened notice is not required or such later hearing date as may be agreed to between the Debtors and such Utility Provider.
- x. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider that made such Additional Assurance Request shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services, and/or any objections to the Proposed Adequate Assurance.
- xi. Absent compliance with the procedures set forth in the Motion and the Proposed Order, the Debtors’ Utility Providers are prohibited from discontinuing, altering, or refusing service on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

7. The Debtors are authorized, in their sole discretion, to amend the Utility Service List to add or delete any Utility Provider, and the Interim Order shall apply to any Utility Provider that is subsequently added to the Utility Service List. Any such amended Utility Service List shall be filed with the Court.

8. For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Interim Order on the subsequently added Utility Provider and deposit two weeks’ worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts already on deposit with any such Utility

Provider), and any such subsequently added entities shall make any Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

9. Any Utility Provider that fails to request additional assurance in accordance with the Adequate Assurance Procedures shall be deemed to consent to the Adequate Assurance Procedures and shall be bound by this Interim Order.

10. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the “**Final Hearing**”).

11. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

12. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

13. Under the circumstances of these Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013(m).

14. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to implement the relief granted in this Interim Order.

16. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

17. The Final Hearing on the Motion shall be held on _____, **2019 at ___:___ (Prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (a) the proposed attorneys for the Debtors, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq., Ronit J. Berkovich, Esq., and Candace M. Arthur, Esq.), and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: 19801 (Attn.: John H. Knight, Esq., Paul N. Heath, Esq., and Amanda R. Steele, Esq.); and (b) the Notice Parties; in each case, on or prior to _____, **2019 at 4:00 p.m. (Prevailing Eastern Time)**.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE _____
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Utility Service List

Utility	Address	Description of Utility Service	Account Number(s)	Average Monthly Expense	Proposed Adequate Assurance
SRP	P.O. Box 80062 Prescott AZ, 86304-8062	Electric	581-144-001 343-606-002 391-217-005 782-917-006	\$4,257	\$12,771
Atmos	P.O. Box 790311 St. Louis, MO 63179-0311	Gas	4006950765	\$3,375	\$10,126
Just Energy	P.O. Box 650518 Dallas, TX 75265-0518	Electric	6330018 6775184	\$9,880	\$29,639
Verizon	P.O. Box 408, Newark, NJ 07101-0408	Internet/Telephones	972328505-00001	\$5,387	\$16,160
Cox Communications	P.O. Box 53249 Phoenix, AZ 85072-3249	Internet/Telephones	001-8501-222-367701 001-8501-229-403401 001-8501-239-306601 001-8501-206-602301 001-8501-240-989401	\$7,067	\$21,201
Time Warner-Spectrum Business	P.O. Box 60074 City of Industry, CA 91716-0074	Internet/Telephones	8260-16-030-1105326 8260-16-030-0939014	\$411	\$ 1,233
City of Round Rock	Utility Billing Department 221 E. Main Street Round Rock, TX 78664-5299	Water/Waste	41565-464029 41565-464039	\$968	\$2,903
Level 3 Communications	P.O. Box 910182 Denver, CO 80291-0182	Internet/Telephones	303248	\$718	\$2,153
Vast Conference	1960 East Grand Ave. #290, CA 90245	Internet/Telephones	1134892	\$380	\$1,140
Ring Central	20 Davis Dr, Belmont, CA 94002	Internet/Telephones	8667218195	\$99	\$ 298
TTC Conference	P.O. Box 409573 Atlanta, GA 30384-1866	Internet/Telephones	N/A	\$150	\$451
Centurylink	P.O. Box 910182 Denver, CO 80291-0182	Internet/Telephones	303248	\$573	\$1,720
Cerilliant Corporation	811 Paloma Dr. Ste. A Round Rock, TX 78665	Security/Electric	N/A	\$2,532	\$7,595

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

In re	X	
	:	Chapter 11
	:	
INSYS THERAPEUTICS, INC., <i>et al.</i> ,	:	Case No. 19-_____ ()
	:	
Debtors. ¹	:	Joint Administration Requested
	X	

MOTION OF DEBTORS PURSUANT TO 11 U.S.C. §§ 105(a) AND 366 REQUESTING ENTRY OF AN ORDER (I) APPROVING DEBTORS’ PROPOSED FORM OF ADEQUATE ASSURANCE OF PAYMENT TO UTILITY PROVIDERS, (II) ESTABLISHING PROCEDURES FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT FOR FUTURE UTILITY SERVICES, AND (III) PROHIBITING UTILITY PROVIDERS FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICE

Insys Therapeutics, Inc. (“**Insys**”) and its affiliated debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), respectfully represent as follows in support of this motion (the “**Motion**”):

Relief Requested

1. By this Motion, pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors request entry of an Order (a) approving the Debtors’ proposed form of adequate assurance of payment to Utility Providers (as defined below), (b) establishing procedures for determining adequate assurance of payment for future Utility Services (as defined below), and (c) prohibiting Utility Providers from altering, refusing, or

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors’ mailing address is 1333 South Spectrum Blvd #100, Chandler, Arizona 85286.

discontinuing Utility Service on account of the commencement of the Chapter 11 Cases or outstanding prepetition invoices.

2. A proposed form of order granting the relief requested herein on an interim basis, is annexed hereto as **Exhibit A** (the “**Proposed Interim Order**”).

Jurisdiction

3. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

4. Pursuant to Rule 9013–1(f) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”), the Debtors consent to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

Background

5. On the date hereof (the “**Petition Date**”), the Debtors each commenced with this Court a voluntary case under chapter 11 of the Bankruptcy Code. The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these Chapter 11 Cases.

6. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b).

7. Additional information regarding the circumstances leading to the commencement of these Chapter 11 Cases and the Debtors' business and capital structure is set forth in the declaration of Andrew G. Long, the Debtors' Chief Executive Officer, filed contemporaneously herewith, in support of the Debtors' chapter 11 petitions and related first day relief (the "**Long Declaration**").²

The Debtors' Utilities

A. Utility Providers

8. In the ordinary course of business, the Debtors incur expenses for utilities, including electricity, natural gas, water, sewage, information technology, and waste. Approximately thirteen utility providers (collectively, the "**Utility Providers**") provide services to the Debtors directly or indirectly through a landlord (the "**Utility Services**"). A non-exhaustive list of the Debtors' Utility Providers that provide Utility Services to the Debtors as of the Petition Date (the "**Utility Service List**") and the proposed Adequate Assurance Deposit (as defined herein) for each such Utility Provider is attached hereto as **Exhibit B**.³

9. On average, the Debtors spend approximately \$72,000 each month on utility costs and estimate that, as of the Petition Date, approximately \$27,000 of utility costs are outstanding and will come due during the period between the Petition Date and the final hearing on the Motion.

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

³ The Debtors reserve the right to amend or supplement the Utility Service List to include any Utility Provider omitted. The inclusion of any entity on the Utility Service List is not an admission that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization in the future.

10. The Debtors rely on the Utility Providers to provide Utility Services to their business offices, manufacturing, and research and development facilities located in Arizona and Texas and to provide necessary support to their employees, vendors, and customers. Preserving the Utility Services on an uninterrupted basis is essential to the Debtors' ongoing operations and restructuring and sale process. Indeed, any interruption in Utility Services—even for a brief period of time—would seriously disrupt the Debtors' ability to continue operations. This disruption would adversely impact, among other things, the Debtors' sale efforts, manufacturing and testing of pharmaceutical products, and research and development. Any such interruption would negatively impact the Debtors' restructuring efforts to the detriment of all parties in interest. Therefore, it is critical that Utility Services continue uninterrupted during these Chapter 11 Cases.

B. Proposed Adequate Assurance

11. The Debtors intend to pay all postpetition obligations owed to the Utility Providers in a timely manner and expect that cash flows from operations and cash on hand will be sufficient to do so.

12. Furthermore, the Debtors propose to deposit cash into a segregated bank account (the “**Adequate Assurance Account**”) in an amount equal to the cost of two weeks' worth of the average utility cost for each Utility Provider, based on the Debtors' average usage for the fiscal year ending 2018 (collectively, the “**Adequate Assurance Deposit**”). The Adequate Assurance Deposit may be increased or decreased by the Debtors if the Debtors terminate services with any of the Utility Providers, make other arrangements with certain Utility Providers for adequate assurance of payment, determine that an entity listed on the Utility Service List is not a utility company as defined by section 366 of the Bankruptcy Code, or supplement the Utility Service List to include additional Utility Providers. As of the Petition Date, the Debtors estimate

that the total amount of the Adequate Assurance Deposit will be \$36,000. Such Adequate Assurance Deposit will further assure the Utility Providers of payment for postpetition services.

13. Although the Adequate Assurance Deposit will be placed in a single bank account, each Utility Provider's portion of the Adequate Assurance Deposit set forth in **Exhibit B** will be separately allocated for, and payable to, such Utility Provider.

14. The Debtors submit that the Adequate Assurance Deposit, in conjunction with cash flow from operations and cash on hand, demonstrates the Debtors' ability to pay for future Utility Services in the ordinary course of business (collectively, the "**Proposed Adequate Assurance**") and constitutes sufficient adequate assurance to the Utility Providers.

C. Proposed Adequate Assurance Procedures

15. The Debtors intend to implement the Proposed Adequate Assurance utilizing the procedures described below (the "**Adequate Assurance Procedures**"):⁴

- a. The Debtors will mail a copy of this Motion and the Proposed Interim Order (upon entry, the "**Interim Utilities Order**") to each Utility Provider within two (2) business days after entry of the Interim Utilities Order.
- b. The Debtors will deposit the Adequate Assurance Deposit in the aggregate amount of \$36,000 in the Adequate Assurance Account within twenty (20) calendar days of entry of the Interim Utilities Order; provided that, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, upon agreement with the Utility Provider, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account for such Utility Provider by such amount.
- c. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors upon the earlier of (i) the Debtors having satisfied in full all postpetition obligations due and owing to the applicable Utility Provider, (ii) the occurrence of the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases, and (iii) the Debtors'

⁴ To the extent that there are any discrepancies between this Motion and the Order, the Order shall control in all respects.

termination of Utility Services with the Utility Provider, if not applied earlier.⁵

- d. Any Utility Provider desiring additional assurances of payment in the form of deposits or prepayments or otherwise must serve a request for additional assurance (an “**Additional Assurance Request**”) so that it is received by the following parties at the following addresses: (i) Insys Therapeutics, Inc., 1333 South Spectrum Blvd #100, Chandler, Arizona 85286 (Attn.: Andrew G. Long); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn.: Candace M. Arthur and Alyssa Kutner); and (iii) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the “**Adequate Assurance Notice Parties**”).
- e. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the type of Utility Services provided to the Debtors, any account numbers, and the location for which Utility Services are provided to the Debtors, (iii) include a summary of the Debtors’ payment history relevant to the affected account(s) of such Utility Provider, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- f. Any Additional Assurance Request must be made and actually received by all of the Adequate Assurance Notice Parties. If a Utility Provider fails to serve an Additional Assurance Request on the Adequate Assurance Notice Parties, such Utility Provider shall be: (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse service to, or discriminate against, the Debtors on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.
- g. Upon the Adequate Assurance Notice Parties’ receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider’s Additional Assurance Request.
- h. The Debtors may, in their sole discretion, resolve any Additional Assurance Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments, or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.

⁵ In the event that a Utility Provider has more than one account with the Debtors, then, upon termination of an account by the Debtors, only that portion of the Adequate Assurance Deposit attributable to such terminated account will be returned.

- i. If the Debtors determine that the Additional Assurance Request is not reasonable and they are not able to reach a resolution with the Utility Provider, the Debtors will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code, and such Determination Hearing shall be scheduled for the next omnibus hearing date for which shortened notice is not required or such later hearing date as may be agreed to between the Debtors and such Utility Provider.
- j. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider that made such Additional Assurance Request shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services, and/or any objections to the Proposed Adequate Assurance.
- k. Absent compliance with the procedures set forth in the Motion and the Proposed Order, the Debtors’ Utility Providers are prohibited from discontinuing, altering, or refusing service on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

D. Subsequent Modifications of Utility Services List

16. The Debtors have made an extensive and good faith effort to identify all of their Utility Providers and include them on the Utility Service List. Nonetheless, certain Utility Providers may not be listed on the Utility Service List. To the extent that the Debtors subsequently identify additional Utility Providers, the Debtors seek authority, in their sole discretion, to amend the Utility Service List to add or remove any Utility Provider before or after entry of an order by the Court granting this Motion. Any such amended Utility Service List shall be filed with the Court. The Debtors further request that such order of the Court be deemed to apply to any such subsequently identified Utility Provider, regardless of when such Utility Provider is added to the Utility Service List. The Debtors will serve a copy of this Motion and any order hereon on any such Utility Provider subsequently added to the Utility Service List and deposit two weeks’ worth

of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider.

17. The Debtors propose that any Utility Provider subsequently added to the Utility Service List that objects to the entry of an order granting the relief requested herein shall be required to file an objection in accordance with the Bankruptcy Rules, the Local Rules, and the Adequate Assurance Procedures.

18. The Debtors request that all Utility Providers, including Utility Providers subsequently added to the Utility Service List, be prohibited from altering, refusing, or discontinuing utility services to the Debtors absent further order of the Court.

The Relief Requested Should be Granted

19. The relief requested will ensure the continuation of the Debtors' business during the pendency of these Chapter 11 Cases. The Debtors believe that the Utility Providers will be adequately assured of payment for future services by the relief requested herein, without which the Debtors could be forced to address multiple requests by Utility Providers in a disorganized manner when the Debtors' efforts should be more productively focused on continuing operations and maximizing value for their estates and creditors.

A. The Proposed Adequate Assurance Deposit is Sufficient.

20. Congress enacted section 366 of the Bankruptcy Code for the dual purpose of protecting debtors from utility service cutoffs upon a bankruptcy filing and providing utility companies with adequate assurance that the debtor will be able to pay for postpetition services. *See* H.R. Rep. No. 95-595 at 350 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Accordingly, section 366(c) of the Bankruptcy Code provides that during the first thirty days of a chapter 11 case, a utility company may not alter, refuse, or discontinue services to a debtor solely

because of any unpaid prepetition amounts. After the first thirty days, however, the utility company may alter, refuse, or discontinue service if a debtor does not provide “adequate assurance” of payment for postpetition utility services in satisfactory form.

21. Section 366(c)(1)(A) of the Bankruptcy Code defines “assurance of payment” to mean several enumerated forms of security (*e.g.*, a cash deposit, letter of credit, certificate of deposit, surety bond, prepayment of utility consumption, or other mutually agreed upon security), while section 366(c)(1)(B) expressly excludes from such definition an administrative expense priority for a utility’s claim. In addition, section 366(c)(3)(B) of the Bankruptcy Code provides a list of factors that courts are *not* to consider when evaluating whether a proposed adequate assurance payment is in fact adequate. The factors not to be considered are: (i) the absence of security before the petition date; (ii) a debtor’s history of timely payments; and (iii) the availability of administrative expense priority.

22. Although section 366(c) of the Bankruptcy Code clarifies what does and does not constitute “assurance of payment” and what can be considered in determining whether such assurance is adequate, Congress, in enacting that section, did not divest this Court of its power to determine what amount, if any, is necessary to provide adequate assurance of payment to a Utility Provider. *See* 11 U.S.C. § 366(c)(3)(A). Specifically, section 366(c)(3)(A) states that, “[o]n request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment . . .” Thus, there is nothing to prevent a court from deciding that, on the facts of the case before it, the amount required of the debtor to provide adequate assurance of payment to a utility company should be nominal or even zero. *See, e.g., In re Pac-West Telecomm., Inc.*, Case No. 07-10562 (BLS) (Bankr. D. Del. May 2, 2007) [D.I. No.

39] (approving adequate assurance in the form of a one-time supplemental prepayment to each utility company equal to the prorated amount of one week's charges).

23. Although section 366(c)(2) of the Bankruptcy Code allows a utility provider to take action if a debtor fails to provide adequate assurance of payment that is "satisfactory" to the utility, it is the Court and not the utility provider that is the ultimate arbiter of what is "satisfactory" assurance after taking into consideration the needs of the debtor as well as the utility. *See, e.g., In re Penn. Cent. Transp. Co.*, 467 F.2d 100, 103–04 (3d Cir. 1972) (affirming the bankruptcy court's decision that no utility deposit was necessary if such deposit would "jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already [were] reasonably protected"); *see In re Heard*, 84 B.R. 454, 459 (Bankr. W.D. Tex. 1987) (holding that because the utility had not had any difficulty with the debtors during 14 years of service, "the utility need[ed] no adequate assurance"). Indeed, section 366 only requires that assurance of payment be "adequate" and courts have not construed section 366 to require an absolute guarantee of a debtor's ability to pay. *See, e.g., In re Caldor, Inc. – N.Y.*, 199 B.R. 1, 3 (S.D.N.Y. 1996) ("Section 366(b) requires the Bankruptcy Court to determine whether the circumstances are sufficient to provide a utility with 'adequate assurance' of payment. The statute does not require an 'absolute guarantee of payment.'" (citation omitted), *aff'd sub nom. Va. Elec. & Power Co. v. Caldor, Inc. – N.Y.*, 117 F.3d 646 (2d Cir. 1997); *In re New Rochelle Tel. Corp.*, 397 B.R. 633, 639 (Bankr. E.D.N.Y. 2008) ("Adequate assurance, however, is not a guarantee of payment; rather, it is intended to guard against the utility assuming an unreasonable risk of non-payment.") (citation omitted).

24. Furthermore, courts consider what is "need[ed] of the utility for assurance, and . . . require that the debtor supply *no more than that*, since the debtor almost perforce has a

conflicting need to conserve scarce financial resources.” *Va. Elec. & Power*, 117 F.3d at 650 (emphasis in original); *see also In re Penn Central*, 467 F.2d 100, 103–04. Indeed, “[c]ourts will approve an amount that is adequate enough to insure against unreasonable risk of nonpayment, but are not required to give the equivalent of a guaranty of payment in full.” *In re The Great Atl. & Pac. Tea Co.*, Case No. 11-CV-1338 (CS), 2011 WL 5546954, at *5 (S.D.N.Y. Nov. 14, 2011) (citations omitted).

25. Here, the Utility Providers are adequately assured against any risk of nonpayment for future services. The Debtors have a good historical payment record with the Utility Providers. To the best of the Debtors’ knowledge, there are no material defaults or arrearages of any significance for the Debtors’ undisputed invoices for prepetition Utility Services, other than payment interruptions that may be caused by the commencement of these Chapter 11 Cases. Accordingly, the Adequate Assurance Deposit and the Debtors’ ongoing ability to meet obligations as they come due in the ordinary course provide assurance of the Debtors’ payment of their future obligations to the Utility Providers. Moreover, termination of the Utility Services could result in the Debtors’ inability to operate their business to the detriment of all stakeholders. *See In re Pilgrim’s Pride Corp.*, No. 08-45664 (DML), 2009 WL 7313309, at *2 (Bankr. N.D. Tex. Jan 4, 2009) (“The consequences of an unexpected termination of utility service to [the debtors] could be catastrophic.”); *In re Monroe Well Serv., Inc.*, 83 B.R. 317, 321-22 (Bankr. E.D. Pa. 1988) (noting that without utility service the debtors “would have to cease operations” and that section 366 of the Bankruptcy Code “was intended to limit the leverage held by utility companies, not increase it.”).

26. In light of the foregoing, the Debtors respectfully submit that the Proposed Adequate Assurance is sufficient to assure the Utility Providers of future payment.

B. The Adequate Assurance Procedures Are Reasonable, Necessary, and Appropriate

27. The proposed Adequate Assurance Procedures are necessary for the Debtors to effectuate their chapter 11 strategy. As noted above, if the proposed Adequate Assurance Procedures are not approved, the Debtors likely will be confronted with and forced to address numerous requests by their Utility Providers at a critical point in their Chapter 11 Cases. Moreover, the Debtors could be blindsided by a Utility Provider unilaterally deciding on or after the thirtieth day following the Petition Date that it is not adequately protected and, therefore, either making an exorbitant demand for payment to continue service or discontinuing providing service to the Debtors altogether. Such an outcome could severely jeopardize the Debtors' operations and asset values.

28. Absent the approval of the Adequate Assurance Procedures, Utility Providers could discontinue service, without warning, thirty days from the Petition Date, if they claim they have not yet received a "satisfactory" adequate assurance payment. Under the Adequate Assurance Procedures, to eliminate such uncertainty, any Utility Provider that fails to file a timely Additional Assurance Request shall be deemed to consent to the Adequate Assurance Procedures and shall be bound by the order by the Court granting this Motion. *See In re Syroco, Inc.*, 374 B.R. 60, 62 (Bankr. D.P.R. 2007) (a utility provider's lack of objection, response or counter-demand after receiving notice of hearing on utilities motion, notice of interim order and notice of final hearing constitutes tacit acceptance of the debtor's proposed two-week cash deposit as adequate assurance of payment as such term is used in section 366 of the Bankruptcy Code).

29. Under the circumstances of these cases, the Debtors believe that the establishment of a cash reserve in a bank account, in an amount that is substantially relative to the

Debtors' average usage for two weeks for the fiscal year ending 2018, constitutes adequate assurance of payment under section 366(c) of the Bankruptcy Code.

30. The Court has the power to approve these Adequate Assurance Procedures pursuant to section 105(a) of the Bankruptcy Code, which provides that a bankruptcy court may “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions” of the Bankruptcy Code. The Adequate Assurance Procedures are necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code without prejudicing the Utility Providers. Section 1107(a) of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”).

31. For the foregoing reasons, the Debtors respectfully submit that the relief requested by this Motion is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases.

Bankruptcy Rule 6003(b) Has Been Satisfied

32. Bankruptcy Rule 6003 provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” before twenty-one (21) days

after filing of the petition. Fed. R. Bankr. P. 6003(b). As described above and in the Long Declaration, the Debtors would suffer immediate and irreparable harm if the relief sought herein is not promptly granted. Any lapse in utility services could severely disrupt the Debtors' business operations, essentially bringing their operations to a standstill, and thus jeopardize the Debtors' ability to successfully reorganize. If any Utility Provider were to refuse or discontinue service, even for a brief period, the Debtors' estates would suffer immediate and irreparable harm if the relief sought herein were not promptly granted. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, Bankruptcy Rule 6003 is satisfied.

Request for Bankruptcy Rule 6004(a) and (h) Waivers

33. To implement the foregoing successfully, the Debtors request a waiver of the 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 Long Declaration, the relief requested herein is necessary to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify the waiver of the notice requirements under Bankruptcy Rule 6004(a) and the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent such notice requirements and stay apply.

Reservation of Rights

34. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement,

contract, lease, program, or policy between the Debtors and any third party 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 Debtors' rights to dispute such claim subsequently.

Notice

35. Notice of this Motion will be provided to (a) the Office of the United States Trustee for the District of Delaware (Attn: Jane M. Leamy); (b) the holders of the thirty (30) largest unsecured claims against the Debtors on a consolidated basis; (c) the Securities and Exchange Commission; (d) the Internal Revenue Service; (e) the United States Attorney's Office for the District of Delaware; (f) the Department of Justice; (g) the Utility Providers; and (h) any other party entitled to notice pursuant to Local Rule 9013-1(m) (the "**Notice Parties**"). The Debtors submit that, in view of the facts and circumstances, such notice is sufficient and no further notice is required.

36. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Interim Order granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: June 10, 2019
Wilmington, Delaware

/s/ Paul N. Heath
RICHARDS, LAYTON & FINGER, P.A.
Mark D. Collins (No. 2981)
John H. Knight (No. 3848)
Paul N. Heath (No. 3704)
Amanda R. Steele (No. 5530)
Zachary I. Shapiro (No. 5103)
One Rodney Square
920 N. King Street
Wilmington, Delaware 19801
Telephone: (302) 651-7700
Facsimile: (302) 651-7701

-and-

WEIL, GOTSHAL & MANGES LLP
Gary T. Holtzer (*pro hac vice* pending)
Ronit J. Berkovich (*pro hac vice* pending)
Candace M. Arthur (*pro hac vice* pending)
Olga F. Peshko (*pro hac vice* pending)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007

*Proposed Attorneys for the Debtors
and Debtors in Possession*

Exhibit A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

	X		
	:		
In re	:		Chapter 11
	:		
INSYS THERAPEUTICS, INC., et al.,	:		Case No. 19-_____ (___)
	:		
Debtors.¹	:		Jointly Administered
	:		
	X		

**INTERIM ORDER PURSUANT TO 11 U.S.C.
§§ 105(a) AND 366 (I) APPROVING DEBTORS’ PROPOSED
FORM OF ADEQUATE ASSURANCE OF PAYMENT TO
UTILITY PROVIDERS, (II) ESTABLISHING PROCEDURES
FOR DETERMINING ADEQUATE ASSURANCE OF PAYMENT
FOR FUTURE SERVICES, AND (III) PROHIBITING UTILITY PROVIDERS
FROM ALTERING, REFUSING, OR DISCONTINUING UTILITY SERVICE**

Upon the motion (the “**Motion**”)², dated June 10, 2019, of Insys Therapeutics, Inc. and its affiliated debtors in the above-captioned chapter 11 cases (the “**Chapter 11 Cases**”), as debtors and debtors in possession (collectively, the “**Debtors**”), pursuant to sections 105(a) and 366 of title 11 of the United States Code (the “**Bankruptcy Code**”), the Debtors request entry of an order (a) approving the Debtors’ proposed form of adequate assurance of payment to Utility Providers (as defined below), (b) establishing procedures for determining adequate assurance of payment for future utility services, and (c) prohibiting Utility Providers from altering, refusing, or discontinuing utility service on account of outstanding prepetition invoices (the “**Interim Order**”), all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, as applicable, are: Insys Therapeutics, Inc. (7886); IC Operations, LLC (9659); Insys Development Company, Inc. (3020); Insys Manufacturing, LLC (0789); Insys Pharma, Inc. (9410); IPSC, LLC (6577); and IPT 355, LLC (0155). The Debtors’ mailing address is 1333 South Spectrum Blvd #100, Chandler, Arizona 85286.

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

and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties; and such notice having been adequate and appropriate under the circumstances, and it appearing that no other or further notice need be provided; and the Court having reviewed the Motion; and the Court having held a hearing to consider the relief requested in the Motion on an interim basis (the “**Hearing**”); and upon the Long Declaration, filed contemporaneously with the Motion, and the record of the Hearing; 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 it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis, to the extent provided herein.
2. As adequate assurance, the Debtors shall deposit cash in an amount of \$36,000 (the “**Adequate Assurance Deposit**”) into a segregated bank account (the “**Adequate Assurance Account**”), which shall be separately allocated for, and payable to, each Utility Provider in the amount set forth on **Exhibit B** to the Motion or as otherwise agreed; provided that the Adequate Assurance Deposit maintained in the Adequate Assurance Account may be increased

or decreased by the Debtors if the Debtors terminate services with any of the Utility Providers, make other arrangements with certain Utility Providers for adequate assurance of payment, determine that an entity listed on the Utility Service List is not a utility company as defined by section 366 of the Bankruptcy Code, or supplement the Utility Service List to include additional Utility Providers.

3. The Adequate Assurance Deposits, in conjunction with cash flow from operations and cash on hand, demonstrate the Debtors' ability to pay for future Utility Services in the ordinary course of business (together, the "**Proposed Adequate Assurance**") and constitute sufficient adequate assurance to the Utility Providers.

4. The Proposed Adequate Assurance is hereby approved and is deemed adequate assurance of payment as the term is used in section 366 of the Bankruptcy Code.

5. The Debtors' Utility Providers, including those that provide Utility Services to the Debtors through a landlord (the "**Utility Providers**"), including without limitation those listed on **Exhibit B** to the Motion (the "**Utility Service List**"), are prohibited from altering, refusing, or discontinuing services to the Debtors (the "**Utility Services**") on account of any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

6. The following Adequate Assurance Procedures are hereby approved:

- i. The Debtors will mail a copy of this Motion and the Proposed Interim Order (upon entry, the "**Interim Utilities Order**") to each Utility Provider within two (2) business days after entry of the Interim Utilities Order.
- ii. The Debtors will deposit the Adequate Assurance Deposit in the aggregate amount of \$36,000 in the Adequate Assurance Account within twenty (20) calendar days of entry of the Interim Utilities Order; provided that, to the extent any Utility Provider receives any other value from the Debtors as adequate assurance of payment, upon agreement with the Utility Provider, the Debtors may reduce the Adequate Assurance Deposit maintained in the Adequate Assurance Account for such Utility Provider by such amount.

- iii. The portion of the Adequate Assurance Deposit attributable to each Utility Provider shall be returned to the Debtors upon the earlier of (i) the Debtors having satisfied in full all postpetition obligations due and owing to the applicable Utility Provider, (ii) the occurrence of the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases, and (iii) the Debtors' termination of Utility Services with the Utility Provider, if not applied earlier.³
- iv. Any Utility Provider desiring additional assurances of payment in the form of deposits or prepayments or otherwise must serve a request for additional assurance (an "**Additional Assurance Request**") so that it is received by the following parties at the following addresses: (i) Insys Therapeutics, Inc., 1333 South Spectrum Blvd #100, Chandler, Arizona 85286 (Attn.: Andrew G. Long); (ii) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn.: Candace M. Arthur and Alyssa Kutner); and (iii) counsel to any official committee appointed in the Chapter 11 Cases (collectively, the "**Adequate Assurance Notice Parties**").
- v. Any Additional Assurance Request must (i) be made in writing, (ii) set forth the type of Utility Services provided to the Debtors, any account numbers, and the location for which Utility Services are provided to the Debtors, (iii) include a summary of the Debtors' payment history relevant to the affected account(s) of such Utility Provider, and (iv) set forth why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- vi. Any Additional Assurance Request must be made and actually received by all of the Adequate Assurance Notice Parties. If a Utility Provider fails to serve an Additional Assurance Request on the Adequate Assurance Notice Parties, such Utility Provider shall be: (i) deemed to have received adequate assurance of payment satisfactory to such Utility Provider in compliance with section 366 of the Bankruptcy Code; and (ii) forbidden to discontinue, alter, or refuse service to, or discriminate against, the Debtors on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges, or require additional assurance of payment other than the Proposed Adequate Assurance.
- vii. Upon the Adequate Assurance Notice Parties' receipt of any Additional Assurance Request at the addresses set forth above, the Debtors shall promptly negotiate with such Utility Provider to resolve such Utility Provider's Additional Assurance Request.
- viii. The Debtors may, in their sole discretion, resolve any Additional Assurance

³ In the event that a Utility Provider has more than one account with the Debtors, then, upon termination of an account by the Debtors, only that portion of the Adequate Assurance Deposit attributable to such terminated account will be returned.

Request by mutual agreement with the Utility Provider and without further order of the Court, and may, in connection with any such agreement, in their sole discretion, provide a Utility Provider with additional adequate assurance of future payment, including but not limited to cash deposits, prepayments, or other forms of security, without further order of this Court if the Debtors believe such additional assurance is reasonable.

- ix. If the Debtors determine that the Additional Assurance Request is not reasonable and they are not able to reach a resolution with the Utility Provider, the Debtors will request a hearing before this Court to determine the adequacy of assurances of payment with respect to a particular Utility Provider (the “**Determination Hearing**”) pursuant to section 366(c)(3) of the Bankruptcy Code, and such Determination Hearing shall be scheduled for the next omnibus hearing date for which shortened notice is not required or such later hearing date as may be agreed to between the Debtors and such Utility Provider.
- x. Pending resolution of such dispute at the Determination Hearing, the relevant Utility Provider that made such Additional Assurance Request shall be prohibited from discontinuing, altering, or refusing service to the Debtors on account of the commencement of the Chapter 11 Cases, any unpaid charges for prepetition services, and/or any objections to the Proposed Adequate Assurance.
- xi. Absent compliance with the procedures set forth in the Motion and the Proposed Order, the Debtors’ Utility Providers are prohibited from discontinuing, altering, or refusing service on account of the commencement of the Chapter 11 Cases and/or any unpaid prepetition charges and are deemed to have received adequate assurance of payment in compliance with section 366 of the Bankruptcy Code.

7. The Debtors are authorized, in their sole discretion, to amend the Utility Service List to add or delete any Utility Provider, and the Interim Order shall apply to any Utility Provider that is subsequently added to the Utility Service List. Any such amended Utility Service List shall be filed with the Court.

8. For those Utility Providers that are subsequently added to the Utility Service List, the Debtors will serve a copy of this Interim Order on the subsequently added Utility Provider and deposit two weeks’ worth of estimated utility costs in the Adequate Assurance Account for the benefit of such Utility Provider (less any amounts already on deposit with any such Utility

Provider), and any such subsequently added entities shall make any Additional Assurance Requests in accordance with the Adequate Assurance Procedures.

9. Any Utility Provider that fails to request additional assurance in accordance with the Adequate Assurance Procedures shall be deemed to consent to the Adequate Assurance Procedures and shall be bound by this Interim Order.

10. Nothing in the Motion or this Interim Order shall be deemed to authorize the Debtors to accelerate any payments not otherwise due prior to the date of the hearing to consider entry of an order granting the relief requested in the Motion on a final basis (the “**Final Hearing**”).

11. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors’ or any appropriate party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (c) a waiver of any claims or causes of action that may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

12. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

13. Under the circumstances of these Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and Local Rule 9013(m).

14. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all actions necessary to implement the relief granted in this Interim Order.

16. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

17. The Final Hearing on the Motion shall be held on _____, **2019 at ___:___ (Prevailing Eastern Time)** and any objections or responses to the Motion shall be in writing, filed with the Court, and served upon (a) the proposed attorneys for the Debtors, (i) Weil, Gotshal & Manges LLP, 767 Fifth Avenue, New York, New York 10153 (Attn: Gary T. Holtzer, Esq., Ronit J. Berkovich, Esq., and Candace M. Arthur, Esq.), and (ii) Richards, Layton & Finger, P.A., One Rodney Square, 920 North King Street, Wilmington, Delaware 19801 (Attn: 19801 (Attn.: John H. Knight, Esq., Paul N. Heath, Esq., and Amanda R. Steele, Esq.); and (b) the Notice Parties; in each case, on or prior to _____, **2019 at 4:00 p.m. (Prevailing Eastern Time)**.

Dated: _____, 2019
Wilmington, Delaware

THE HONORABLE _____
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Utility Service List

Utility	Address	Description of Utility Service	Account Number(s)	Average Monthly Expense	Proposed Adequate Assurance
SRP	P.O. Box 80062 Prescott AZ, 86304-8062	Electric	581-144-001 343-606-002 391-217-005 782-917-006	\$4,257	\$12,771
Atmos	P.O. Box 790311 St. Louis, MO 63179-0311	Gas	4006950765	\$3,375	\$10,126
Just Energy	P.O. Box 650518 Dallas, TX 75265-0518	Electric	6330018 6775184	\$9,880	\$29,639
Verizon	P.O. Box 408, Newark, NJ 07101-0408	Internet/Telephones	972328505-00001	\$5,387	\$16,160
Cox Communications	P.O. Box 53249 Phoenix, AZ 85072-3249	Internet/Telephones	001-8501-222-367701 001-8501-229-403401 001-8501-239-306601 001-8501-206-602301 001-8501-240-989401	\$7,067	\$21,201
Time Warner-Spectrum Business	P.O. Box 60074 City of Industry, CA 91716-0074	Internet/Telephones	8260-16-030-1105326 8260-16-030-0939014	\$411	\$ 1,233
City of Round Rock	Utility Billing Department 221 E. Main Street Round Rock, TX 78664-5299	Water/Waste	41565-464029 41565-464039	\$968	\$2,903
Level 3 Communications	P.O. Box 910182 Denver, CO 80291-0182	Internet/Telephones	303248	\$718	\$2,153
Vast Conference	1960 East Grand Ave. #290, CA 90245	Internet/Telephones	1134892	\$380	\$1,140
Ring Central	20 Davis Dr, Belmont, CA 94002	Internet/Telephones	8667218195	\$99	\$ 298
TTC Conference	P.O. Box 409573 Atlanta, GA 30384-1866	Internet/Telephones	N/A	\$150	\$451
Centurylink	P.O. Box 910182 Denver, CO 80291-0182	Internet/Telephones	303248	\$573	\$1,720
Cerilliant Corporation	811 Paloma Dr. Ste. A Round Rock, TX 78665	Security/Electric	N/A	\$2,532	\$7,595