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Human Condition Safety Inc.*

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HUMAN CONDITION SAFETY INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No: 17-10585-SHL

**MOTION FOR ENTRY OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES  
FOR SALE OF SUBSTANTIALLY ALL DEBTOR'S ASSETS, (B) SCHEDULING AN  
AUCTION, (C) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D)  
APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (E)  
SCHEDULING A SALE HEARING AND APPROVING THE FORM AND MANNER OF  
NOTICE THEREOF, AND (II)(A) APPROVING THE SALE OF SUBSTANTIALLY ALL  
DEBTOR'S ASSETS FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND  
ENCUMBRANCES AND (B) APPROVING THE ASSUMPTION AND ASSIGNMENT  
OF EXECUTORY CONTRACTS AND UNEXPIRED LEASES IN CONNECTION  
THEREWITH; AND (III) GRANTING RELATED RELIEF**

Human Condition Safety Inc., a Delaware corporation with its principal assets and  
principal place of business located at 61 Broadway, Suite 2710, New York, New York 10006, as  
debtor and debtor-in-possession (the "Debtor") in the above-captioned Chapter 11 case (the  
"Chapter 11 Case" or the "Case"), by and through its undersigned attorneys, hereby submits this

<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's tax identification number, is Human Condition Safety Inc. (2476). The address of the Debtor's corporate headquarters, and sole office location, for noticing purposes is 61 Broadway, Suite 2710, New York, New York 10006.

motion (the “Motion”) pursuant to sections 105(a), 363, and 365 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”) and Rules 2002, 6004, 6006, 9007, 9008, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), for entry of an order substantially in the form attached hereto as Exhibit 1 (the “Bidding Procedures Order”):

(i) approving the proposed procedures substantially in the form attached as Exhibit A to the Bidding Procedures Order (the “Bidding Procedures”)<sup>2</sup> to be used in connection with the sale (the “Sale”) of any or substantially all Debtor’s assets (the “Assets”), including approving use of a proposed form of asset purchase agreement substantially in the form attached as Exhibit B to the Bidding Procedures Order (the “Specimen APA”);

(ii) scheduling an auction for the Assets (the “Auction”), the hearing with respect to the approval of the sale (the “Sale Hearing”), and approval of the form and manner of notice thereof;

(iii) authorizing certain procedures related to the Debtor’s assumption and assignment of executory contracts and unexpired leases (the “Assumption and Assignment Procedures”) in connection with any Sale; and

(iv) granting related relief.

The Debtor also moves the Court, pursuant to Bankruptcy Code sections 105, 363, and 365, and Bankruptcy Rules 2002, 6004, and 6006 for entry of one or more orders in substantially the form attached hereto as Exhibit 2 (the “Sale Order”):

(i) authorizing the sale of the Assets to one or more successful bidders at the Auction (each such sale, a “Sale Transaction”) free and clear of all liens, claims, interests, and encumbrances;

- (ii) authorizing the assumption and assignment of certain executory contracts and unexpired leases in connection therewith; and
- (iii) granting related relief.

In support of this Motion, the Debtor relies upon the Declaration of Gregory Wolyniec in support of the Motion (the “Sale Declaration”) filed contemporaneously herewith as Exhibit 3 to this Motion and the Declaration of Gregory Wolyniec Pursuant to Local Rule 1007-2 in Support of Debtor’s Chapter 11 Petition and Requests for First Day Relief [Doc 7] filed on March 13, 2017 in this case (the “First Day Declaration”) and respectfully represent as follows:

### **JURISDICTION AND VENUE**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).
2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

### **BACKGROUND<sup>3</sup>**

#### **A. General Background**

3. The Debtor filed a voluntary petition (the “Petition”) for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the “Bankruptcy Code”) on March 10, 2017 (the “Petition Date”) commencing this Chapter 11 Case. As of the date hereof the Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

4. In summary, the Debtor is a privately held company that develops, markets and sells innovative virtual reality and internet based technology products designed to improve workplace

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Bidding Procedures Order or in the Bidding Procedures attached thereto.

safety for clients in the construction industry and other hazardous industries, including developing virtual reality and internet based software programs with wearable sensors to remotely monitor and assess workers' safety conditions and to administer training helping workers learn to properly and safely perform their job duties. A client would pay a one-time fee for the Debtor to design and install such a program tailored to the individual client's needs and thereafter the client would pay monthly fees to use the program and for the Debtor to continue hosting and servicing it.

5. But the process of researching, developing and bringing the Debtor's groundbreaking new products to market proved to be much more time consuming and costly than anticipated. The process was plagued with unanticipated delays, as well as unanticipated and unsustainable costs and debt due, in part, to inefficiencies in the Debtor's operations. This ultimately led to the departure of some of the Debtor's leadership and a restructuring of the Debtor's operations.

6. Thanks to the skill and effort of Debtor's current leadership, within the months before the Petition Date, Debtor was finally able to finalize and begin marketing, selling and servicing its first products with much success, and continuing to do so long term was forecasted to be highly profitable as Debtor's products were well-received in the market place. In order to preserve the Debtor's value and its employees' jobs, it recently became clear that Debtor could not adequately address its liquidity needs outside of bankruptcy and that its only viable option was to proceed with this Chapter 11 effort and with the proposed debtor-in-possession financing arrangement negotiated with AIG PC Global Services, Inc., as the postpetition lender ("DIP Lender"), which arrangement (the "DIP Facility") was approved by the Court under the Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507, Bankruptcy Rules 2002, 4001,

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<sup>3</sup> The relevant background facts are more fully set forth in the First Day Declaration and in the Sale Declaration

and 6004, and Local Rule 4001-2 (I) Authorizing Debtor to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Super-Priority Administrative Expenses Status, (IV) Granting Adequate Protection, and (V) Granting Related Relief, entered on April 19, 2017 in the Case [Doc 39] (the “Final DIP Financing Order”).

7. The DIP Facility and Final DIP Financing Order provide for Debtor to continue operating in bankruptcy while implementing a dual-track process to maximize value for stakeholders and preserve employees’ jobs by simultaneously pursuing (i) a reorganization plan, and (ii) a sale of substantially all Debtor’s assets with the transition of its employees, operations, and files.

8. As above, around the time of the Petition Date, the Debtor’s products were well-received in the market place and were thus forecasted to be highly profitable. During the weeks after the Petition Date, potential customers continued to express interest in Debtor’s products and several new customer contracts were executed. However, in recent weeks market interest in Debtor’s products materially declined at an increasing rate with a growing number of potential customers expressing the same sentiment—that they are interested but not willing to contract for Debtor’s products because they are concerned that Debtor will not successfully reorganize and emerge from Chapter 11 and such customers may soon be left with no one to continue hosting and servicing the Debtor’s unique products.

9. Through its current leadership and other officers, the Debtor made its best and extensive efforts, both before and after the Petition Date, to secure sufficient customer contacts, to increase revenues, to seek additional financing and new potential investors to enable a successful reorganization effort, and, alternatively, seeking purchasers for the Debtor or its

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which are each incorporated herein by reference.

assets. Despite such efforts, there has been no means to fund or implement a confirmable reorganization plan and at this time the Debtor will soon exhaust the maximum funding under the DIP Facility and it has no viable option to preserve value except to conduct an expedited sale of substantially all assets and pursue a proposed Chapter 11 liquidating plan (the “Plan”) which will be filed shortly after the Sale Motion and which is estimated to provide distributions to allowed general unsecured claims after satisfaction of secured and priority claims. To accommodate this course of action, the DIP Lender has agreed to extend milestones under the DIP Facility and has agreed to permit a certain portion of DIP Facility advances to be used to help fund distributions to allowed general unsecured claims pursuant to a confirmed Plan agreeable to the DIP Lender and otherwise consistent with the Final DIP Financing Order.

#### **B. The Marketing and Sale Process**

10. As above, during several months before the Petition Date and throughout the months following the Petition Date, through its Debtor’s current leadership and other officers, the Debtor made robust and extensive efforts to market the Debtor and its assets to seek additional financing, new potential investors as well as purchasers. Such efforts included, without limitation, soliciting and engaging in meetings with a wide range of potential purchasers and investors familiar with the Debtor’s tech driven industry, including venture capital firms, private equity firms, family office managers, high net worth individuals, strategic partners and buyers, as well as competitors. Debtor’s current leadership engaged in approximately 30 extensive meetings with approximately 30 different targeted potential purchasers and investors. Additionally, over the past months Debtor’s current leadership has repeatedly invited all of its 36 different existing preferred equity shareholders to participate or otherwise assist in soliciting potential purchasers and investors for the Debtor or its assets.

11. Through the foregoing marketing process, a list of potential buyers (the “Potential Buyer List”) was developed using three general introduction routes: (i) analysis of inbound requests to Debtor’s website, emails, or phone calls received from interested parties who learned of the Debtor through the marketplace, (ii) proactive outreach by the Debtor to specifically targeted potential purchasers and investors, including potential purchasers and investors targeted based on their prior or existing relationships with the Debtor, its shareholders or its employees and those targeted based on the nature of the potential purchaser or investor (ex: strategic buyer or a competitor), and (iii) Debtor’s use of family offices and prepetition advisors who assisted in helping to introduce Debtor to potential purchasers and investors.

12. Much of the foregoing marketing efforts were led by Gregory Wolyniec, who is currently Debtor’s President, Director and Chief Executive Officer, and by Adam Bellin, who is currently Debtor’s Head of Business Development. In addition to the foregoing, to assist in marketing the Debtor and its assets, Debtor prepared a high quality investor presentation which was approved by its board of directors and which included a company and product background, market overview, company financials, and management team resumes. These materials assisted in a well-rounded description of the business and the Debtor’s business and its business assets which are largely centered on patent rights to its products for which non-provisional patent applications have been timely filed to preserve value.

13. Given the foregoing marketing efforts which were robust and well-tailored to Debtor’s niche industry and given the Debtor’s liquidity constraints, the Debtor submits that there would no material benefit from any further marketing efforts and that Debtor’s liquidity constraints have made any further marketing efforts virtually impossible and unjustifiable.

14. The Debtor submits that conducting the Sale process pursuant to the expedited timelines and procedures under the Bidding Procedures, and by simply soliciting from the Potential Buyer List which Debtor already spent substantial time and effort accumulating, is reasonable and is in the best interests of the Debtor's estate in light of the Debtor's liquidity and will provide parties with sufficient time and information necessary to formulate a bid to purchase the Debtor's assets.

15. Specifically, potential bidders will have access to comprehensive information prepared by the Debtor and a substantial body of data, inclusive of presentations and discussions with directors and officers as requested. Moreover, many of the potential bidders have already expressed interest and already become knowledgeable about the Debtor.

16. Because the Debtor will soon have insufficient capital to continue operating its business, the expedited Sale process under the Bidding Procedures is the most effective, feasible and efficient course for selling Debtor's business while it still has realizable value and can be maintained as a going concern.

### **C. The Proposed Specimen Asset Purchase Agreement**

17. The Debtor has prepared a form asset purchase agreement (the Specimen APA), substantially in the form attached to the Bidding Procedures Order as Exhibit B, which will be provided to all Notice Parties (including everyone on the Potential Buyer List, as well as all Debtor's known creditors, shareholders and contract counterparties) in connection with the sale bidding process for Debtor's Assets. Potential bidders will be required to submit to the Debtor an executed Specimen APA, with any modifications to it, reflecting the terms upon which the potential bidder would seek to effect a purchase of the Assets and the assumption of certain



liabilities as soon as is practicable, but no later than the Bid Deadline established by entry of the Bidding Procedures Order.

18. To the extent a stalking horse purchase offer materializes, the Debtor may also entertain entering into an agreement (a “Stalking Horse Agreement”) with such a purchaser (“Stalking Horse Purchaser”), as may be determined by the Debtor in its business judgment prior to the Bid Deadline or otherwise prior to Debtor’s selection of a successful bidder for Assets. Upon the selection of a Stalking Horse Purchaser, if any, the Debtor will file and serve a notice that includes: (i) the identity of the proposed Stalking Horse Purchaser; (ii) a summary of the key terms of the Stalking Horse Agreement; (iii) a summary of the type and amount of bid protections (the “Bid Protections”), if any, being offered to the proposed Stalking Horse Purchaser; (iv) a summary of any necessary modifications or amendments to the Bid Procedures; and (v) a copy of the Stalking Horse Agreement. In the event a Stalking Horse Purchaser is selected, the Debtor will request that the Court set a hearing to approve any such Stalking Horse Purchaser, Stalking Horse Agreement, and accompanying Bid Protections on an expedited basis.

19. In the event that the Debtor does not select a Stalking Horse Purchaser, the Debtor intends to proceed with the Bidding Procedures as otherwise set forth in the Bidding Procedures and Bidding Procedures Order and, in accordance with same, prior to the Sale Hearing Debtor will provide to all Notice Parties (as defined below) the terms (or a summary of the principal terms) of any Successful Bids.

#### **D. The Notice Parties and Notice Procedures**

20. In connection with providing notice of the Sale, Bidding Procedures, Auction, Sale Hearing and all related deadlines, on or within two (2) days after entry of this Bidding Procedures Order, Debtor shall serve (such service date being the “Notice Date”) upon all Notice

Parties, (i) by email with hardcopy by regular mail, or (ii) by overnight or same day courier, copies of (a) the signed Bidding Procedures Order (along with the Bidding Procedures and all other exhibits attached to the Bidding Procedures Order entered by the Court); (b) a Specimen APA with accurate schedules attached thereto; (c) a complete and accurate sale notice signed and filed on behalf of the Debtor substantially in the form attached as Exhibit C to the Bidding Procedures Order (the “Sale Notice”) providing notice of the Sale, Bid Deadline, Auction date, Sale Hearing and other relevant information; (d) a notice signed and filed on behalf of the Debtor substantially in the form attached to the Bidding Procedures Order as Exhibit D (the “Assumption and Assignment Notice”) which shall identify Debtor’s executory contracts and unexpired leases (each a “Contract”), list Debtor’s good faith calculation of cure amounts (“Cure Costs”) for each, expressly state that assumption or assignment of a Contract is not guaranteed and is subject to the agreement of the Successful Bidder and Court approval, and prominently display the deadline to file objections to the assumption, assignment, or sale of the Debtor’s Contracts in connection with any Sale; and (e) the proposed Sale Order in substantially the form attached as Exhibit 2 to the Motion (all of the foregoing collectively, the “Sale Bidding Procedures Notice Package”).

21. The “Notice Parties” shall include (a) all parties included in the Potential Buyer List and any other entities known by the Debtor to have expressed an interest in a Sale transaction or any of the Assets during the past several months of Debtor’s marketing efforts; (b) the Postpetition Lender and any persons and entities known by the Debtor to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtor); (c) all non-Debtor counterparties (each a “Counterparty” and collectively, “Counterparties”) to any of Debtor’s Contracts; (d) any governmental authority

known to have a claim against the Debtor in this Chapter 11 Case; (e) the United States Attorney General; (f) the United States Attorney for the Southern District of New York; (g) the Federal Trade Commission; (h) the office of the United States Trustee for the Southern District of New York; (i) the Internal Revenue Service; (j) the United States Securities and Exchange Commission; (k) all of the Debtor's known creditors (for whom identifying information and addresses are known to the Debtor); (l) all parties who have filed a notice of appearance and request for service of papers in this Case pursuant to Bankruptcy Rule 2002; (m) all parties holding an equity interest in the Debtor as of the Petition Date; and (n) all other persons and entities as directed by the Court.

#### **E. Assumption and Assignment Procedures**

22. In connection with any Sale Transaction, the Debtor proposes that certain Contracts may be assumed and assigned to Successful Bidder(s). The Assumption and Assignment Procedures will, among other things, notice the Counterparties of the potential assumption and assignment of their Contracts and the Debtor's calculation of Cure Costs with respect thereto.

23. As noted above and as set forth more fully in the Bidding Procedures Order and in the Assumption and Assignment Notice, the Assumption and Assignment Procedures provide, in sum, that on or within 2 days after the date the Bidding Procedures Order is entered, Debtor will file and serve all Counterparties with an Assumption and Assignment Notice identifying Contracts proposed for possible assumption and assignment, listing Debtor's good faith calculation of Cure Costs for each, and prominently displaying that the deadline to file objections to the assumption, assignment, or sale of any Contracts, whether the objection is based on Cure Costs, assignability or alleged failure to adequate assurance of future performance, is shall be the Sale Objection Deadline which shall occur at least one (1) week

after service of the Assumption and Assignment Notice and shall occur three (3) business days after the Debtor files a notice disclosing the Auction results identifying any Contract proposed to be assigned to a Successful Bidder.

24. Upon request by a Counterparty, the Debtor shall serve, by electronic mail, the evidence of adequate assurance of future performance under a Contract proposed to be assumed and assigned to a Successful Bidder, including the legal name of the proposed assignee, the proposed use of any leased premises, the proposed assignee's financial ability to perform under that Contract, and a contact person with the proposed assignee that Counterparties may contact if they wish to obtain further information regarding the purchaser of the Assets.

#### **F. The Need for an Expedited Sale Process**

25. Debtor believes that proceeding with the Bidding Procedures on an expedited basis represents the best means to generate and maximize value for the estate.

26. As above, despite extensive efforts since the Petition Date, Debtor has not been able to secure any means to fund or implement a confirmable reorganization plan and at this time the Debtor will soon exhaust the maximum funding under the DIP Facility and then Debtor will be left without the means to continue business operations. Thus, the Debtor has no viable option to preserve value except to conduct an expedited sale of its Assets as a going concern while the Debtor still is a going concern.

27. Accordingly, the Debtor respectfully requests that the Bidding Procedures Order be entered as soon as possible on shortened notice approving and scheduling the dates and deadlines requested in accordance with the expedited timeline below.<sup>4</sup> While Debtor seeks the expedited

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<sup>4</sup> What is set forth herein is a discussion about and summary of the proposed Bidding Procedures and the proposed timeline therefore. Such Bidding Procedures and proposed timeline therefore are more fully set forth in the proposed Bidding Procedures Order attached hereto and in all exhibits attached thereto.

timeline below, Debtor reserves the right to request dates and deadlines different from those set forth below subject to the Court's direction and availability for hearing dates.

<b>July 14, 2017 Notice Date</b>	On or within two (2) days after entry of this Bidding Procedures Order, Debtor shall serve upon all Notice Parties, (i) by email with hardcopy by regular mail, or (ii) by overnight or same day courier, copies of the Sale Bidding Procedures Notice Package.
<b>July 21, 2017 at 5:00 p.m. (prevailing Eastern Time) Bid Deadline</b>	The Bid Deadline on which all bids must be received by the parties specified in the Bidding Procedures shall be seven (7) days after the Notice Date.
<b>July 24, 2017 at 10:00 a.m. (prevailing Eastern Time) Auction Date</b>	The Auction is to be held at the office of Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 (the "Auction Date") one (1) business day after the Bid Deadline.
<b>July 25, 2017 at 5:00 p.m. (prevailing Eastern Time) Notice of Auction Results</b>	Within one (1) day after the Auction or as soon as is reasonably practicable, Debtor shall file a notice ("Notice of Auction Results") disclosing the Auction results, including the identity of each Successful Bidder along with a copy of each proposed asset purchase agreement (or a summary of the principal terms thereof) for each Sale of Assets to each Successful Bidder.
<b>July 28, 2017 at 5:00 p.m. (prevailing Eastern Time) Sale Objection Deadline</b>	The Sale Objection Deadline, which is the deadline to file Cure Objections, Assignability Objections, Adequate Assurance Objections (as each is defined in the Bidding Procedures and Bidding Procedures Order) and any other objections to Sale Transaction(s) (each a "Sale Objection") shall be three (3) business days after the date Debtor files the Notice of Auction Results.
<b>July 31, 2017 at 12:00 p.m. (prevailing Eastern Time) Sale Reply Deadline</b>	The Sale Reply Deadline, the deadline for filing any replies or any omnibus reply to any Sale Objection shall be the later of two (2) days or one (1) business day after the Sale Objection Deadline.
<b>August 2, 2017 at 10:00 a.m. (prevailing Eastern Time) Sale Hearing</b>	The Sale Hearing to approve each proposed Sale Transaction shall be scheduled to be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, Courtroom 701, located at One Bowling Green, New York, New York 10004-1408, two (2) days after the Sale Reply Deadline.

28. As above, the Debtor submits that conducting the foregoing Sale process by simply soliciting from the Potential Buyer List, as well as from existing shareholders, counterparties and

others included in the Notice Parties, and pursuant to these expedited procedures under the Bidding Procedures, is reasonable and is in the best interests of the Debtor's estate and will provide parties with sufficient time and information necessary to formulate a bid to purchase the Debtor's assets. Additional marketing efforts are not justifiable given Debtor's lack of liquidity and given that the Debtor already made extensive marketing efforts over the past several months and many of the potential bidders included in the Potential Buyer List have already expressed interest and already become knowledgeable about the Debtor and its assets. Moreover, any potential bidder will have access to comprehensive information prepared by the Debtor and a substantial body of data.

29. At this point in time, Debtor has exhausted efforts to conduct a viable reorganization and will soon have insufficient capital to maintain its business operations (in addition to the accrual of administrative expenses) and thus the expedited Sale process under the Bidding Procedures is the most effective, feasible and efficient course to maximize returns for the estate by selling Debtor's business while it still has realizable value as a going concern. Failing to conduct such an expedited sale will jeopardize the Debtor's ability to maintain its operations during the pendency of the Sale process, which would result in a substantial loss of value for creditors and stakeholders and prevent going concern value from being extracted at the Auction.

### **RELIEF REQUESTED**

30. By this Motion, pursuant to Bankruptcy Code sections 105(a), 363, and 365 and Bankruptcy Rules 2002, 6004, 6006, 9007, 9008, and 9014, the Debtor requests that the Court:

(a) Enter the Bidding Procedures Order substantially in the form attached hereto as Exhibit 1:

(i) approving the Bidding Procedures substantially in the form attached as Exhibit A

to the Bidding Procedures Order, including approving use of a proposed form of asset purchase agreement or Specimen APA substantially in the form attached as Exhibit B to the Bidding Procedures Order;

(ii) scheduling the Bid Deadline, Auction and Sale Hearing consistent with the proposed dates and deadlines set forth above and approving the form and manner of notice thereof as summarized above and as set forth in the Bidding Procedures Order, including approving the notice of Sale and notice of Sale Hearing substantially in the form of the Sale Notice attached as Exhibit C to the Bidding Procedures Order;

(iii) authorizing and approving the (A) notice to each a Counterparty to a Contract of the Debtor's proposed cure amounts (the "Cure Costs"), substantially in the form attached to the Bidding Procedures Order as Exhibit D (the "Assumption and Assignment Notice") and (B) the Assumption and Assignment Procedures set forth in the Bidding Procedures Order and in the Assumption and Assignment Notice for the assumption and assignment of Contracts and the determination of Cure Costs with respect thereto;

(b) Enter one or more Sale Orders in substantially the form attached hereto as Exhibit 2:

(i) authorizing the Sale of the Assets free and clear of all liens, claims, interests, and encumbrances with liens to attach to the proceeds of such Sale Transaction and authorizing the assumption and assignment of certain Contracts in connection therewith; and

(ii) granting related relief.

### **BASIS FOR RELIEF**

#### **A. The Bidding Procedures Are Appropriate and Are in the Best Interests of the Debtor and Its Estate**

31. Bankruptcy Rule 6004(f)(1) provides that "[a]ll sales not in the ordinary course of business may be by private sale or by public auction." The paramount goal of any proposed sale of property of a debtor's estate is to maximize the value of the sale proceeds received by the estate. See Official Committee of Unsecured Creditors of Cybergenics Corp. v. Chinery, 330 F.3d 548, 573 (3d Cir. 2003) (the debtor has the "fiduciary duty to maximize the value of the bankruptcy estate."); Burtch v. Ganz (In re Mushroom Co.), 382 F.3d 325, 339 (3d Cir. 2004) (finding that debtor "had a fiduciary duty to protect and maximize the estate's assets."); In re

Food Barn Stores, Inc., 107 F.3d 558, 564- 65 (8th Cir. 1997) (“a primary objective of the Code [in asset sales is] to enhance the value of the estate at hand.”) (internal citations omitted).

32. Courts recognize that procedures established for the purpose of enhancing competitive bidding are consistent with the fundamental goal of maximizing value for the debtor’s estate. See Calpine Corp. v. O’Brien Env’tl. Energy, Inc. (In re O’Brien Env’tl. Energy, Inc.), 181 F.3d 527, 537 (3d Cir. 1999) (noting that bidding procedures that promote competitive bidding provide benefit to the estate); In re Fin’l News Network, Inc., 126 B.R. 152, 156 (Bankr. S.D.N.Y. 1992) (“court-imposed rules for the disposition of assets . . . [should] provide an adequate basis for comparison of offers, and [should] provide for fair and efficient resolution of bankrupt estates.”).

33. The Debtors have structured the Bidding Procedures to attract competitive and active bidding from those parties with the financial capability to do so and from those parties who have already expressed interest based on the extensive marketing efforts Debtor undertook over the past several months. The Bidding Procedures will allow the Debtor to conduct the bidding and any Auction in a fair, controlled, and transparent manner that will encourage participation by financially capable bidders that demonstrate the financial wherewithal to close a transaction. Thus, the Bidding Procedures should be approved as reasonable, appropriate, and in the best interests of the Debtor, its estate, and all parties in interest.

**B. Entry into a Sale Transaction is a Sound Exercise of the Debtors’ Business Judgment**

34. Bankruptcy Code section 363 provides that the debtor may, “after a notice and a hearing . . . use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363. Bankruptcy Code section 105(a) provides that the court “may issue



any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105(a).

35. While the Bankruptcy Code does not specify the appropriate standard for approving sale of property under section 363, courts agree that a business judgment standard applies. See, e.g., Meyers v. Martin (In re Martin), 91 F.3d 389, 395 (3d Cir. 1996) (internal citations omitted); In re Chateaugay Corp., 973 F.2d 141, 143 (2d Cir. 1992); Committee of Equity Security Holders v. Lionel Corp. (In re Lionel Corp.), 722 F.2d 1063, 1071 (2d Cir. 1983). Courts typically apply four factors in determining whether a section 363 sale is appropriate, which factors include whether: (a) a sound business justification exists for the proposed sale; (b) adequate and reasonable notice of the sale under the circumstances was provided to interested parties; (c) the sale will produce a fair and reasonable price for the property; and (d) the parties have acted in good faith. Id. at 1070 (setting forth the “sound business” purpose standard for the sale of debtor’s assets under Bankruptcy Code section 363). Thus, when a debtor demonstrates a valid business justification for a decision, the presumption is that the business decision was made “on an informed basis, in good faith and in the honest belief that the action taken was in the best interests of the company.” Official Comm. of Subordinated Bondholders v. Integrated Res. Inc. (In re Integrated Res., Inc.), 147 B.R. 650, 656 (S.D.N.Y. 1990) (quoting Smith v. Van Gorkcom, 488 A.2d 858, 872 (Del. 1985)).

**1. The Debtor Has Demonstrated a Sound Business  
Justification for the Sale of the Assets**

36. A sound business justification exists where a sale of the debtor’s assets is necessary to preserve the value of a Debtor’s estates. See, e.g., Guilford Trans. Indus., Inc. v. Del. & Hudson Ry. Co. (In re Del. & Hudson Ry. Co.), 124 B.R. 169, 179 (D. Del. 1991) (approving the sale of a debtor as a going concern upon a showing of “a valid business purpose”); In re Lionel

Corp., 722 F.2d at 1071 (“requiring that a judge determining a § 363(b) application expressly find from the evidence presented before him . . . a good business reason to grant” the sale).

37. As set forth above, in the First Day Declaration and in the Sale Declaration, the Debtor has demonstrated a sound business justification for the expedited Sale and Bidding Procedures and for entry into any Sale Transaction that may result from the Auction. Despite extensive efforts since before and after the Petition Date, Debtor has not been able to secure any means to fund or implement a confirmable reorganization plan and soon Debtor will no longer be able to operate its business. Thus, at this time the Debtor has no viable option to preserve value except to conduct an expedited sale of its Assets to extract value as a going concern while the Debtor still is a going concern. Such course of action is consistent with the Debtor’s fiduciary duties to its creditors and economic stakeholders.

**2. The Notice Procedures Are Appropriate and Comply with Bankruptcy Rule 2002**

38. Bankruptcy Rule 2002 (a) and (c) require the Debtor to notify creditors of the Sale, including a disclosure of the time and place of any auction, the terms and conditions of the sale and the deadline for filing any objections.

39. The Debtor submit that the notice procedures, as described and incorporated into the Bidding Procedures, comply with Bankruptcy Rule 2002 and are reasonably calculated to provide all creditors and known parties in interest with adequate and timely notice of a Sale Transaction, the Bidding Procedures, the Auction and the Sale Hearing.

40. The Debtor requests that the Court approve the notice procedures as set forth herein, including the form and manner of the Sale Notice and Assumption and Assignment Notice, and that no other further notice of the Bidding Procedures, the Auction, and the Sale Hearing is necessary or required.

**3. The Proposed Sale Will Produce a Fair and Reasonable Purchase Price**

41. As set forth above, the Debtor believes that the proposed Sale will produce a fair and reasonable price for the Assets. The Bidding Procedures were designed to ensure that the Auction, if necessary, will yield the maximum value for the Debtor's creditors and economic stakeholders. The Debtor constructed the Bidding Procedures to leverage the Potential Buyer List derived from Debtor's extensive marketing efforts over the past several months and to encourage competitive bidding while proceeding on an expedited basis to ensure Debtor can continue to operate pending the Sale process in order to extract going concern value. These measures will preserve Debtor's value as a going concern to maximize Sale returned and will prevent any bid that does not constitute a fair and adequate purchase price for the Assets or any combination thereof.

42. Further, parties in interest will have the opportunity to conduct diligence as set forth in the Bidding Procedures and many potential bidders have already expressed interest and already become familiar with Debtor's business. Potential bidders will also have the opportunity to bid on a combination of, substantially all or a portion of the Assets.

**4. The Bidding Procedures Ensure a Good Faith Process and the Ultimate Purchaser(s) of Assets Is Entitled to the Protections of Bankruptcy Code Section 363(m)**

43. Bankruptcy Code section 363(m) is designed to protect the sale of a debtor's assets to a good faith purchaser. Section 363(m) provides that: "The reversal or modification on appeal of an authorization under subsection (b) or (c) of this section of a sale or lease of property does not affect the validity of a sale or lease under such authorization to an entity that purchased or leased such property in good faith, whether or not such entity knew of the pendency of the

appeal, unless such authorization and such sale . . . were stayed pending appeal.” 11 U.S.C. § 363(m).

44. While the Bankruptcy Code does not define good faith, the United States Court of Appeals for the Third Circuit has held that indices of bad faith typically include “fraud, collusion between the purchaser and other bidders or the trustee, or an attempt to take grossly unfair advantage of other bidders.” Cumberland Farms Dairy, Inc. v. Abbotts Dairies of Penn., Inc. (In re Abbotts Dairies of Penn., Inc.), 788 F.2d 143, 147 (3d Cir. 1986) (internal citations omitted); see also Kabro Assoc. of West Islip, L.L.C. v. Colony Hill Assocs. (In re Colony Hill Assocs.), 111 F.3d 269, 276 (2d Cir. 1997) (noting that “misconduct that would destroy a [purchaser]’s good faith status at a judicial sale involves fraud, collusion between the [purchaser] and other bidders or the trustee or an attempt to take grossly unfair advantage of other bidders.”).

45. The Bidding Procedures were designed with the goal of producing a fair and transparent bidding process to allow the Debtor to generate the best offer for the Assets. The Successful Bidder(s) and the Debtor will have negotiated at arm’s-length and in good faith for the purchase of the Assets, backed by the Court-approved Auction. Thus, the Debtor requests that the ultimate purchaser or purchasers of the Assets be entitled to the protections of Bankruptcy Code section 363(m).

**C. The Sale of Assets Free and Clear of Liens, Claims, Interests, and Encumbrances Is Permitted and Appropriate Under Bankruptcy Code Section 363(f)**

46. Bankruptcy Code section 363(f) authorizes a debtor to sell assets free and clear of each lien, claim, interest, and encumbrance provided that one of the following conditions are met:

- a. applicable non-bankruptcy law permits sale of such property free and clear of such interest;

- b. the entity holding each such interest consents;
- c. such interest is a lien and the price at which such property is to be sold is greater than the value of all liens on such property;
- d. such interest is in bona fide dispute; or
- e. such entity could be compelled, in legal or equitable proceeding, to accept a money satisfaction of such interest.

11 U.S.C. § 363(f)(1) – (5).

47. The Debtor represents that, any Sale Transaction that is pursued, such Sale Transaction will satisfy one of the five requirements set forth under Bankruptcy Code section 363(f), including, without limitation, that the holder of each lien on the Assets will consent to the sale or the purchase price will be at least as much as the actual value of any such lien. Thus, the Debtor may sell the Assets free and clear of any and all liens, claims, and encumbrances. Any lien holder will be adequately protected by attachment of its lien to the net proceeds of the Sale Transaction, subject to any claims and defenses that the Debtor may have with respect thereto. Accordingly, the Debtor requests that the Court authorize the Debtor to sell the Assets free and clear of any liens, claims, interests, and encumbrances in accordance with Bankruptcy Code section 363(f).

#### **D. Assumption and Assignment of Executory Contracts**

48. Bankruptcy Code section 365(a) provides that a debtor “subject to the court’s approval, may assume or reject any executory contract . . .” 11 U.S.C. § 365(a).

49. Courts employ a business judgment standard in determining whether to approve a debtor’s decision to assume or reject an executory contract. See, e.g., In re HQ Global Holdings, Inc., 290 B.R. 507, 511 (Bankr. D. Del. 2003) (finding that debtor’s decision to assume or reject executory contract is governed by business judgment standard and can only be overturned if

decision was product of bad faith, whim, or caprice); In re Market Square Inn, Inc., 978 F.2d 116, 121 (3d Cir. 1992) (finding that assumption or rejection of lease “will be a matter of business judgment by the bankruptcy court. . .”). The business judgment test “requires only that the trustee [or debtor in possession] demonstrate that [assumption] or rejection of the contract will benefit the estate.” Wheeling-Pittsburgh Steel Corp. v. West Penn Power Co. (In re Wheeling-Pittsburgh Steel Corp.), 72 B.R. 845, 846 (Bankr. W.D. Pa. 1987).

50. Debtor proposes to assume and assign Contracts to the Successful Bidder(s) as part of the Sale Transaction(s). Assumption of Contracts is a sound exercise of the Debtor’s business judgment. Assuming and assigning Contracts may enable the Debtor to garner the highest or otherwise best offer for the Assets, by enabling the Debtor to offer parties in interest with a combination of Contracts that may be in some instances an integral part of the Assets that the Debtor seeks to sell.

51. Bankruptcy Code section 365(f) requires, in part, that the assignee of any executory contract provide “adequate assurance of future performance . . . whether or not there has been a default in such contract.” 11 U.S.C. § 365(f)(2). Section 365(b) codifies the requirements for assuming an executory contract and provides, in pertinent part, that the debtor may only assume an executory contract if it:

(A) cures, or provides adequate assurance that the [debtor] will promptly cure[s] [any defaults existing under the executory contract];

(B) compensates, or provides adequate assurance that the [debtor] will promptly compensate, a party other than the debtor to such contract . . . for any actual

pecuniary loss to such party resulting from such default; and

(C) provides adequate assurance of future performance under such contract or lease.

11 U.S.C. § 365(b).

52. Adequate assurance is not specifically defined in the Bankruptcy Code but it is guided by “a practical, pragmatic construction based upon the facts and circumstances of each case.” Carlisle Homes, Inc. v. Azzari (In re Carlisle Homes, Inc.), 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (quoting In re Bon Ton Restaurant & Pastry Shop, Inc., 53 B.R. 789, 803 (Bankr. N.D. Ill. 1995)). No single standard governs every case but adequate assurance “will fall considerably short of an absolute guarantee of performance.” In re Carlisle Homes, Inc., 103 B.R. at 538. Adequate assurance may be provided by demonstrating the assignee’s financial health and experience in managing the type of enterprise or property assigned. See, e.g., In re Bygaph, Inc., 56 B.R. 596, 605-06 (Bankr. S.D.N.Y. 1986) (finding that assignee’s industrial expertise, past success in operating a similar business, and financial wherewithal satisfied the adequate assurance requirement of section 365 of the Bankruptcy Code).

53. The Bidding Procedures specifically require any Qualified Bidders to provide financial and other information that would provide the Counterparties with adequate assurance of future performance of the applicable obligations under any Contract included as part of a Qualified Bid. Moreover, the Debtor will provide adequate assurance information to all Counterparties to Contracts proposed for assumption and assignment, and upon request by such Counterparty, furnish additional adequate assurance information if reasonable and appropriate under the circumstances. Counterparties that are not satisfied with the proposed adequate assurance of future performance provided to them may file objections by the Sale Objection Deadline.

54. Thus, the Debtor has satisfied requirements of Bankruptcy Code section 365 with respect to the assumption and assignment of Contracts.

55. To facilitate the assumption and assignment of Contracts, the Debtor respectfully requests that the Court find that all anti-assignment provisions included in Contracts, if any, including those provisions that have the effect of restricting or limiting assignment, to be unenforceable and prohibited pursuant to Bankruptcy Code section 365(f).

56. Section 365(f)(1) provides, in pertinent part, that, “notwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law, that prohibits, restricts, or conditions the assignment of such contract or lease, the trustee may assign such contract or lease. . .” 11 U.S.C. § 365(f)(1). Further, section 365(f)(3) provides that “[n]otwithstanding a provision in an executory contract or unexpired lease of the debtor, or in applicable law that terminates or modifies, or permits a party other than the debtor to terminate or modify, such contract or lease or a right or obligation under such contract or lease on account of an assignment of such contract or lease, such contract, lease, right, or obligation may not be terminated or modified under such provision because of the assumption or assignment of such contract or lease by the trustee.” 11 U.S.C. § 365(f)(3).

**E. The Sale of Assets Will Not Require Appointment of a Consumer Privacy Ombudsman**

57. Bankruptcy Code section 363(b)(1) provides that a debtor may not sell or release personally identifiable information about individuals unless either the sale complies with the debtor’s privacy policies previously given to consumers and these policies remain in place, or a consumer privacy ombudsman is appointed pursuant to Bankruptcy Code section 332.

58. Here, Debtor submits that the Sale will not include the transfer of personally identifiable information within the meaning of Bankruptcy Code section 363(b)(1) and thus there is no need for the appointment of a consumer privacy ombudsman.



### **REQUEST FOR IMMEDIATE RELIEF AND WAIVER OF STAY**

59. Pursuant to Bankruptcy Rules 6004(h) and 6006(d), the Debtor seeks (a) entry of an order granting the relief sought herein, and (b) a waiver of any stay of the effectiveness of such an order. Bankruptcy Rule 6004(h) provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Bankruptcy Rule 6006(d) provides that “[a]n order authorizing the trustee to assign an executory contract or unexpired lease under § 365(f) is stayed until the expiration of 14 days after entry of the order, unless the court order otherwise.”

60. As set forth above, the relief requested herein is necessary and appropriate to maximize the value of the Debtor’s estate for the benefit of its creditors and economic stakeholders. Thus, the Debtor submits that ample cause exists to justify (a) the immediate entry of an order granting the relief sought herein and (b) a waiver of the 14 day stay imposed by Bankruptcy Rules 6004(h) and 6006(d), to the extent that each Rule applies.

### **NOTICE**

61. Notice of this Motion shall be given to (a) the Office of the United States Trustee for the Southern District of New York; (b) those creditors holding the 20 largest unsecured claims against the Debtor’s estate; (c) counsel to the DIP Lender; (d); the Internal Revenue Service; (e) the Securities and Exchange Commission; and (f) all parties who have filed a notice of appearance and request for service of papers in this Case pursuant to Bankruptcy Rule 2002. The Debtor submits that no other or further notice of this Motion need be provided.

WHEREFORE, the Debtor respectfully request that the Court (i) enter the Bidding Procedures Order in substantially the form attached to this Motion as Exhibit 1 following any hearing for same; (ii) enter Sale Order in substantially the form attached to this Motion as

Exhibit 2 for each Sale Transaction following the Sale Hearing; and (ii) grant the Debtor such further relief as may be appropriate.

Dated: July 11, 2017  
New York, New York

WOLLMUTH MAHER & DEUTSCH LLP

/s/ John D. Giampolo

John D. Giampolo

500 Fifth Avenue

New York, New York 10110

Phone: 212-382-3300

*Attorneys for the Debtor and Debtor-in-Possession,  
Human Condition Safety Inc.*

**Exhibit 1 to the Sale Motion**

**(Bidding Procedures Order)**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HUMAN CONDITION SAFETY INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No: 17-10585-SHL

**ORDER (I) (A) APPROVING BIDDING PROCEDURES FOR SALE  
OF SUBSTANTIALLY ALL DEBTOR'S ASSETS, (B) SCHEDULING  
AN AUCTION, (C) APPROVING THE FORM AND MANNER OF NOTICE  
THEREOF, (D) APPROVING ASSUMPTION AND ASSIGNMENT PROCEDURES,  
AND (E) SCHEDULING A SALE HEARING AND APPROVING THE FORM AND  
MANNER OF NOTICE THEREOF, AND (II) GRANTING RELATED RELIEF**

This Court having considered the Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially all Debtor's Assets, (B) Scheduling an Auction, (C) Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (II)(A) Approving the Sale of Substantially All Debtor's Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith; and (III) Granting Related Relief (the "Motion"), filed by the above-captioned debtor, as debtor and debtor-in-possession (the "Debtor") on July 11, 2017, along with the accompanying Declaration of Gregory Wolyniec in support of the Motion (the "Sale Declaration"), the Declaration of Gregory Wolyniec Pursuant to Local Rule 1007-2 in Support of Debtor's Chapter 11 Petition and Requests for First Day Relief [Doc 7] filed on March 13, 2017 in this case (the "First Day

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's tax identification number, is Human Condition Safety Inc. (2476). The address of the Debtor's corporate headquarters, and sole office location, for noticing purposes is 61 Broadway, Suite 2710, New York, New York 10006.

Declaration”), and the statements of counsel and the evidence adduced with respect to the Motion at any hearing (“Bidding Procedures Hearing”) before this Court for approval of (i) the Bidding Procedures attached hereto as Exhibit A (the “Bidding Procedures”)<sup>2</sup>, (ii) use of a form asset purchase agreement substantially in the form attached hereto as Exhibit B (the “Specimen APA”), (iii) the form of notice of the sale, bid deadline, auction date, sale hearing and other relevant information substantially in the form attached hereto as Exhibit C (the “Sale Notice”), (iv) the assumption and assignment procedures (the “Assumption and Assignment Procedures”) set forth herein and in the “Assumption and Assignment Notice” attached hereto as Exhibit D, and (v) the form of Assumption and Assignment Notice in substantially the form attached hereto as Exhibit D; and after due deliberation, this Court having determined that approval of the Bidding Procedures and related relief requested in the Motion is in the best interests of the Debtor, its estate, its creditors, and other parties in interest, the Debtor having demonstrated good, sufficient, and sound business justification for the relief approved herein, and that such relief is necessary to prevent immediate and irreparable harm to the Debtor, its estate, and its creditors; and good and sufficient cause having been shown;

IT IS HEREBY FOUND AND DETERMINED THAT:<sup>3</sup>

A. The Court has jurisdiction over this matter pursuant to 28 U.S.C. § 1334(b). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

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

C. The statutory predicates for the relief requested in the Motion are (i) sections 105,

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<sup>2</sup> Capitalized terms used but not otherwise defined in this Order shall have the same meanings ascribed to them in the Bidding Procedures.

<sup>3</sup> The findings of fact and the conclusions of law stated herein shall constitute the Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052, made applicable to this proceeding pursuant to Bankruptcy Rule 9014. To the extent any finding of fact shall be determined to be a conclusion of law, it shall be so deemed, and to the extent any conclusion of law shall be determined to be a finding of fact, it shall be so deemed.

107(b)(1), 363, 365, and 503 of title 11 of the United States Code (the “Bankruptcy Code”) and (ii) Rules 2002, 6004, 6006, 9014, and 9018 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”)

D. Notice of the Motion and the Bidding Procedures Hearing was sufficient under the circumstances, and no other or further notice need be provided.

E. There is good cause to waive the fourteen (14) day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) to the extent it is applicable.

F. The Bidding Procedures attached hereto, which includes use of the form asset purchase agreement or Specimen APA attached hereto, are fair, reasonable, and appropriate, and are designed to maximize the value of the proceeds of a sale (the “Sale”) of any or substantially all of the Debtor’s assets (the “Assets”) to a purchaser(s) (“Sale Transaction”) following an auction (“Auction”).

G. The Assumption and Assignment Procedures set forth herein and in the Assumption and Assignment Notice are fair, reasonable, and appropriate and comply with the provisions of Bankruptcy Code section 365.

H. The Debtor has articulated good and sufficient business reasons for this Court to approve (i) the Bidding Procedures, (ii) the use of the form Specimen APA, (iii) Sale Notice, (iv) Assumption and Assignment Notice, and (v) the Assumption and Assignment Procedures.

I. The Bidding Procedures were formulated in good faith and at arm’s-length, and are reasonably designed to promote participation and active bidding and to ensure that the highest or otherwise best value is generated for the Assets.

J. Good and sufficient notice of the relief sought in the Motion has been provided under the

circumstances, and no other or further notice is required except as set forth herein, in the Bidding Procedures, in the Assumption and Assignment Procedures and in the Sale Notice. A reasonable opportunity to object and be heard regarding the relief requested in the Motion has been afforded to parties in interest.

K. The Bidding Procedures, the Sale Notice and the Assumption and Assignment Notice are all appropriate and reasonably calculated to provide all interested parties with timely and proper notice of the Auction, the Bidding Procedures, any Sale Transaction and Sale Hearing (as defined below), the Assumption and Assignment Procedures, the Debtor's proposed good faith calculation of cure amounts (the "Cure Costs") due under any executory contract or unexpired lease proposed to be assumed and assigned in connection with a Sale Transaction (each a "Proposed Assumed Contract") and all relevant important dates and deadlines with respect to the foregoing, and no other or further notice of the Sale, Auction, the Bidding Procedures or the proposed assumption and assignment of any Proposed Assumed Contract in connection therewith shall be required.

L. Entry of this Order (or "Bidding Procedures Order") is in the best interests of the Debtor's estate, its creditors, and all other interested parties.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:

1. The Motion is GRANTED to the extent set forth herein.
2. Except as expressly provided herein, nothing herein shall be construed as a determination of the rights of any party in interest in this Chapter 11 case (the "Case").
3. All objections to the relief granted in this Bidding Procedures Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, hereby are overruled and denied on the merits with prejudice.

### **A. The Bidding Procedures**

4. The Bidding Procedures attached as Exhibit A hereto and use of the form Specimen APA in substantially the form attached hereto as Exhibit B, are hereby APPROVED and fully incorporated into this Bidding Procedures Order. The Debtor is authorized to take all actions necessary or appropriate to implement the Bidding Procedures. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

5. The Bidding Procedures shall apply to the conduct of any Sale of Assets and any bidders therefore and any Auction in connection therewith.

6. Except as otherwise provided in the Bidding Procedures, the following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bidding Procedures):

<b>July 14, 2017 Notice Date</b>	On or within two (2) days after entry of this Bidding Procedures Order, Debtor shall serve (such service date being the “ <b>Notice Date</b> ”) upon all Notice Parties (as defined below), (i) by email with hardcopy by regular mail, or (ii) by overnight or same day courier, copies of (a) this signed Bidding Procedures Order (along with the Bidding Procedures and all other exhibits attached to this Bidding Procedures Order), (b) a Specimen APA with accurate schedules attached thereto, (c) a complete accurate Sale Notice signed and filed on behalf of the Debtor providing notice of the Sale, Bid Deadline, Auction, Sale Hearing and other relevant information as set forth in the form Sale Notice attached hereto, and (d) an Assumption and Assignment Notice signed and filed on behalf of the Debtor identifying all Proposed Assumed Contracts and Cure Costs for each and prominently displaying the deadline to file objections to assumption, assignment, or sale of Proposed Assumed Contracts as set forth in the form Assumption and Assignment Notice attached hereto (collectively, the “ <b>Sale Bidding Procedures Notice Package</b> ”).
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<b>July 21, 2017 at 5:00 p.m. (prevailing Eastern Time) Bid Deadline</b>	The deadline on which all bids must be received by the parties specified in the Bidding Procedures (the “ <u>Bid Deadline</u> ”) shall be seven (7) days after the Notice Date.
<b>July 24, 2017 at 10:00 a.m. (prevailing Eastern Time) Auction Date</b>	The Auction is to be held at the office of Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 (the “ <u>Auction Date</u> ”) one (1) business day after the Bid Deadline.
<b>July 25, 2017 at 5:00 p.m. (prevailing Eastern Time) Notice of Auction Results</b>	Within one (1) day after the Auction or as soon as is reasonably practicable, Debtor shall file a notice (“ <u>Notice of Auction Results</u> ”) disclosing the Auction results, including the identity of each Successful Bidder along with a copy of each proposed asset purchase agreement (or a summary of the principal terms thereof) for each Sale of Assets to each Successful Bidder.
<b>July 28, 2017 at 5:00 p.m. (prevailing Eastern Time) Sale Objection Deadline</b>	The deadline (“ <u>Sale Objection Deadline</u> ”) to file Cure Objections, Assignability Objections, Adequate Assurance Objections (as each is defined below) and any other objections to Sale Transaction(s) (each a “ <u>Sale Objection</u> ”) shall be three (3) business days after the date Debtor files the Notice of Auction Results.
<b>July 31, 2017 at 12:00 p.m. (prevailing Eastern Time) Sale Reply Deadline</b>	The deadline (“ <u>Sale Reply Deadline</u> ”) to file replies or any omnibus reply to any Sale Objection shall be the later of two (2) days or one (1) business day after the Sale Objection Deadline.
<b>August 2, 2017 at 10:00 a.m. (prevailing Eastern Time) Sale Hearing</b>	The hearing (the “ <u>Sale Hearing</u> ”) to approve each proposed Sale Transaction is scheduled to be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, Courtroom 701, located at One Bowling Green, New York, New York 10004-1408, two (2) days after the Sale Reply Deadline.

7. Except as otherwise provided in the Bidding Procedures, only Qualified Bidders that submitted Qualified Bids will be eligible to participate at the Auction and if the Debtor does not receive more than one Qualified Bid, it may not hold the Auction and the sole Qualified Bidder may be named the Successful Bidder and Debtor may seek final approval at the Sale Hearing of the sale of the Assets to the sole Qualified Bidder.

8. To the extent a stalking horse purchase offer materializes, the Debtor may also entertain

entering into an agreement (a “Stalking Horse Agreement”) with such a purchaser (“Stalking Horse Purchaser”), as may be determined by the Debtor in its business judgment prior to the Bid Deadline or otherwise prior to Debtor’s selection of a successful bidder for Assets. Upon the selection of a Stalking Horse Purchaser, if any, the Debtor will file and serve a notice that includes: (i) the identity of the proposed Stalking Horse Purchaser; (ii) a summary of the key terms of the Stalking Horse Agreement; (iii) a summary of the type and amount of bid protections (the “Bid Protections”), if any, being offered to the proposed Stalking Horse Purchaser; (iv) a summary of any necessary modifications or amendments to the Bid Procedures; and (v) a copy of the Stalking Horse Agreement. In the event a Stalking Horse Purchaser is selected, the Debtor will request that the Court set a hearing to approve any such Stalking Horse Purchaser, Stalking Horse Agreement, and accompanying Bid Protections on an expedited basis.

9. The Debtor shall sell Assets to the Successful Bidder(s) only upon the approval of the Successful Bid(s) by the Court after a Sale Hearing and any and all liens on the Assets shall attach to the proceeds of the sale of such Assets with the same validity and priority as such liens applied against the Assets. The Debtor’s presentation of the Successful Bid(s) to the Court for approval does not constitute the Debtor’s acceptance of the bid(s). The Debtor will be deemed to have accepted a bid only when the bid has been approved by the Court at the Sale Hearing.

#### **B. Sale Notice**

10. The form of Sale Notice attached hereto is approved and fully incorporated into this Bidding Procedures Order. The failure to specifically include a reference to any particular provision of the Sale Notice in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

11. On or within two (2) days after entry of this Bidding Procedures Order, the Debtor

shall serve, (i) by email with hardcopy by regular mail, or (ii) by overnight or same day courier, copies of Sale Bidding Procedures Notice Package upon: (a) all parties included in the Potential Buyer List (as described and defined in the Sale Declaration), which includes all persons and entities known by the Debtor to have expressed an interest in a Sale transaction or any of the Assets during the past several months of Debtor's marketing efforts; (b) the Postpetition Lender and any persons and entities known by the Debtor to have asserted any lien, claim, interest, or encumbrance in the Assets (for whom identifying information and addresses are available to the Debtor); (c) all non-Debtor counterparties (each a "Counterparty" and collectively, "Counterparties") to any of Debtor's Proposed Assumed Contracts; (d) any governmental authority known to have a claim against the Debtor in this Chapter 11 Case; (e) the United States Attorney General; (f) the United States Attorney for the Southern District of New York; (g) the Federal Trade Commission; (h) the office of the United States Trustee for the Southern District of New York; (i) the Internal Revenue Service; (j) the United States Securities and Exchange Commission; (k) all of the Debtor's known creditors (for whom identifying information and addresses are known to the Debtor); (l) all parties who have filed a notice of appearance and request for service of papers in this Case pursuant to Bankruptcy Rule 2002; (m) all parties holding an equity interest in the Debtor as of the Petition Date; and (n) all other persons and entities as directed by the Court (collectively, the "Notice Parties").

12. Sale Objections, which include objections to any Sale Transaction, including any Cure Objections, Assignability Objections, and Adequate Assurance Objections and any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to Bankruptcy Code section 363(f) and entry of any Sale Order must (a) be in writing and specify the nature of such objection; (b) comply with the Bankruptcy Code, Bankruptcy Rules, Local

Bankruptcy Rules for the Southern District of New York, and all orders of the Bankruptcy Court; and (c) be filed with the Bankruptcy Court and served on: (i) counsel for the Debtor, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 (Attn.: John D. Giampolo) jgiampolo@wmd-law.com; (ii) counsel for the Debtor's Postpetition Lender, AIG PC Global Services, Inc., DLA Piper LLP, 1251 Avenue of the Americas, 27th Floor, New York, New York 10020-1104 (Attn: Daniel G. Egan) daniel.egan@dlapiper.com; (iii) counsel (if applicable) for any Successful Bidder; and (iv) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn.: Serene Nakano) (collectively, the "Objection Recipients") by the **Sale Objection Deadline on July 28, 2017 at 5:00 p.m. (prevailing Eastern Time)**.

13. Any replies to Sale Objections shall be submitted by the Sale Reply Deadline which shall be **July 31, 2017 at 12:00 p.m.(prevailing Eastern Time)**, the later of two (2) days or one (1) business day after the Sale Objection Deadline and no later than two (2) days before the Sale Hearing.

14. The failure of any party to timely file with the Court and serve on the Objection Recipients a Sale Objection shall be barred from asserting, at the applicable Sale Hearing or thereafter, any objection to the relief requested in the Motion, or to the consummation and performance of the applicable Sale transaction, including the transfer of the Assets to the Successful Bidder, free and clear of all liens, claims, interests, and encumbrances pursuant to Bankruptcy Code section 363(f), and shall be deemed to be a "consent" for purposes of Bankruptcy Code section 363(f).

### **C. Assumption and Assignment Procedures**

#### ***1. Cure Objections and Assignability Objections***

15. The Assumption and Assignment Notice attached hereto is approved and fully incorporated into this Bidding Procedures Order. The failure to specifically include a reference to any particular provision of the Bidding Procedures in this Bidding Procedures Order shall not diminish or impair the effectiveness of such provision.

16. Within two (2) days after the entry of this Bidding Procedures Order, the Debtor shall file with this Court, serve on the Notice Parties, including each Counterparty to a Proposed Assumed Contract, the Assumption and Assignment Notice, which shall (i) identify each Proposed Assumed Contract; (ii) list the Debtor's good faith calculation of Cure Costs with respect to each; (iii) expressly state that assumption or assignment of a Proposed Assumed Contract is not guaranteed and is subject to the agreement of the Successful Bidder and Court approval; and (iv) prominently display the deadline to file objections to the assumption, assignment, or sale of the Debtor's Proposed Assumed Contracts.

17. Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment, and sale of the Proposed Assumed Contract on any grounds, including the subject of which objection is either (i) the Debtor's proposed Cure Costs to cure any outstanding monetary defaults then existing under such Proposed Assumed (each, a "Cure Objection") and/or (ii) an objection to the assignability of the Proposed Assumed, whether on grounds that such contract is not assignable, is not an executory contract or unexpired lease, or otherwise (each, an "Assignability Objection"), shall file with the Bankruptcy Court and serve on the Objection Recipients its Cure Objection and/or Assignability Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in

support thereof, by no later than **Sale Objection Deadline on July 28, 2017 at 5:00 p.m.**  
**(prevailing Eastern Time).**

18. In the event that the Debtor identifies any Counterparty that was not served with the Assumption and Assignment Notice, the Debtor may subsequently serve such Counterparty with an Assumption and Assignment Notice, and the following procedures will nevertheless apply to such Counterparty; provided, however, that the deadline for such Counterparty to file any Sale Objection with respect to such Counterparty's Proposed Assumed Contract may be extended or such Counterparty may not be required to file any objection and may voice objection at the Sale Hearing.

19. The Debtor and a Counterparty that has filed a Cure Objection and/or Assignability Objection shall first confer in good faith to attempt to resolve the Cure Objection and/or Assignability Objection without Court intervention. If the parties are unable to consensually resolve the Cure Objection and/or Assignability Objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to such Cure Objection and the assignability of the Counterparty's Proposed Assumed Contract shall be determined by the Court at the Sale Hearing provided that, a Cure Objection may, at the Debtor's discretion after consulting with its professionals, the Postpetition Lender and its professionals and with the applicable Successful Bidder and its professionals, be adjourned (an "Adjourned Cure Objection") to a subsequent hearing. An Adjourned Cure Objection may be resolved after the closing date of the applicable Sale Transaction; *provided that*, the Debtor maintain a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Proposed Assumed Contract.

20. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure

amount, if any, the applicable Proposed Assumed Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder, as of the closing date of the applicable Sale Transaction. All objections to the proposed assumption and assignment of the Debtor's right, title, and interest in, to, and under a Proposed Assumed Contract will be heard at the Sale Hearing, except with respect to an Adjourned Cure Objection as set forth herein.

21. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients a Cure Objection and/or Assignability Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Counterparty's Proposed Assumed Contract (unless such Counterparty has timely filed an Adequate Assurance Objection (as defined below) with respect to the Proposed Assumed Contract, in which case the Counterparty may only object to the Successful Bidder's adequate assurance) to the Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment, and sale. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Proposed Assumed Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Proposed Assumed Contract, or any other document, and the Counterparty to the Proposed Assumed Contract shall be deemed to have consented to the Cure Costs and forever shall be barred from asserting any other claims related to such Proposed Assumed Contract against the Debtor or any Successful Bidder(s) or its property.

## ***2. Adequate Assurance Objections***

22. Upon request by a Counterparty, the Debtor shall serve, by electronic mail, the evidence

of adequate assurance of future performance under the Proposed Assumed Contracts, including the legal name of the proposed assignee, the proposed use of any leased premises, the proposed assignee's financial ability to perform under the Proposed Assumed Contracts, and a contact person with the proposed assignee that Counterparties may contact if they wish to obtain further information regarding the purchaser of the Assets. Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment, and sale of the Proposed Assumed Contract, the subject of which objection is a Successful Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection"), shall file with the Bankruptcy Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than the **Sale Objection Deadline on July 28, 2017, at 5:00 p.m. (prevailing Eastern Time)**.

23. The Debtor and a Counterparty that has filed an Adequate Assurance Objection shall first confer in good faith to attempt to resolve the Adequate Assurance Objection without Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance of the applicable Successful Bidder shall be determined by the Court at the Sale Hearing.

24. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Proposed Assumed Contract (unless the Counterparty has filed a timely Cure Objection and/or Assignability Objection with respect to the Proposed Assumed Contract) to the Successful Bidder and forever shall be barred from asserting any



objection. The Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Proposed Assumed Contract in accordance with Bankruptcy Code section 365(f)(2)(B), notwithstanding anything to the contrary in the Proposed Assumed Contract, or any other document.

#### **D. Related Relief**

25. If the Debtor receives more than one Qualified Bid for the same Assets with acceptable purchase prices by the Bid Deadline, the Debtor shall conduct the Auction. The Auction, if required, will be conducted at the offices of Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 on the Auction Date and the Debtor shall have the right to conduct any number of Auctions, if the Debtor determines, in their reasonable business judgment, after consultation with its professionals, the Postpetition Lender and its professionals, that conducting such Auctions would be in the best interests of the Debtor's estate. If the Debtor receives no more than one Qualified Bid, the Debtor may decide, in its discretion and reasonable business judgment, after consultation with its professionals, the Postpetition Lender and its professionals, to cancel the Auction and instead shall request at the Sale Hearing that this Court approve the Sale Transaction with the sole Qualified Bidder.

26. As the Debtor has represented that the Sale will not include the transfer of personally identifiable information within the meaning of Bankruptcy Code section 363(b)(1), there is no requirement that the United States Trustee appoint a consumer privacy ombudsman.

27. The Good Faith Deposits of the bidders, and any other amounts deposited into escrow pursuant to an applicable asset purchase agreement, shall be held in an escrow account and shall not become property of the Debtor's bankruptcy estate unless the deposit amount or other such escrow amount is otherwise due and payable to the Debtor in accordance with the applicable

purchase agreement. The Debtor is authorized to enter into such an escrow agreement with each bidder (which shall be consistent with the terms set forth herein and in the Bidding Procedures) and when executed by the Debtor, such escrow agreements shall be binding and enforceable against the Debtor and its estate in all respects.

28. All persons and entities that participate in the bidding process or the Auction shall be deemed to have knowingly and voluntarily submitted to the exclusive jurisdiction of this Court with respect to all matters related to the terms and conditions of the transfer of Assets, the Auction, and any Sale Transaction.

29. In the event there is a conflict between this Order and the Motion, this Order shall control and govern.

30. This Order shall be immediately effective and enforceable upon its entry. The fourteen (14) day stay imposed by Bankruptcy Rules 6004(h) and 6006(d) is hereby waived.

31. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

32. The requirements set forth in Bankruptcy Rule 6004(a) are satisfied.

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

34. The Debtor is authorized to take all steps necessary or appropriate to carry out this Bidding Procedures Order.

35. This Court shall retain jurisdiction to hear and determine all matters arising from the implementation of this Order.

Dated: \_\_\_\_\_, 2017  
New York, New York

\_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit A to the Bidding Procedures Order**

**(Bidding Procedures)**

## **THE BIDDING PROCEDURES**

Set forth below are the bidding procedures (the “**Bidding Procedures**”) to be employed with respect to the proposed sale of any or substantially all of the assets (the “**Assets**”) of Human Condition Safety Inc., as debtor and debtor-in-possession (the “**Debtor**”) having filed a voluntary petition in the Bankruptcy Court for the Southern District of New York (the “**Bankruptcy Court**” or “**Court**”), Case No.: 17-10585 (SHL) (the “**Case**”), for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* The Debtor will seek entry of an order from the Bankruptcy Court authorizing and approving the proposed sale to a buyer or to one or more other Successful Bidder(s) (defined below) that are determined to have made the highest, best or otherwise financially superior offer(s). Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Bidding Procedures Order (defined below).

### **Summary Chart of Bidding Procedures Dates and Deadlines**

Except as otherwise provided herein, the following dates and deadlines regarding competitive bidding are hereby established (subject to modification in accordance with the Bidding Procedures herein):

<b>July 14, 2017 Notice Date</b>	On or within two (2) days after entry of the Bidding Procedures Order, Debtor shall serve (such service date being the “ <b>Notice Date</b> ”) upon all Notice Parties, (i) by email with hardcopy by regular mail, or (ii) by overnight or same day courier, copies of (a) this signed Bidding Procedures Order (along with these Bidding Procedures and all other exhibits attached to this Bidding Procedures Order), (b) a Specimen APA with accurate schedules attached thereto, (c) a complete accurate Sale Notice signed and filed on behalf of the Debtor providing notice of the Sale, Bid Deadline, Auction, Sale Hearing and other relevant information as set forth in the form Sale Notice attached to the Bidding Procedures Order, (d) an Assumption and Assignment Notice signed and filed on behalf of the Debtor identifying all Proposed Assumed Contracts and Cure Costs for each and prominently displaying the deadline to file objections to assumption, assignment, or sale of Proposed Assumed Contracts as set forth in the form Assumption and Assignment Notice attached to the Bidding Procedures Order, and (e) the proposed Sale Order in substantially the form attached as Exhibit 2 to the Motion (collectively, the “ <b>Sale Bidding Procedures Notice Package</b> ”).
<b>July 21, 2017 at 5:00 p.m. (prevailing Eastern Time) Bid Deadline</b>	The deadline on which all bids must be received by the parties specified in these Bidding Procedures (the “ <b>Bid Deadline</b> ”) shall be seven (7) days after the Notice Date.

<b>July 24, 2017 at 10:00 a.m.</b> <b>(prevailing Eastern Time)</b> <b>Auction Date</b>	The Auction is to be held at the office of Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 (the “ <b>Auction Date</b> ”) one (1) business day after the Bid Deadline.
<b>July 25, 2017 at 5:00 p.m.</b> <b>(prevailing Eastern Time)</b> <b>Notice of Auction Results</b>	Within one (1) day after the Auction or as soon as is reasonably practicable, Debtor shall file a notice (“ <b>Notice of Auction Results</b> ”) disclosing the Auction results, including the identity of each Successful Bidder along with a copy of each proposed asset purchase agreement (or a summary of the principal terms thereof) for each Sale of Assets to each Successful Bidder.
<b>July 28, 2017 at 5:00 p.m.</b> <b>(prevailing Eastern Time)</b> <b>Sale Objection Deadline</b>	The deadline (“ <b>Sale Objection Deadline</b> ”) to file Cure Objections, Assignability Objections, Adequate Assurance Objections and any other objections to Sale Transaction(s) (each a “ <b>Sale Objection</b> ”) shall be three (3) business days after the date Debtor files the Notice of Auction Results.
<b>July 31, 2017 at 12:00 p.m.</b> <b>(prevailing Eastern Time)</b> <b>Sale Reply Deadline</b>	The deadline (“ <b>Sale Reply Deadline</b> ”) to file replies or any omnibus reply to any Sale Objection shall be the later of two (2) days or one (1) business day after the Sale Objection Deadline.
<b>August 2, 2017 at 10:00 a.m.</b> <b>(prevailing Eastern Time)</b> <b>Sale Hearing</b>	The hearing (the “ <b>Sale Hearing</b> ”) to approve each proposed Sale Transaction is scheduled to be held before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, Courtroom 701, located at One Bowling Green, New York, New York 10004-1408, two (2) days after the Sale Reply Deadline.

### **Specimen APA**

The Order to which the Bidding Procedures herein are attached (the “**Bidding Procedures Order**”) was entered by the Bankruptcy Court on July [ ], 2017 approving the Bidding Procedures herein governing the sale of any or substantially all of the Assets, including approving a specimen asset purchase agreement (the “**Specimen APA**”), which is attached as an exhibit to the Bidding Procedures Order, and approving the form of Sale Notice and form of Assumption and Assignment Notice and the Assumption and Assignment Procedures therefore with respect to the assumption and sale/assignment of certain unexpired leases and executory contracts and procedures for the determination of the proposed costs to cure monetary defaults under such agreements. The Bidding Procedures Order also approved, as fair, reasonable and adequate, the Debtor’s efforts to market the Assets and the Debtor’s proposed procedure to provide notice of the Sale and Bidding Procedures to potential bidders by disseminating notice of the Bidding Procedures to all potentially interested buyers which the Debtor discovered following several months of extensive marketing efforts.

Pursuant to the Specimen APA, a buyer would be able to acquire Assets free and clear of all pledges, liens, security interests, encumbrances, claims, charges, options and interests thereon

to the maximum extent permitted by section 363 of the Bankruptcy Code (collectively, the **“Encumbrances”**).

### **The Bidding Process**

Subject to the Bidding Procedures Order, the Debtor, in consultation with its professionals and the Postpetition Lender<sup>1</sup> and its professionals, shall (i) determine whether any bid for Assets is a Qualified Bid, (ii) coordinate the efforts of Qualified Bidders in conducting their due diligence investigations, (iii) receive offers from Qualified Bidders, and (iv) negotiate in good faith any offers made to purchase the Assets (collectively, the **“Bidding Process”**). The Debtor shall consult with its professionals and the Postpetition Lender and its professionals regarding the Debtor’s determination as to whether bids are Qualified Bids and bidders are Qualified Bidders. Only Qualified Bidders may participate in the Bidding Process and bid at the Auction. Neither the Debtor nor its representatives or agents shall be obligated to furnish information of any kind whatsoever to any person that is not a Qualified Bidder, and the Debtor and its professionals shall use good faith efforts to provide all Qualified Bidders with substantially similar information. The Debtor, in its discretion pursuant to its reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals, shall have the right to modify the Bidding Process and/or adopt such other rules for the Bidding Process (including rules that may depart from those set forth herein) that will better maximize value from Sales and better promote the goals of the Bidding Process and that are not materially inconsistent with any of the other provisions hereof or any Bankruptcy Court order, including, without limitation, that Debtor reserves the right to waive certain of the requirements set forth herein (i) for Required Bid Documents (as defined herein), (ii) for a bid to be deemed a Qualified Bid, and (iii) for a bidder to participate in an auction. Notwithstanding any other provision to the contrary, to the extent that the Postpetition Lender, or any affiliate thereof, submits any bid for the purchase of any Assets or otherwise participates as a bidder for the purchase of any Assets, whether Postpetition Lender or its affiliate does so individually, jointly with another party, directly or indirectly, then with respect to such Assets, Debtor shall not consult with Postpetition Lender, or any of its professionals or agents, in determining (i) whether or how to modify the Bidding Process, (ii) which bid is a Qualified Bid, (iii) which bid may participate in an auction, (iv) the value of bids received, or (v) which bid is the highest or otherwise best bid.

### **Participation Requirements**

Subject to the foregoing provisions, any person that wishes to participate in the Bidding Process (a **“Competing Bidder”**) must become a **“Qualified Bidder”**. As a prerequisite to becoming a Qualified Bidder (and thus, among other things, prior to being able to conduct due diligence), a Competing Bidder must deliver (unless previously delivered) to the Debtor by the Bid Deadline (as defined below):

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<sup>1</sup> Postpetition Lender as defined in the Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507, Bankruptcy Rules 2002, 4001, and 6004, and Local Rule 4001-2 (I) Authorizing Debtor to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Super-Priority Administrative Expenses Status, (IV) Granting Adequate Protection, and (V) Granting Related Relief, entered on April 19, 2017 in the Case [Doc 39] (the **“Final DIP Financing Order”**)

- (i) An executed confidentiality agreement in form and substance acceptable to the Debtor; and
- (ii) Sufficient information, as requested by the Debtor, to allow the Debtor to determine that the Competing Bidder has the financial wherewithal and any required authorizations to close the sale transaction contemplated, including, but not limited to, current audited financial statements (or such other form of financial disclosure and credit-quality support or enhancement acceptable to the Debtor) of the Competing Bidder or of those entities that will guarantee the obligations of the Competing Bidder.

A Qualified Bidder is a Competing Bidder that delivers the documents described in subparagraphs (i) - (ii), and that the Debtor determines is reasonably likely (based on financial information submitted by the Competing Bidder, the availability of financing, experience and other considerations deemed relevant by the Debtor) to submit a bona fide offer and to be able to consummate a sale if selected as a Successful Bidder. The Postpetition Lender is deemed a Qualified Bidder for all purposes in connection with the Bidding Process.

No later than two (2) days after a Competing Bidder delivers all of the materials and information required by subparagraphs (i) - (ii) above, the Debtor shall determine, and shall notify the Competing Bidder, if such Competing Bidder is or may be a Qualified Bidder.

#### **Due Diligence**

A bid that contains a due diligence contingency shall not be considered a Qualified Bid and shall be rejected, unless the Debtor decides otherwise, in its discretion pursuant to its reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals.

#### **Bid Deadline**

A Competing Bidder that desires to make a bid, shall do so in writing and deliver such writing to (a) the Debtor c/o Human Condition Safety Inc., 61 Broadway, Suite 2710, New York, New York 10006 (Attn.: Gary Foreman) gary@hcsafety.com, and (b) the attorneys for the Debtor, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 (Attn.: John D. Giampolo) jgiampolo@wmd-law.com, no later than **the Bid Deadline on July 21, 2017 at 5:00 p.m. prevailing Eastern Time.**

#### **Bid Requirements**

All bids must include the following documents (the “**Required Bid Documents**”):

- The identity of the bidder and the officer(s) or authorized agent(s) who will appear on behalf of such bidder;

- A purchase price, the value of which is determined by the Debtor (pursuant to its reasonable good faith business judgment and after consultation with its professionals and the Postpetition Lender and its professionals);
- A letter stating that the bidder's offer is irrevocable until at least three (3) business days after the Assets have been sold pursuant to the closing of the sale or sales approved by the Bankruptcy Court;
- An executed copy of an asset purchase agreement, preferably in the form of the Specimen APA and with an additional unsigned duplicate copy redlined over the form of the Specimen APA, pursuant to which the Qualified Bidder proposes to acquire the applicable Assets, which agreement shall include a commitment to close no later than two (2) business days following the date the Court enters an order approving the sale;
- A good-faith deposit in an amount equal to 10% of the purchase price (the "**Good Faith Deposit**");
- Written evidence of a commitment for financing or other evidence of the ability to consummate the sale satisfactory to the Debtor, with appropriate contact information for such financing sources, as well as evidence satisfactory to the Debtor of the Competing Bidder's ability to perform the Competing Bid and to satisfy the adequate assurance requirements, including the cost to cure any monetary defaults (the "**Adequate Assurance Information**"), of any contracts or leases to be assumed and assigned (the "**Assumed Contracts**"), and must authorize the Debtor to release the Adequate Assurance Information to the non-Debtor parties to Assumed Contracts; and
- A redline of bidder's proposed form of Sale Order over the form of Sale Order attached as Exhibit 2 to the Sale Motion.

A bid received from a Qualified Bidder that includes all of the Required Bid Documents and meets all of the above requirements is a "**Qualified Bid**".

The Debtor reserves the right to determine (pursuant to its reasonable good faith business judgment and after consultation with its professionals and the Postpetition Lender and its professionals) the value of any Qualified Bid(s) for all or any portion of the Assets, and which Qualified Bid(s) constitutes the highest, best or otherwise financially superior offer. Proposals will be evaluated on numerous grounds; however, proposals that are unconditional and contemplate sales that may be consummated on or soon after the Sale Hearing are preferred.

#### **"As Is, Where Is"**

The sale of Assets shall be on an "as is, where is" basis and without representations or warranties of any kind, nature or description by the Debtor, its agents or its estate except to the extent expressly stated in the terms of any asset purchase agreement or other document the Debtor may agree to sign for a sale of Assets. By submitting a bid, each Qualified Bidder shall



be deemed to acknowledge and represent that it has had an opportunity to conduct any and all due diligence regarding the Assets prior to making its offer, that it has relied solely upon its own independent review, investigation and/or inspection of any documents and/or the Assets in making its bid, and that it did not rely upon any written or oral statements, representations, promises, warranties or guaranties whatsoever, whether express, implied, by operation of law or otherwise, regarding the Assets, or the completeness of any information provided in connection therewith or the Auction, except as expressly stated in the Bidding Procedures Order or these Bidding Procedures or as expressly stated in the terms of any asset purchase agreement or other document the Debtor may agree to sign for a sale of Assets.

### **Free Of Any And All Encumbrances**

Except as otherwise provided in a Successful Bidder's applicable agreement, all of Debtor's right, title and interest in and to the Assets subject thereto shall be sold free and clear of Encumbrances to the maximum extent permitted by section 363 of the Bankruptcy Code, with such Encumbrances to attach to the net proceeds of the sale of the Assets with the same validity and priority as such Encumbrances applied against the Assets. Nothing herein shall prevent any party in interest from objecting to the Bankruptcy Court's approval of such agreement.

### **Possible Stalking Horse Bid**

To the extent a stalking horse purchase offer materializes, the Debtor may also entertain entering into an agreement (a "**Stalking Horse Agreement**") with such a purchaser ("**Stalking Horse Purchaser**"), as may be determined by the Debtor in its business judgment prior to the Bid Deadline or otherwise prior to Debtor's selection of a successful bidder for Assets. Upon the selection of a Stalking Horse Purchaser, if any, the Debtor will file and serve a notice that includes: (i) the identity of the proposed Stalking Horse Purchaser; (ii) a summary of the key terms of the Stalking Horse Agreement; (iii) a summary of the type and amount of bid protections (the "**Bid Protections**"), if any, being offered to the proposed Stalking Horse Purchaser; (iv) a summary of any necessary modifications or amendments to the Bid Procedures; and (v) a copy of the Stalking Horse Agreement. In the event a Stalking Horse Purchaser is selected, the Debtor will request that the Court set a hearing to approve any such Stalking Horse Purchaser, Stalking Horse Agreement, and accompanying Bid Protections on an expedited basis.

### **Auction**

If more than one Qualified Bid is received by the Debtor with respect to the same Assets, the Debtor shall conduct an auction ("**Auction**") with respect to such Assets. The Auction shall commence on **July 24, 2017, at 10:00 a.m.** prevailing Eastern Time, at Wollmuth Maher & Deutsch, LLP, 500 Fifth Avenue, 12<sup>th</sup> Floor, New York, New York 10110.

Only a Qualified Bidder that has submitted a Qualified Bid for Assets is eligible to participate at the Auction for such Assets. During the Auction, bidding shall begin initially with the highest Qualified Bid(s), as determined by the Debtor (pursuant to its reasonable good faith business judgment and after consultation with its professionals and the Postpetition Lender and its professionals), and shall subsequently continue. Other than otherwise set forth herein, the Debtor may conduct an Auction in the manner it determines (pursuant to its reasonable good faith

business judgment and after consultation with its professionals and the Postpetition Lender and its professionals) will result in the highest, best or otherwise financially superior offer(s) for the Assets subject to Auction.

At the conclusion of an Auction, the Debtor (pursuant to its reasonable good faith business judgment and after consultation with its professionals and the Postpetition Lender and its professionals) shall identify the highest, best or otherwise financially superior offer(s) for the Assets subject to Auction, and the entity or entities submitting such Successful Bid, which highest, best or otherwise financially superior offer(s) will provide the greatest amount of net value to the Debtor, and advise the Qualified Bidders of such determination. The Qualified Bidder or Bidders whose final bid is deemed to be highest and best following the conclusion of the Auction will be the **“Successful Bidder”** or **“Successful Bidders”**, and such bid, the **“Successful Bid”** or **“Successful Bids”**. Immediately after the announcement of the Successful Bid(s), the Successful Bidder(s) shall execute and deliver an asset purchase agreement incorporating the price and terms offered in the Successful Bid(s) (the **“Final Sale Agreement”**). Upon submission of the Final Sale Agreement by the Successful Bidder(s), the Debtor will execute the Final Sale Agreement and shall seek Bankruptcy Court approval of the Final Sale Agreement at a hearing, the Sale Hearing, before the Bankruptcy Court.

#### **Acceptance of Successful Bid(s)**

The Debtor shall sell the Assets to the Successful Bidder(s) only upon the approval of the Successful Bid(s) by the Bankruptcy Court after a hearing (the **“Sale Hearing”**) and any and all liens on the Assets shall attach to the proceeds of the sale of such Assets with the same validity and priority as such liens applied against the Assets. The Debtor’s presentation of the Successful Bid(s) to the Bankruptcy Court for approval does not constitute the Debtor’s acceptance of the bid(s). The Debtor will be deemed to have accepted a bid only when the bid has been approved by the Bankruptcy Court at the Sale Hearing. All interested parties reserve their right to object to the Debtor’s selection of the Successful Bidder(s).

#### **Sale Hearing**

The Sale Hearing shall be conducted by the Bankruptcy Court on **August 2, 2017 at 10:00 a.m. (prevailing Eastern Time)**. Following the approval of the sale of the Assets to the Successful Bidder(s) at the Sale Hearing, if such Successful Bidder(s) fails to consummate an approved sale within two (2) business days after entry of an Order approving the Sale, the Debtor shall be authorized (pursuant to its reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals), but not required, to deem the next highest or otherwise best Qualified Bid, as disclosed at the Sale Hearing, the Successful Bid, and the Debtor (pursuant to its reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals) shall be authorized, but not required, to consummate the sale with the Qualified Bidder submitting such bid without further order of the Bankruptcy Court.

### **Credit Bid**

The Postpetition Lender holds a valid security interest in the Assets and has the right to credit bid all or a portion of its secured claims pursuant to section 363(k) of the Bankruptcy Code.

### **Return of Good Faith Deposit**

As noted above, all Qualified Bidders (other than the Postpetition Lender or an affiliate thereof, to the extent its bid is comprised of a credit bid of all or a portion of its secured claims against the Debtor) will be required to submit the Good Faith Deposit to the Debtor on or before the Bid Deadline in an amount equal to 10% of their purchase price. Good Faith Deposits of all Qualified Bidders shall be held in a non-interest-bearing escrow account until a proposal is no longer irrevocable as provided herein, at which time they will be returned to the Qualified Bidder; provided, however, that if a Successful Bidder fails to consummate an approved sale because of a breach or failure to perform on the part of such Successful Bidder, the Debtor will not have any obligation to return the Good Faith Deposit deposited by such Successful Bidder, and such Good Faith Deposit shall irrevocably become the property of the Debtor.

### **Providing Information to the Postpetition Lender and the United States Trustee**

The Debtor shall provide to the Postpetition Lender's professionals and to the United States Trustee's office information regarding the qualification of bidders and such other information related to the sale of the Assets as may be reasonably requested by the Postpetition Lender's professionals and by the United States Trustee's office.

### **Bankruptcy Court Oversight**

The Bankruptcy Court shall decide any controversy regarding the qualification of bidders and the valuation of bids.

### **Reservation of Rights**

The Debtor reserve the right to (i) determine (in its reasonable discretion pursuant to its reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals) which offer is the highest or otherwise best offer, (ii) reject at any time prior to entry of a Bankruptcy Court order approving an offer, without liability, any offer that the Debtor (in its reasonable discretion pursuant to its reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals) deems to be (x) inadequate or insufficient, (y) not in conformity with the requirements of the Bankruptcy Code, the Bankruptcy Rules, the Local Rules or procedures set forth therein or herein, or (z) contrary to the best interests of the Debtor and its estate, (iii) waive the requirements of any of the Bidding Procedures with respect to a potential or Qualified Bidder if the Debtor (in its reasonable discretion pursuant to its reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals) determine, in its business judgment, that doing so is in the best interests of its creditors and estate; (iv) seek Bankruptcy Court authority to extend the Bid Deadline; (v) seek Bankruptcy Court

authority (to the extent required) to change the date of any Auction; and (vi) seek Bankruptcy Court authority (to the extent required) to move the Sale Hearing.

The selection of a Successful Bidder(s) shall be within the Debtor's reasonable discretion and reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals, and subject to the approval of the Bankruptcy Court, and economic considerations may not be the sole criteria upon which the Debtor may base its decision. In assessing whether a proposal constitutes a higher or otherwise better offer, the Debtor may consider, among other things, the net economic effect upon the Debtor's estate. The presentation of a particular proposal to the Bankruptcy Court for approval does not constitute the Debtor's acceptance of the proposal. The Debtor will be deemed to have accepted a proposal only when the proposal has been approved by the Bankruptcy Court at the Sale Hearing. At or before the Sale Hearing, the Debtor (in its reasonable discretion pursuant to its reasonable good faith business judgment, after consultation with its professionals and the Postpetition Lender and its professionals) may impose such other terms and conditions on the Qualified Bidders as the Debtor may determine to be in the best interests of the Debtor, its estate, creditors, and other parties in interest.

**Exhibit B to the Bidding Procedures Order**

**(Specimen APA)**

## **SPECIMEN ASSET PURCHASE AGREEMENT**

THIS ASSET PURCHASE AGREEMENT (this “Agreement”) is made and entered into as of \_\_\_\_\_, 2017, between (i) Human Condition Safety Inc., a Delaware corporation with its principal assets and principal place of business located at 61 Broadway, Suite 2710, New York, New York 10006, as the debtor and debtor-in-possession (“Debtor” or “Seller”) having filed a voluntary petition (the “Petition”) in the Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court” or “Court”), Case No.: 17-10585 (SHL) (the “Bankruptcy Case”), for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), and (ii) \_\_\_\_\_<sup>1</sup>, a \_\_\_\_\_ under the laws of \_\_\_\_\_ (“Buyer”).

### **BACKGROUND**

WHEREAS, on March 10, 2017 (the “Petition Date”), Seller filed the Petition commencing the Bankruptcy Case;

WHEREAS, Seller continues to operate as debtor and debtor-in-possession pursuant to Sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, on [\_\_\_\_\_] 2017, the Bankruptcy Court entered an Order pursuant to 11 U.S.C. §§ 105(a), 363 and 365 and Rules 2002, 6004 and 6006 of the Federal Rules of Bankruptcy Procedure authorizing and approving certain bidding procedures for the sale of substantially all of the Debtor’s assets and assignment of any assumed contracts and granting related relief (the “Bidding Procedures Order”);

WHEREAS, on [\_\_\_\_\_] 2017, the Seller filed and served its notice of cure costs (the “Notice of Cure Costs”) in accordance with the Bidding Procedures Order reflecting the Debtor’s proposed good faith calculation of cure amounts (the “Cure Costs”) to cure any monetary defaults due under any contract or lease which the Seller proposed to be an executory contract or unexpired lease to be assumed and assigned to a buyer under any sale contemplated under the Bidding Procedures Order (each a “Proposed Assumed Contract”);

WHEREAS, subject to the terms and conditions of this Agreement and the Bidding Procedures Order, Seller desires to sell and transfer, and Buyer desires to purchase and acquire, the Purchased Assets (as defined below); and

WHEREAS, Assets are located at Seller’s sole office location at 61 Broadway, Suite 2710, New York, New York 10006 which location is licensed to the Seller for use as office space (together with all related facilities infrastructure, systems and utilities, the “Premises”).

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein and for other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the parties hereto agree as follows:

<sup>1</sup> Please provide information on Buyer.

## ARTICLE I PURCHASE AND SALE

1.1 Purchase and Sale of Assets. Subject to the terms and conditions of this Agreement and the entry of the Sale Order (as defined below), at the Closing Seller shall sell, assign, transfer, convey and deliver to Buyer, and Buyer shall purchase, receive and assume, all right, title and interest of Seller in, to and under the Purchased Assets other than Excluded Assets, free and clear of all mortgages, liens (including judicial and statutory liens), security interests, encumbrances, claims (including options and rights of first refusal), charges, pledges, hypothecations, covenants, interests and restrictions of any kind or character (collectively, "Encumbrances") pursuant to Sections 363(b) and (f) of the Bankruptcy Code. The assets purchased (the "Purchased Assets") include:

(a) all (whether ordered, prepaid, in transit or on the premises) inventory, supplies, work-in-process, finished goods, materials and stock in trade used in or held for sale or license in the Business (as defined herein), which also includes all inventory purchase orders, work-in-process and unpaid for finished goods or services in the possession of Seller and/or any third parties, including, without limitation, the items set forth on Schedule 1.1(a) attached hereto (collectively, the "Inventory");

(b) all uncollected accounts receivable of the Business, including all recoverable customer deposits, as of the date of the Auction as identified on Schedule 1.1(b) attached hereto (collectively, the "Accounts Receivable");

(c) to the extent legally transferable, all rights and incidents of interest of Seller in and to the Proposed Assumed Contracts and other agreements to which seller is a party or otherwise has rights under, but only if identified in writing by Buyer prior to the Closing Date as a Proposed Assumed Contract to be assumed and assigned to Buyer (each an "Assumed Contract") in accordance with Section 1.3(a);

(d) all personal property used or held for use in the Business, including, without limitation, the machinery, equipment, trucks, vans, supplies, pallet racks, office furniture, copiers, fax machines, telephone systems, computers and computer software, fixtures and other tangible property used or held for use in the Business including any of the foregoing purchased subject to any conditional sales or title retention agreement in favor of any other Person;<sup>2</sup>

(e) all telephone and facsimile numbers, email addresses, websites, advertising literature, photographic materials, packaging materials (including inserts), catalogs, customer and supplier lists, designs, make-up formulas, historical performance and test results records, software, patterns, specifications, drawings and blueprints used in the Business;

<sup>2</sup> "Person" shall mean any natural person, corporation, association, partnership, joint venture or other entity.

(f) all owned intellectual property rights and licensed intellectual property rights, including those set forth on Schedule 1.1(f) attached hereto;

(g) originals of all books and records (including, without limitation, all customer lists, costumer records and information regarding Accounts Receivable) used or held for use in the Business and relating to the Purchased Assets (collectively, the “Books”); provided, however, that Seller and any successor to Seller and any trustee in the Bankruptcy Case may retain a copy of and shall have reasonable access to such Books from and after the Closing Date for a period of one (1) year, and shall retain access to the Premises from and after the Closing Date for a period of one (1) month;

(h) all unfilled orders and the payments and/or customer deposits therefore, and inventory and drop-ship purchase orders, in each case, entered into by Seller after the Petition Date, including those identified on Schedule 1.1(h) attached hereto as may be updated through the Closing Date (collectively, the “Sales Orders”);

(i) to the extent legally transferable, all rights under warranties, representations and guarantees made by suppliers, manufacturers, licensees, contractors or other Persons in connection with the Purchased Assets or the Business and all insurance claims or payments related to the Purchased Assets or the Business;

(j) except to the extent of any Excluded Assets as expressly set forth in Section 1.2, all claims and causes of action relating to the Business which Seller may have against third parties and any counterclaims, set-offs or defenses Seller may have with respect to the Assumed Liabilities;

(k) all goodwill appurtenant to the Business;

(l) all licenses, permits, registrations, variances, interim permits, permit applications, certificates, approvals or other authorizations under any regulation applicable to the Business that relate to the Business (the “Permits”) and that are transferable under applicable law;

(m) all credits, prepaid expenses, deferred charges, advance payments, security deposits, returns to and rebates from vendors, and prepaid items relating to the Business or pursuant to any Assumed Contract; and

(n) any and all other assets and rights of the Seller that are not Excluded Assets (as defined below).

1.2 Excluded Assets. The Purchased Assets shall only include the assets set forth in Section 1.1 and shall not include any other assets of the Seller, including, without limitation, the following:

(a) any cash and cash equivalents of Seller;

(b) all causes of action belonging to Seller or its bankruptcy estate (i) against any officers and/or directors of Seller, (ii) against any affiliates (as defined by the Bankruptcy



Code) of Seller, and/or (iii) arising under Chapter 5 of the Bankruptcy Code against any entity or Person;

(c) all materials subject to any attorney-client or other privilege as well as any information concerning employees, the disclosure of which would violate an employee's reasonable expectation of privacy;

(d) those contracts terminated by Court Order prior to the date of this Agreement, that shall have terminated or expired on or before the Closing Date in accordance with their respective terms and in the ordinary course of business or that are designated by Purchaser as Excluded Assets pursuant to Section 1.3;

(e) the rights of Seller under this Agreement and all cash and non-cash consideration payable or deliverable to Seller under this Agreement;

(f) the rights of Seller to tax attributes, tax refunds, net operating losses or recoveries from taxing authorities for overpayment;

(g) all director or officer insurance policies and all rights thereunder;

(h) any capital stock or membership interests, as the case may be, of the Seller; and

(i) all rights and interests of Seller in and to any contracts and other agreements other than the Assumed Contracts, Sale Orders or any other contracts otherwise transferred to the Buyer under the Purchased Assets.

For the avoidance of doubt, the Purchased Assets shall not include any assets owned by a Person other than a Seller.

### 1.3 Assumption of Contracts.

(a) The Debtor shall assume and assign to the Buyer the Assumed Contracts identified on Schedule 1.3(a). The Seller may not take any action to reject any executory contract or unexpired lease (i) prior to the auction (the "Auction") from which Buyer was selected as the successful bidder for the Purchased Assets, or (ii) that has been designated an Assumed Contract without Buyer's prior written consent.

(b) At the Closing, pursuant to Section 363 and 365 of the Bankruptcy Code, the Seller shall assume and assign the Assumed Contracts (including, without limitation, any purchase options, reconveyance rights, and expansion rights given or made in respect of such Assumed Contracts) to Buyer or to such other party (a "Designee") as Buyer may designate prior to Closing.

(c) The Seller shall take all requisite actions to obtain approval under Section 365(f) of the Bankruptcy Code for the assumption and assignment of the Assumed Contracts by the Seller to the Buyer or its Designee at the Closing. Buyer shall bear all Cure Costs arising from the assumption and assignment of the Assumed Contracts.

(d) Notwithstanding the foregoing, Buyer may elect to exclude a contract from the category of Assumed Contracts after the Auction by delivering written notice to that effect to the Seller, if the Buyer has reason to believe that the Cure Costs associated with such contract may materially exceed the Cure Costs provided to Buyer by Seller prior to Buyer's election to designate such contract an Assumed Contract.

## **ARTICLE II ASSUMED LIABILITIES**

2.1 Assumed Liabilities. At the Closing and subject to the terms and conditions hereof and subject to the approval of the Bankruptcy Court pursuant to an order approving a sale of the Purchased Assets (the "Sale Order"), at the Closing, the Buyer shall assume, and thereafter shall discharge and perform when due, only those obligations or liabilities of the Seller accrued or arising after the Closing Date under the agreements, contracts, leases, licenses and other arrangements included in the Purchased Assets (other than obligations or liabilities solely attributable to any failure by Seller to comply with the terms of such agreements, contracts, leases, licenses and other arrangements prior to the Closing Date), including (a) all customer deposits identified on Schedule 2.1; (b) all accounts payable to third-party vendors of the Business which accrue after the Closing, or the pro rata portions thereof which accrue after the Closing; (c) any and all unpaid expenses, taxes, payroll, wages, employee benefits, and expense reimbursements and commissions due employees of the Business which accrue after the Closing, or the pro rata portions thereof which accrue after the Closing; (d) all Seller's obligations under the Assumed Contracts, and (e) to the extent constituting Purchased Assets, all licenses, permits, authorization and approvals issued by any domestic governmental or regulatory authority, including any department, commission, board, bureau, agency, or instrumentality of such authority, or any court or tribunal (all of the foregoing collectively, the "Assumed Liabilities").

2.2 Excluded Liabilities. Buyer is only assuming the Assumed Liabilities and is not assuming any other liabilities or obligations of the Seller or any predecessor or prior owner, in full or in part, of the Seller or the Seller's businesses and assets, of whatever nature. All such liabilities or obligations of the Seller not included in the Assumed Liabilities shall be retained by and remain liabilities or obligations of the Seller (all such liabilities or obligations not included in Assumed Liabilities being referred to as the "Excluded Liabilities").

## **ARTICLE III PURCHASE PRICE**

### 3.1 Purchase Price.

(a) Purchase Price for the Purchased Assets. Subject to the terms and conditions of this Agreement, as full consideration for the Purchased Assets, at the Closing, Buyer shall pay to Seller the aggregate amount of \_\_\_\_\_ dollars (\$\_\_\_\_\_) (the "Purchase Price") and shall pay the Cure Costs, as provided below. The Purchase Price shall be allocated in accordance with Section 3.2 below.

(b) Deposit Amount. Simultaneously with the execution of this Agreement, Buyer shall deliver to Debtor's counsel a deposit in the amount of \_\_\_\_\_

(\$\_\_\_\_\_) in immediately available funds (the “Deposit”) to be held in escrow by the Debtor’s counsel to serve as an earnest money deposit under this Agreement, and to be released in accordance with the following procedures.

(i) Deposit Instructions. At Closing, Seller and Buyer shall jointly instruct the Debtor’s counsel to deliver the Deposit, by wire transfer of immediately available funds, to an account designated by Seller (and such amount shall be applied towards the payment of the Purchase Price). The costs and expenses to establish the escrow account and those costs and expenses that are ordinarily recurring in nature will be paid solely by the party to whom the Deposit is paid pursuant to this Section 3.1(b).

(ii) Termination of Agreement by Reason of Buyer Material Breach. If Seller terminates this Agreement pursuant to Section 9.1(h), then the Deposit shall be delivered to Seller.

(iii) Termination of Agreement for Other Reasons. If this Agreement is terminated for any reason whatsoever other than that stated in Section 3.1(b)(ii), then the Deposit will be returned to Buyer.

(c) Remaining Purchase Price Payable at Closing. At the Closing, Buyer shall pay to Seller an amount equal to (i) (A) the Purchase Price and (B) the Cure Costs for Assumed Contracts, minus (ii) the Deposit (the amount resulting from such calculation being referred to as the “Remaining Purchase Price”), in immediately available funds by wire transfer to Seller’s account pursuant to instructions to be delivered to Buyer in advance of the Closing or as the Sale Order may otherwise direct.

#### **ARTICLE IV THE CLOSING**

4.1 Time and Place of the Closing. The closing of the transactions contemplated by this Agreement (the “Closing”) shall take place at the offices of Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, 12<sup>th</sup> Floor, New York, New York 10110, at 10:00 a.m., Eastern time, on the second (2nd) business day after the conditions to Closing set forth in Article VIII (excluding conditions that, by their terms, cannot be satisfied until the Closing) have been satisfied (or waived by the party entitled to waive such condition), or at such other place, date and time as the parties may agree in writing (the “Closing Date”).

4.2 Deliveries by Seller. At the Closing, Seller shall deliver, or cause to be delivered, the following to Buyer:

(a) a counterpart of any instruments of conveyance reasonably necessary for the transfer of the Purchased Assets duly executed by Seller;

(b) a true and correct copy of the filed Sale Order as entered by the Bankruptcy Court;

(c) a certificate of an officer of Seller certifying that the conditions to Closing set forth in Section 8.2(a) and Section 8.2(b) have been satisfied;

(d) all Documents of Title (as defined in the Uniform Commercial Code) or such other documentation evidencing ownership issued to or in the possession of Seller with regard to the Purchased Assets; and

(e) all such other agreements, documents and instruments as may be reasonably required by Buyer to complete the transactions provided for in this Agreement.

4.3 Deliveries by Buyer. At the Closing, Buyer shall deliver, or cause to be delivered, the following to Seller:

(a) the Remaining Purchase Price by wire transfer of immediately available funds to Seller's account;

(b) a counterpart of any instruments of conveyance reasonably necessary for the transfer of the Purchased Assets duly executed by Buyer;

(c) a certificate of an officer of Buyer certifying that the Closing conditions set forth in Section 8.3(a) and Section 8.3(b) have been satisfied; and

(d) all such other agreements, documents and instruments as may be reasonably required by Seller to complete the transactions provided for in this Agreement.

## **ARTICLE V REPRESENTATIONS AND WARRANTIES OF SELLER**

Subject to the exceptions expressly provided herein, as a material inducement to Buyer to execute and perform its obligations under this Agreement, Seller represents and warrants to Buyer, as of the date hereof and as of the Closing, as follows:

5.1 Organization and Good Standing. Human Condition Safety Inc. is a corporation duly organized, validly existing and in good standing under the laws of the State of Delaware. Subject to the limitations imposed on Seller as a result of having filed a petition for relief under the Bankruptcy Code, or pursuant to any order entered by the Bankruptcy Court, Seller has full power and authority to conduct the Business (as defined below) as it is being conducted, as of the date of the Auction, and to own, lease and operate its properties and assets. Seller is duly qualified to do business, and is in good standing, in each jurisdiction in which the character or location of the property owned, leased or operated or the nature of the business conducted makes such qualification necessary, except where the failure to be qualified or in good standing will not have a material adverse effect on the Purchased Assets or Seller's ability to consummate the transactions contemplated hereunder.

5.2 Authorization. Subject to the entry of the Sale Order and, with respect to Seller's obligations under Section 7.7(a), the entry of the Bidding Procedures Order, Seller has the requisite power and authority to execute this Agreement and the other agreements, instruments and certificates to be executed and delivered by it in connection with the transactions contemplated by this Agreement (collectively, the "Seller Ancillary Documents"), to perform its obligations under such agreements, and to consummate the transactions contemplated hereby and thereby. Subject to the entry of the Sale Order the execution and delivery by Seller of this

Agreement and the Seller Ancillary Documents and the consummation by Seller of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate and other organizational action on the part of Seller. This Agreement and the Seller Ancillary Documents have been duly executed and delivered by Seller and, assuming the execution and delivery by Buyer and the entry of the Sale Order, and, with respect to Seller's obligations under Section 7.7(a), the entry of the Bidding Procedures Order, constitute valid and binding obligations of Seller, enforceable against Seller in accordance with their respective terms, except the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceedings therefor may be brought.

5.3 No Violation; Consents. Upon or after the entry and effectiveness of the Sale Order, the execution and delivery of this Agreement and the Seller Ancillary Documents and the performance of Seller's obligations herein or therein will not (i) conflict with or result in any breach of any provision of the organizational documents of Seller, (ii) violate any applicable foreign, federal, state or local law (including common law), statute, code, ordinance, rule, regulation or other requirement enacted, promulgated, issued or entered by a governmental authority (collectively, "Laws"), (iii) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental authority or other Person which has not otherwise been obtained or made, or (iv) result in the imposition of any Encumbrances upon the Purchased Assets, except as are excused by or unenforceable as a result of the filing of the Bankruptcy Case or the applicability of any provision of, or any Law under, the Bankruptcy Code.

5.4 Title to the Purchased Assets. Other than the assets in Seller's possession which are leased or licensed to Seller which are listed in Schedule 5.4 hereto, Seller is the sole and lawful owner of, and holds good and marketable title to, the Purchased Assets. At the Closing, Buyer will receive good and marketable title to the Purchased Assets, free and clear of all Encumbrances as permitted under Sections 363(b) and 363(f) of the Bankruptcy Code and subject to the entry of the Sale Order.

5.5 [Reserved]

5.6 [Reserved]

5.7 [Reserved]

5.8 Litigation. Subject to the entry of the Sale Order, other than as set forth on the Schedules of Assets and Liabilities and Statement of Financial Affairs filed by Seller in its Chapter 11 case, there are no private or governmental actions, suits, proceedings, claims, arbitrations, judgments or decrees or, to Seller's Knowledge, investigations pending against Seller or, to Seller's Knowledge, affecting Seller or the Purchased Assets or the Assumed Liabilities, which (i) contest or challenge Seller's authority, right or ability to perform its obligations under this Agreement or any of the Seller Ancillary Documents, as applicable, (ii) challenge Seller's right, title or ownership in any of the Purchased Assets, or (iii) would impair or have an adverse effect on Buyer's right or ability to own, use, commercialize or otherwise exploit any of the Purchased Assets, or impair or have an adverse effect on the value

of any of the Purchased Assets following the Closing. To Seller's Knowledge, there are no proceedings threatened that assert any claim described in clauses (i), (ii) or (iii) of the preceding sentence; provided, however, that if after the date hereof, any action, suit, proceeding, claim, arbitration, judgment decree or investigation described in clause (i), (ii) or (iii) is asserted, instituted or entered, then the representation contained in the first sentence of this Section 4.8 shall be deemed accurate as of the Closing Date so long as an order has been issued by the Bankruptcy Court rejecting, disallowing or dismissing such action, suit, proceeding, claim, arbitration, judgment decree or investigation, no appeal or motion for reconsideration of that order has been filed and the time for filing such motion and an appeal has expired. Except for orders entered in the Bankruptcy Case that do not have an adverse effect on the Purchased Assets or the Assumed Liabilities or on Seller's ability to consummate the transactions contemplated hereunder, there are no judgments, decrees, injunctions or orders of any court, governmental authority, arbitrator or mediator pending or binding against Seller or the Purchased Assets.

5.9 Insurance. Schedule 5.9 lists all insurance policies insuring the Purchased Assets, including the policy numbers, expiration dates, premium payment schedules, and the coverage limitations and amounts of any deductibles with respect to such insurance policies. Such insurance policies are in full force and effect for such amounts and are sufficient for material compliance with all legal requirements and of all agreements to which Seller is a party or by which it is bound. No event has occurred which limits or impairs the rights of Seller under any such insurance policies.

5.10 Except as set forth on Schedule 5.10, all material federal, state and local tax filings (the "Tax Returns") required to be filed by Seller with respect to the Purchased Assets or the Business have been timely filed, all such tax returns are true, correct and complete in all material respects; except as set forth on Schedule 5.10, no adjustment related to such Tax Returns has been proposed formally or information by any taxing authority; the Seller have not received any written notice or inquire from any jurisdiction in which Seller do not currently file Tax Returns to the effect that such filings may be required with respect to the Purchased Assets or the Business, or that the Business may otherwise be subject to taxation by such jurisdiction; except as set forth on Schedule 5.10, the Seller has paid all taxes payable with respect to the Purchased Assets or the Business, the non-payment of which would result in a lien on any of the Purchased Assets or would result in Buyer becoming liable or responsible therefore; and no power of attorney currently in force has been granted by the Seller with respect to the Business that would be binding on the Buyer with respect to the taxable periods commencing on or after the Closing Date.

5.11 [Reserved]

5.12 Environmental Safety and Health. Within the last twelve (12) months, Seller has not received any written notice, claim, or report relating to the Purchased Assets or the Assumed Liabilities regarding any violation or alleged violation by Seller of, or liability or alleged liability of Seller, under any environmental laws.

5.13 Financial Advisors. Except as set forth on Schedule 5.13, no Person has acted, directly or indirectly, as a broker, finder or financial advisor for Seller in connection with the transactions contemplated hereunder. Buyer is not and will not become obligated to pay any fee

or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated hereunder based upon any arrangement made by or on behalf of Seller.

5.14 No Other Representations or Warranties. Except as expressly set forth in this Agreement and the Seller Ancillary Documents, none of Seller or any agent, employee, attorney or other representative of Seller or purporting to represent Seller, makes any representation or warranties, express or implied, of any kind whatsoever to Buyer with respect to the Purchased Assets or otherwise, including, without limitation, the maintenance, repair, condition, quality, design, marketability, accuracy, utility or completeness of the equipment, and Seller expressly disclaims as it pertains to Buyer (1) any implied or express warranty of merchantability, (2) any implied or express warranty of fitness for a particular purpose, or (3) any implied or express warranty of conforming to models or samples with respect to any of the foregoing. For the avoidance of doubt, except as set forth in this Agreement or the Seller Ancillary Documents, no warranty or representation is given on the contents of the documents provided in due diligence, on any other documents or other information not contained in this Agreement, all of which were produced only for information purposes.

5.15 No Inducement or Reliance; Independent Assessment. With respect to the Purchased Assets or any other rights to be transferred hereunder, Seller acknowledges it has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Buyer or any agent, employee, attorney or other representative of Buyer representing or purporting to represent Buyer that are not expressly set forth herein (including the exhibits hereto), whether or not any such representations, warranties or statements were made in writing or orally, and Seller acknowledges that none of Buyer, nor any agent, employee, attorney, other representative of Buyer or other Person will have or be subject to any liability to Seller or any other Person resulting from the distribution to Seller, or Seller's use of, any such information, including any information, documents or material made available to Seller in expectation of the transactions contemplated by this Agreement. For purposes of clarification, this Section 5.15 shall not in any way limit any representation, warranty or statement of Buyer made in this Agreement or in any document or instrument delivered to Seller pursuant to this Agreement.

5.16 [Reserved]

## **ARTICLE VI REPRESENTATIONS AND WARRANTIES OF BUYER**

As of the date hereof and as of the Closing, as a material inducement to Seller to execute and perform its obligations under this Agreement, Buyer represents and warrants to Seller as follows as of the date hereof and as of the Closing:

6.1 Organization and Good Standing. Buyer is a \_\_\_\_\_ duly organized, validly existing and in good standing under the laws of \_\_\_\_\_. Buyer has full corporate power and authority to conduct its business as it is presently being conducted and to own, operate and lease its properties and assets.

6.2 Authorization. Buyer has the requisite power and authority to execute this Agreement and the other agreements, instruments and certificates to be executed and delivered by it in connection with the transactions contemplated by this Agreement (collectively, the “Buyer Ancillary Documents”), to perform its obligations under such agreements, and to consummate the transactions contemplated hereby and thereby. The execution and delivery by Buyer of this Agreement and the Buyer Ancillary Documents and the consummation by Buyer of the transactions contemplated hereby and thereby have been duly authorized by all necessary corporate action on the part of Buyer. This Agreement and the Buyer Ancillary Documents have been duly executed and delivered by Buyer and, assuming the execution and delivery by Seller and the entry of the Sale Order, constitute valid and binding obligations of Buyer, enforceable against Buyer in accordance with their respective terms, except the availability of the remedy of specific performance or injunctive or other forms of equitable relief may be subject to equitable defenses and would be subject to the discretion of the court before which any proceedings therefor may be brought.

6.3 No Violation; Consents. The execution and delivery of this Agreement and the Buyer Ancillary Documents and the performance of Buyer’s obligations herein or therein will not (i) conflict with or result in any breach of any provision of the organizational documents of Buyer, (ii) conflict with, require the consent of a third party under, violate, result in the breach of, constitute a default under, or give rise to any right of acceleration, cancellation or termination of any material right or obligation of Buyer under any material agreement or other instrument to which Buyer is a party or by which Buyer or any of its properties or assets are bound, (iii) violate any applicable Law, or (iv) require any consent, approval, authorization or permit of, or filing with or notification to, any governmental authority or other Person which has not otherwise been obtained or made.

6.4 Litigation. Other than in or pursuant to the Bankruptcy Case, there are no private or governmental actions, suits, proceedings, claims, arbitrations or investigations pending or, to Buyer’s knowledge, threatened against Buyer that, if finally determined adversely, would be reasonably likely to have a material adverse effect on Buyer’s ability to consummate the transactions contemplated by this Agreement. Other than in or pursuant to the Bankruptcy Case, there are no judgments, decrees, injunctions or orders of any court, governmental authority, arbitrator or mediator pending or binding against Buyer which shall have a material adverse effect on Buyer’s ability to consummate the transactions contemplated by this Agreement.

6.5 Financial Advisors. No Person has acted, directly or indirectly, as a broker, finder or financial advisor for Buyer in connection with the transactions contemplated hereunder and Seller is not and will not become obligated to pay any fee or commission or like payment to any broker, finder or financial advisor as a result of the consummation of the transactions contemplated hereunder based upon any arrangement made by or on behalf of Buyer.

6.6 No Inducement or Reliance; Independent Assessment. With respect to the Purchased Assets or any other rights to be transferred hereunder, Buyer acknowledges it has not been induced by and has not relied upon any representations, warranties or statements, whether express or implied, made by Seller or any agent, employee, attorney or other representative of Seller representing or purporting to represent Seller that are not expressly set forth herein (including the exhibits hereto), whether or not any such representations, warranties or statements



were made in writing or orally, and Buyer acknowledges that none of Seller, nor any agent, employee, attorney, other representative of Seller or other Person will have or be subject to any liability to Buyer or any other Person resulting from the distribution to Buyer, or Buyer's use of, any such information, including any information, documents or material made available to Buyer in expectation of the transactions contemplated by this Agreement. For purposes of clarification, this Section 5.6 shall not in any way limit any representation, warranty or statement of Seller made in this Agreement or in any document or instrument delivered to Buyer pursuant to this Agreement.

6.7 No Projections. Buyer acknowledges that neither Seller nor any of its affiliates has made any warranty, express or implied, as to the performance, utility or prospects, financial or otherwise, or the profitability of the Purchased Assets or Assumed Contracts for Buyer, or with respect to any forecasts, expense estimates, projections or business plans prepared by or on behalf of Seller and delivered to Buyer in connection with Buyer's review of the Purchased Assets, Assumed Contracts and Assumed Liabilities and the negotiation and the execution of this Agreement.

6.8 Financing. Buyer has and will have on the Closing Date sufficient cash and cash equivalents and/or existing credit facilities with sufficient borrowing capacity thereunder (and has provided Seller with satisfactory evidence thereof) to purchase the Purchased Assets and to consummate the transactions contemplated by this Agreement.

6.9 Buyer's Investigation. Buyer represents that it is a sophisticated entity that was advised by knowledgeable counsel and other advisors and hereby acknowledges that it has conducted an investigation of the Purchased Assets, Assumed Contracts and Assumed Liabilities. Notwithstanding the foregoing, this Section 5.9 does not limit any representation or warranty made by Seller in this Agreement or any document or instrument delivered to Buyer pursuant to this Agreement.

6.10 No Other Representations and Warranties. Except as expressly set forth in this Agreement and the Buyer Ancillary Documents, neither Buyer nor any agent, employee, attorney or representative of Buyer or purporting to represent Buyer makes any representations or warranties, express or implied, of any kind whatsoever.

## **ARTICLE VII COVENANTS OF THE PARTIES**

7.1 Access. Prior to the Closing, Seller shall permit Buyer and its respective affiliates, officers, directors, managers, employees, attorneys, investment bankers, accountants and other agents and representatives (collectively, "Representatives") to have reasonable access to Purchased Assets during normal business hours and upon reasonable advance notice.

7.2 Seller's Operation of the Business. From the date hereof, Seller shall, and shall cause its Representatives to (a) keep the Purchased Assets intact and reasonably maintain the Purchased Assets until the end of the Closing Date, (b) not sell, transfer, pledge or grant a license or a security interest in, or otherwise dispose or encumber, any of the Purchased Assets or Assumed Contracts, (c) not remove any of the Purchased Assets from the Premises prior to the

Closing Date except in the ordinary course of business, (d) maintain all insurance policies on the Purchased Assets, existing as of the date of the Auction, until the Closing Date (and, if requested, will provide Buyer with satisfactory evidence thereof), and (e) not take any action inconsistent with Seller's obligations under this Agreement, in each case, subject to such obligations, limitations or restrictions imposed by the Bankruptcy Code and the Bankruptcy Court. For the avoidance of doubt, Seller agrees that it shall maintain the Purchased Assets in the manner that they are currently being maintained until the Closing Date, *provided however*, that Seller shall not be required to continue operating the Business after conclusion of the Auction except that Seller shall continue administering payroll to certain key employees, until the earlier of (i) the Closing Date, and (ii) 10 days after the Auction, to the extent reasonably necessary to preserve value of the Purchased Assets and to the extent the Buyer demands same as a condition of its bid.

7.3 Cooperation Toward Closing. From the date hereof until the Closing Date, subject to the terms and conditions of this Agreement, each of the parties hereto shall use commercially reasonable efforts to take, or cause to be taken, all actions, and to do, or cause to be done, all things reasonably necessary, proper or advisable under applicable Law to consummate and make effective the sale of the Purchased Assets and the assumption and assignment of the Assumed Contracts in accordance with this Agreement and the Sale Order, including using commercially reasonable efforts to ensure timely satisfaction of the conditions precedent to such party's obligations hereunder.

7.4 Consents. On or prior to the Closing Date, Seller shall use commercially reasonable efforts, and Buyer shall reasonably cooperate with Seller, to obtain at the earliest practical date all material consents, waivers and approvals required to consummate the transactions contemplated by this Agreement.

7.5 [Reserved]

7.6 Compliance with Government Requests. Subject to the terms and conditions herein, each of the parties hereto agrees to use its commercially reasonable efforts to take, or cause to be taken, all actions necessary to expeditiously consummate the transactions contemplated by this Agreement, including using commercially reasonable efforts to respond promptly to government requests for information and obtain all necessary governmental, judicial or regulatory actions or non-actions, orders, waivers, consents, clearances, extensions and approvals. In addition to and without limiting the agreements of the parties contained above, Seller and Buyer shall (a) comply at the earliest practicable date with any request for additional information or documentary material received by Seller or Buyer from any governmental authority in connection with any applicable Law, (b) cooperate with each other in connection with resolving any investigation or other inquiry concerning the transactions contemplated hereby commenced by any governmental authority, and (c) use commercially reasonable efforts to resolve such objections, if any, as may be asserted with respect to the transactions contemplated hereby under any antitrust law. Notwithstanding the foregoing or any other covenant herein contained, nothing in this Agreement shall be deemed to require Buyer or Seller (i) to commence any litigation against any Person in order to facilitate the consummation of any of the transactions contemplated hereby, (ii) to take or agree to take any other action or agree to any limitation that could reasonably be expected to have an adverse effect on the business, assets, condition (financial or otherwise), results of operations or prospects of Buyer on the one

hand, or Seller, on the other hand, (iii) to defend against any litigation brought by any governmental authority seeking to prevent the consummation of, or impose limitations on, any of the transactions contemplated hereby, or (iv) to divest or hold separate or in trust (or the imposition of any other adverse condition or restriction with respect to) any assets or operations of Buyer or Seller and their respective affiliates or the Purchased Assets. Notwithstanding anything herein to the contrary, Buyer acknowledges and agrees that it shall bear sole responsibility for acquiring any necessary governmental, judicial or regulatory actions or non-actions, orders, waivers, consents, clearances, extensions and approvals required in connection with any export Laws or any Laws otherwise affecting the transfer of the Purchased Assets to a location outside the United States.

**7.7 Bankruptcy Matters.**

(a) Copies of Pleadings. Seller shall, to the extent reasonably practicable, provide Buyer with drafts of all documents, motions, orders, filings or pleadings that it proposes to file with the Bankruptcy Court that relate to the approval of this Agreement and the consummation of the transactions contemplated hereby, and will provide Buyer with reasonable opportunity to review and approve such filings. Seller shall also promptly (within one (1) business day) provide Buyer with copies of all pleadings received by or served by or upon Seller in connection with the Bankruptcy Case that relate to or may reasonably be expected to affect the transactions provided for in this Agreement and which have not otherwise been served on Buyer.

**7.8 Taxes; Preparation and Filing.**

(a) Buyer shall bear and be responsible for paying any and all sales, use, transfer, filing, recordation, registration, documentary, stamp, gains and similar taxes and fees, including related penalties, additions to tax, and interest imposed by any governmental authority with respect to the transfer of the Purchased Assets (collectively, "Transfer Taxes"), regardless of whether the tax authority seeks to collect such taxes from Seller or Buyer. The parties will cooperate in the preparation, execution and filing of all tax returns and other documentation with respect to all such Transfer Taxes. The parties will take all reasonable steps to minimize any Transfer Taxes.

(b) Seller shall be responsible for the payment of, and will indemnify Buyer against, all taxes (other than Transfer Taxes, but including without limitation, any interest, penalty or addition thereto) due or assessed that relate to the holding and use of the Purchased Assets (including, for the avoidance of doubt any state or local sales and use taxes assessed with respect to the conduct of the Business prior to the Closing Date) for all taxable periods which end on or prior to the Closing Date. Buyer shall be responsible for the payment of, and will indemnify Seller against, all taxes (including without limitation, any interest, penalty or addition thereto) due or assessed that relate to the holding and use of the Purchased Assets for all taxable periods which commence on or after the Closing Date. Buyer shall be responsible for the payment of, and will indemnify Seller against, all taxes and assessments due or assessed that relate to a change in ownership or a change in the use of the Purchased Assets.

(c) Any and all refunds, credits, claims, or rights to appeal respecting the amount of any taxes or assessments (collectively "Tax Refunds") (including any interest related

thereto) received by Buyer with respect to the Purchased Assets for periods prior to and including the time of the Closing Date (or portions thereof) shall be for the account of Seller, and any Tax Refunds (including any interest related thereto) received by Seller with respect to (i) Transfer Taxes described in Section 6.8(a) or (ii) Tax Refunds received with respect to the Purchased Assets relating to Straddle Periods or periods after the time of the Closing Date (or portions thereof) shall be for the account of Buyer. Buyer shall pay over to Seller, and Seller shall pay over to Buyer, any such refund amount received by the other party (net of any taxes payable by such other party as a result of receiving such Tax Refunds) within five (5) business days of receipt thereof. Seller shall be entitled to request that Buyer, at Seller's expense, file for and obtain any Tax Refunds with respect to tax periods or portions thereof ending on or before the Closing Date with respect to the relevant Asset(s), and Buyer shall be entitled to request that Seller, at Buyer's expense, file for and obtain any Tax Refunds with respect to periods after the time of the Closing Date (or portions thereof) with respect to the relevant Assets. Neither Buyer's nor Seller's consent to such request from the other party shall be unreasonably withheld.

(d) Buyer and Seller will cooperate fully, as and to the extent reasonably requested by the other party, in connection with any tax matters relating to the Purchased Assets (including by the provision of reasonably relevant records or information, and cooperation in the filing of any tax returns).

7.9 Public Statements. In the event either party desires to issue a press release or make a public statement (other than filings made by Seller with the Bankruptcy Court) about the transactions contemplated by this Agreement, such party shall obtain the consent of the other party (such consent not to be unreasonably withheld) to the content of any such press release or other public statement.

7.10 Updating of Representations and Warranties. Each party hereto will give prompt notice to the other party of (a) the occurrence, or failure to occur, of any event which occurrence or failure would be likely to cause any representation or warranty of Seller or Buyer, as the case may be, contained in this Agreement to be untrue or inaccurate at any time from the date hereof to the Closing Date, and (b) any failure of Seller or Buyer, as the case may be, to comply with or satisfy any covenant, condition or agreement to be complied with or satisfied by any of them under this Agreement; provided that such notice shall not be deemed to modify any representation or warranty previously made in this Agreement, and any failure of the party receiving such notice to take action in response to such notice shall not be deemed a waiver or estoppel with respect to any such matter.

## **ARTICLE VIII CONDITIONS TO CLOSING**

8.1 Conditions to Each Party's Obligation to Effect the Closing. The respective obligations of each party to effect the Closing hereunder shall be subject to the fulfillment at or prior to the Closing of the following conditions:

(a) there shall not be in effect any preliminary or permanent injunction or other order or decree by any federal or state court or administrative agency having competent

jurisdiction restraining, enjoining or otherwise prohibiting the sale of the Purchased Assets to Buyer;

(b) the Bankruptcy Court shall have entered (i) the Bidding Procedures Order and (ii) the Sale Order approving this Agreement, substantially in the form attached to this Agreement, and such Sale Order, among other things: (A) shall include a determination that Buyer is a purchaser in good faith within the meaning of section 363(m) of the Bankruptcy Code and, therefore, entitled to the protections of such section, (B) authorizing the Debtor to assume and assign the Assumed Contracts pursuant to Section 365 of the Bankruptcy Code, (C) shall include a waiver of the fourteen (14) day stay set forth in Federal Rule of Bankruptcy Procedure 6004(h) and 6006(d), and (D) shall not have been stayed or otherwise limited as to its terms or effectiveness; and the Sale Order (i) shall not have been reversed or stayed at the time of Closing, and (ii) shall not be the subject of an appeal or motion for rehearing or new trial, provided however, that Buyer, in its sole and absolute discretion, may elect to proceed with the Closing even if an appeal from or a motion for rehearing or new trial on the Sale Order is pending; and

(c) all filings, consents and approvals necessary to permit the parties hereto to perform the transactions contemplated hereby shall have been duly obtained, made or given, shall not be subject to the satisfaction of any condition that has not been satisfied or waived and shall be in full force and effect.

8.2 Conditions to Obligations of Buyer. The obligation of Buyer to effect the Closing hereunder shall be subject to the fulfillment at or prior to the Closing of the following additional conditions:

(a) the representations and warranties of Seller set forth in this Agreement shall have been true and correct in all material respects (and those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the date of this Agreement and shall be true and correct in all material respects (and those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the Closing Date as though made at and as of the Closing (except to the extent that such representations and warranties are stated to be made as of a date other than the date they were made, in which case they shall have been true and correct in all material respects, and those representations and warranties that are qualified as to materiality shall be true and correct in all respects as of such other date);

(b) Seller shall have performed and complied in all material respects with all obligations and covenants contained in this Agreement which are required to be performed and complied with by Seller on or prior to the Closing;

(c) all Encumbrances on the Purchased Assets shall have been released or fully discharged pursuant to the Sale Order;

(d) the Purchased Assets, taken as a whole, shall not have been materially and adversely affected by any act of God or public enemy, casualty, theft, fire, flood, explosion,

hurricane, tornado, earthquake, hail, storm, drought, accident, vandalism, war, or other event or occurrence, whether or not covered by insurance; and

(e) Buyer shall have received the other items to be delivered to it pursuant to Section 4.2.

Any condition specified in this Section 8.2 may be waived, in whole or in part, by Buyer, provided that no such waiver shall be effective against Buyer unless it is set forth in a writing executed by Buyer.

8.3 Conditions to Obligations of Seller. The obligation of Seller to effect the Closing hereunder shall be subject to the fulfillment at or prior to the Closing of the following additional conditions:

(a) The representations and warranties of Buyer set forth in this Agreement shall have been true and correct in all material respects (and those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the date of this Agreement and shall be true and correct in all material respects (and those representations and warranties that are qualified as to materiality shall be true and correct in all respects) as of the Closing Date as though made at and as of the Closing (except to the extent that such representations and warranties are stated to be made as of a date other than the date they were made, in which case they shall have been true and correct in all material respects as of such other date);

(b) Buyer shall have performed and complied in all material respects with all obligations and covenants contained in this Agreement which are required to be performed and complied with by Buyer on or prior to the Closing; and

(c) Seller shall have received the other items to be delivered to it pursuant to Section 4.3.

Any condition specified in this Section 8.3 may be waived, in whole or in part, by Seller, provided that no such waiver shall be effective against Seller unless it is set forth in a writing executed by Seller.

## **ARTICLE IX TERMINATION**

9.1 Termination. This Agreement may be terminated prior to the Closing Date as follows:

(a) by mutual written consent of Seller and Buyer;

(b) by either party, upon written notice to the other party, if (i) there shall be any Law or regulation that makes consummation of the transactions contemplated hereby illegal or otherwise prohibited or (ii) consummation of the transactions contemplated hereby would violate any nonappealable final order, decree or judgment of (A) the Bankruptcy Court or (B) any other court or governmental authority having competent jurisdiction; and

(c) by Buyer, upon written notice to Seller, if Seller shall consummate a sale of all or any portion of the Purchased Assets pursuant to a competing bid.

9.2 Effect of Termination. No termination of this Agreement pursuant to Section 9.1 shall be effective until written notice thereof is given to the non-terminating party specifying the provision hereof pursuant to which such termination is made. If validly terminated pursuant to Section 9.1 this Agreement shall be void and of no effect, and all further obligations of the parties under or pursuant to this Agreement shall terminate without further liability of any party to the other; provided that the provisions of any confidentiality agreement between the parties, Section 3.1(b) (Deposit Amount), Section 8.9 (Confidentiality Agreement; Public Statements), this Section 9.2 (Effect of Termination), Article X (Survival) and Article XI (Miscellaneous) of this Agreement shall survive the termination of this Agreement; provided, further, that nothing contained in this Section 9.2 shall relieve any party from liability for any breach of this Agreement.

## **ARTICLE X SURVIVAL**

### **10.1 Survival of Representations and Warranties.**

(a) The representations and warranties of Seller in this Agreement and in the Seller Ancillary Documents, other than those in Sections 5.2, 5.3, 5.4 and 5.13 of this Agreement, shall not survive the Closing.

(b) The representations and warranties of Buyer in this Agreement and the Buyer Ancillary Documents shall not survive the Closing, except for the representations and warranties of Buyer in Sections 6.2, 6.3 and 6.5 of this Agreement, which shall survive Closing.

(c) The parties hereby agree that the limitations set forth above in this Section 10.1 on the survival of the representations and warranties of the parties shall not apply to a representation or warranty in the event that a party has committed fraud or made an intentional misrepresentation with respect to such representation or warranty.

10.2 Survival of Covenants. The covenants and agreements of Seller and Buyer in this Agreement, the Seller Ancillary Documents and the Buyer Ancillary Documents shall survive the Closing in accordance with the terms of such covenants and agreements.

10.3 Exclusive Remedy. The parties have voluntarily agreed to define their rights, liabilities and obligations respecting the subject matter of this Agreement exclusively in contract pursuant to the express terms and provisions of this Agreement. Accordingly, except with respect to claims based on fraud or intentional misrepresentation, the sole and exclusive remedies for any breach of the terms and provisions of this Agreement and any certificates, documents or other agreements executed in connection with this Agreement (including any representations and warranties set forth herein and therein) or any tort claims or causes of action that may be based upon, arise out of or relate to this Agreement and any certificates, documents or other agreements executed in connection with this Agreement, or the negotiation, execution or performance of this Agreement and any certificates, documents or other agreements executed in connection with this Agreement, shall be those remedies available at law or in equity for breach

of contract only (as such contractual remedies may be further limited or excluded pursuant to the express terms of this Agreement or any certificates, documents or other agreements executed in connection with this Agreement).

## **ARTICLE XI MISCELLANEOUS**

11.1 “AS IS” TRANSACTION. BUYER HEREBY ACKNOWLEDGES AND AGREES THAT, EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, SELLER MAKES NO REPRESENTATIONS OR WARRANTIES WHATSOEVER, EXPRESS OR IMPLIED, WITH RESPECT TO ANY MATTER RELATING TO SELLER’S BUSINESS, TO THE PURCHASED ASSETS, TO THE ASSUMED CONTRACTS OR TO THE ASSUMED LIABILITIES. WITHOUT IN ANY WAY LIMITING THE FOREGOING, SELLER HEREBY DISCLAIMS ANY WARRANTY (EXPRESS OR IMPLIED) OF MERCHANTABILITY OR FITNESS FOR ANY PARTICULAR PURPOSE AS TO ANY PORTION OF THE PURCHASED ASSETS. IF THE CLOSING OCCURS, BUYER WILL ACCEPT THE PURCHASED ASSETS, AT THE CLOSING DATE “AS IS,” “WHERE IS,” SUBJECT TO THE PROVISIONS OF THIS AGREEMENT AND THE SALE ORDER PROVIDING, AMONG OTHER THINGS, THAT THE SALE OF THE PURCHASED ASSETS IS FREE AND CLEAR OF ALL ENCUMBRANCES.

11.2 NO CONSEQUENTIAL OR PUNITIVE DAMAGES; LIMITATION OF LIABILITY. NO PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) SHALL, UNDER ANY CIRCUMSTANCE, BE LIABLE TO ANY OTHER PARTY (OR ITS AFFILIATES OR REPRESENTATIVES) FOR ANY CONSEQUENTIAL, EXEMPLARY, SPECIAL, INCIDENTAL, OR PUNITIVE DAMAGES CLAIMS BY SUCH PARTY UNDER THE TERMS OF OR DUE TO ANY BREACH OF THIS AGREEMENT, INCLUDING LOSS OF REVENUE OR INCOME, DAMAGES BASED ON ANY MULTIPLIER OF PROFITS OR OTHER VALUATION METRIC, COST OF CAPITAL, DIMINUTION OF VALUE OR LOSS OF BUSINESS REPUTATION OR OPPORTUNITY. NOTWITHSTANDING ANYTHING IN THIS AGREEMENT, OR IN ANY OTHER DOCUMENT, INSTRUMENT OR AGREEMENT DELIVERED IN CONNECTION WITH THIS AGREEMENT, TO THE CONTRARY, THE MAXIMUM AGGREGATE LIABILITY OF BUYER AND ITS REPRESENTATIVES TO SELLER AND ITS REPRESENTATIVES ARISING OUT OF ANY AND ALL BREACHES OR VIOLATIONS BY BUYER THAT OCCUR AT OR BEFORE THE CLOSING, INCLUDING WITHOUT LIMITATION ANY BREACH BY BUYER OF ITS OBLIGATION TO EFFECT THE CLOSING HEREUNDER, OR FAILURES AT OR BEFORE THE CLOSING OF BUYER TO COMPLY WITH, THIS AGREEMENT OR SUCH OTHER DOCUMENTS, INSTRUMENTS OR AGREEMENTS, SHALL NOT EXCEED THE AMOUNT OF THE DEPOSIT, AND THE SOLE AND EXCLUSIVE RECOURSE AND REMEDY OF SELLER AND ITS REPRESENTATIVES IN CONNECTION WITH ANY SUCH BREACH, VIOLATION OR FAILURE SHALL BE TO MAKE A CLAIM AGAINST THE DEPOSIT IN ACCORDANCE WITH THE PROCEDURES SET FORTH IN THE DEPOSIT ESCROW AGREEMENT.

11.3 Certain Definitions.



(a) “affiliate” means a Person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with, the Person specified.

(b) “Business” means the Purchased Assets and the business operated by Seller prior to the Auction.

(c) “Seller’s Knowledge” shall refer to the actual knowledge, after due inquiry, of Seller’s board of directors.

(d) For any party hereto, a document is “substantially in the form” of a document referred to in this Agreement when it is materially identical to the document referred to and/or with any other modifications made with the consent of such party, such consent to not be unreasonably withheld. For the sake of clarity, a party shall not be deemed to have unreasonably withheld its consent if such revisions, changes or modifications would materially adversely affect its interest.

11.4 Expenses. Each party will bear its respective costs and expenses, including attorneys fees and fees of investment bankers or other financial advisors, incurred in connection with this Agreement, the Seller Ancillary Document, the Buyer Ancillary Documents and the transactions contemplated hereby and thereby.

11.5 Further Assurances. On and after the Closing, each party will take all appropriate action and execute all documents, instruments or conveyances of any kind which may be reasonably necessary or advisable to carry out any of the provisions hereof, including, without limitation and, subject to Seller’s obligations under Section 7.12, putting Buyer in possession and operating control of the Purchased Assets.

11.6 Amendment, Modification, Extension and Waiver. This Agreement may be amended, modified or supplemented only by written agreement of Seller and Buyer. Except as otherwise provided in this Agreement, any failure of any of the parties to comply with any obligation, covenant or condition herein may be waived in writing by the party or parties granting such waiver, but such waiver shall not operate as a waiver of, or estoppel with respect to any subsequent or other failure to comply with any obligation, covenant or condition.

11.7 Notices. All notices, request, demand and other communications required or permitted hereunder shall be in writing and shall be deemed to have been duly given (a) if delivered by hand, upon delivery; (b) if delivered by mail certified or registered mail with postage prepaid, within three (3) business days after dispatch or (c) if delivered by facsimile transmission, on the next business day after dispatch, provided that the sender receives confirmation of receipt, in each case addressed as follows:

(a) If to Seller, to:

Human Condition Safety Inc.  
C/o Wollmuth Maher & Deutsch LLP  
500 Fifth Avenue, Suite 1200

New York, NY 10110

Attn: John D. Giampolo, Esq. (jgiampolo@wmd-law.com)

(b) If to Buyer, to:

[\_\_\_\_\_]

11.8 Assignment. Except as set forth herein, neither this Agreement nor any of the rights or obligations hereunder may be assigned by any party without the prior written consent of the other parties hereto, which shall not be unreasonably withheld, and any such purported assignment in violation hereof shall be void. Subject to the foregoing, this Agreement shall be binding upon and inure to the benefit of and be enforceable by the parties hereto and their respective successors, assigns, heirs, and legal representatives and no other person or entity shall have any right, benefit or obligation hereunder.

11.9 Third Party Beneficiaries. Buyer and Seller intend that this Agreement and those transactional documents contemplated by this Agreement shall not benefit or create any right or cause of action in any Person other than the parties hereto.

11.10 Severability; Time of Essence. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced by any rule of law or public policy, all other terms, conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated hereby be consummated as originally contemplated to the fullest extent possible. Time is of the essence with regard to this Agreement and the transactions contemplated hereby.

11.11 Governing Law. THIS AGREEMENT WILL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE UNITED STATES BANKRUPTCY CODE AND THE LAWS OF THE STATE OF DELAWARE.

11.12 Submission to Jurisdiction. The parties hereto agree that all litigation concerning any dispute between Seller and Buyer arising from or related in any way to this Agreement and the transactions contemplated hereby, those arising out of the sale of the Purchased Assets, or any conduct or facts related thereto, shall be heard by the Bankruptcy Court, and if the Bankruptcy Case has been closed, such litigation shall be heard by the United States District Court for the Southern District of New York or the courts of the State of New York having subject matter jurisdiction thereof, and the parties hereby consent to the jurisdiction of such courts for such purposes, and waive any objection they may have thereto based on venue, *forum non conveniens* or other similar doctrines.

11.13 Counterparts; Facsimile. This Agreement may be executed in one or more counterparts, each of which will be deemed an original, but all of which together will constitute one and the same instrument. This Agreement may be executed and delivered by facsimile

transmission or other electronic copy, and a facsimile or electronic copy of this Agreement or of a signature of a party will be effective as an original.

11.14 Incorporation of Exhibits. All Schedules and Exhibits attached hereto and referred to herein are hereby incorporated herein by reference and made a part of this Agreement for all purposes as if fully set forth herein.

11.15 Entire Agreement. This Agreement, including the Schedules and Exhibits hereto, and the Seller Ancillary Documents and Buyer Ancillary Documents and the other documents delivered pursuant hereto contain the entire understanding of the parties hereto with respect to the subject matter hereof and thereof, and supersede all prior agreements and understandings, inducements or conditions, express or implied, oral or written, between the parties with respect to the subject matter hereof and thereof.

11.16 No Successor Liability. The parties intend that, except where expressly prohibited under applicable Law, upon the Closing, Buyer shall not be deemed to: (i) be the successor of Seller, (ii) have, de facto, or otherwise, merged with or into Seller, (iii) be a mere continuation or substantial continuation of Seller or the enterprise(s) of Seller, or (iv) be liable for any acts or omissions of Seller in the conduct of the Business or arising under or related to the Purchased Assets other than as set forth in this Agreement. Without limiting the generality of the foregoing, and except as otherwise provided in this Agreement, the parties intend that Buyer shall not be liable for any bankruptcy claims, other claims, written notices, causes of action, proceedings, complaints, investigations or other proceedings against Seller or any of its predecessors or affiliates, and Buyer shall have no successor or vicarious liability of any kind or character whether known or unknown as of the Closing Date, whether now existing or hereafter arising, or whether fixed or contingent, with respect to the Business, the Purchased Assets or any obligations of Seller arising prior to the Closing Date, including, without limitation, liabilities on account of any taxes arising, accruing or payable under, out of, in connection with, or in any way relating to the operation of the Business or the Purchased Assets, as the case may be, prior to the Closing, except as expressly provided in this Agreement. The parties agree that the provisions substantially in the form of this Section 11.16 shall be reflected in the Sale Order.

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IN WITNESS WHEREOF, the undersigned have executed this Asset Purchase Agreement to be effective as of the date first above written.

**SELLER:**

**HUMAN CONDITION SAFETY INC.**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**BUYER:**

**[BUYER]**

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

**Exhibit C to the Bidding Procedures Order**

**(Sale Notice)**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re:

Chapter 11

HUMAN CONDITION SAFETY INC.,

Case No: 17-10585-SHL

Debtor.<sup>1</sup>

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**NOTICE OF (A) SALE OF SUBSTANTIALLY ALL OF DEBTOR'S ASSETS, FREE  
AND CLEAR OF ALL LIENS, CLAIMS, AND ENCUMBRANCES, (B) APPROVAL OF  
CERTAIN BIDDING PROCEDURES RELATED TO SALE, (C) TIME, PLAN, AND  
MANNER OF CONDUCTING AUCTION, AND (D) TIME AND PLACE OF  
CONDUCTING SALE HEARING, AND OBJECTION AND OTHER DEADLINES  
RELATED THERETO**

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**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On July [\_\_\_], 2017, the above-captioned debtor and debtor-in-possession (the "Debtor") filed with the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court") in the above-captioned Chapter 11 case (the "Case") a motion [Doc. \_\_\_] (the "Motion") seeking entry of an Order (I)(A) approving bidding procedures (the "Bidding Procedures") for sale ("Sale" or "Sale Transaction") of any or substantially all Debtor's assets (the "Assets"), (B) scheduling an auction for Sale(s) of Assets ("Auction"), (C) approving the form and manner of notice thereof, (D) approving certain procedures related to the Debtor's assumption and assignment of executory contracts and unexpired leases in connection with any Sale, including notice to each non-Debtor counterparty (each, a "Counterparty") to an executory contract or unexpired lease (collectively, the "Contracts") of the Debtor's proposed cure amounts to cure all monetary defaults under the Contracts (the "Cure Costs"), if any, and notice of proposed assumption and assignment of certain Contracts (collectively, the "Proposed Assumed Contracts") in connection with any Sale, and (E) scheduling the hearing with respect to the approval of Sale(s) (the "Sale Hearing") and approval of the form and manner of notice thereof, and (II) granting related relief.

2. On July [\_\_\_], 2017, the Bankruptcy Court entered an Order [Doc. \_\_] (the "Bidding Procedures Order") in the Case approving, in part, the relief requested in the Motion, including the Bidding Procedures attached as an exhibit to the Bidding Procedures Order.

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's tax identification number, is Human Condition Safety Inc. (2476). The address of the Debtor's corporate headquarters, and sole office location, for noticing purposes is 61 Broadway, Suite 2710, New York, New York 10006.

3. Pursuant to the Bidding Procedures Order, any person or entity that desires to bid for purchase of any Assets, or desires to participate in the Auction for same, must submit a Qualified Bid (as defined in the Bidding Procedures) for the relevant Assets in writing and deliver same to (i) the Debtor c/o Human Condition Safety Inc., 61 Broadway, Suite 2710, New York, New York 10006 (Attn.: Gary Foreman) [gary@hcsafety.com](mailto:gary@hcsafety.com), and (ii) the attorneys for the Debtor, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 (Attn.: John D. Giampolo) [jgiampolo@wmd-law.com](mailto:jgiampolo@wmd-law.com) (collectively, the “Bid Notice Parties”) so as to be received no later than **July 21, 2017 at 5:00 p.m. prevailing Eastern Time (the “Bid Deadline”)**.

4. If the Debtor receives more than one timely Qualified Bid for the same Assets with an acceptable purchase price by the Bid Deadline, the Debtor will conduct the Auction. The Auction, if required, will be conducted at the offices of Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 **on July 24, 2017 at 10:00 a.m. (Prevailing Eastern Time)**, or at such other time and location as designated by the Debtor.

5. Objections to any Sale Transaction (the “Sale Objection”), including any objection to the sale of any Assets free and clear of liens, claims, interests, and encumbrances pursuant to Bankruptcy Code section 363(f) and entry of any sale order (other than Cure Objections, Assignability Objections, and/or Adequate Assurance Objections (each as defined below)) must (i) be in writing and specify the nature of such objection; (ii) comply with the Bankruptcy Code, Bankruptcy Rules, Local Rules, and all orders of the Bankruptcy Court; and (iii) be filed with the Bankruptcy Court and served on: (i) counsel for the Debtor, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 (Attn.: John D. Giampolo) [jgiampolo@wmd-law.com](mailto:jgiampolo@wmd-law.com); (ii) counsel for the Debtor’s DIP Lender, AIG PC Global Services, Inc., DLA Piper LLP, 1251 Avenue of the Americas, 27th Floor, New York, New York 10020-1104 (Attn: Daniel G. Egan) [daniel.egan@dlapiper.com](mailto:daniel.egan@dlapiper.com); (iii) counsel (if applicable) for any Successful Bidder; and (iv) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn.: Serene Nakano) (collectively, the “Objection Recipients”) by **July 28, 2017 at 5:00 p.m. (Prevailing Eastern Time) (the “Sale Objection Deadline”)**.

Notwithstanding the foregoing or anything herein to the contrary, the deadline to file Cure Objections, Assignability Objections and Adequate Assurance Objections in connection with a proposed Sale Transaction shall be the **Sale Objection Deadline on July 28, 2017 at 5:00 p.m. (Prevailing Eastern Time)**.

All Sale Objections not otherwise resolved by the parties prior thereto shall be heard at the Sale Hearing. **THE FAILURE OF ANY PARTY TO TIMELY FILE WITH THE BANKRUPTCY COURT AND SERVE ON THE OBJECTION RECIPIENTS A SALE OBJECTION FOREVER SHALL BE BARRED FROM ASSERTING, AT THE APPLICABLE SALE HEARING OR THEREAFTER, ANY OBJECTION TO THE RELIEF REQUESTED IN THE MOTION, OR TO THE CONSUMMATION AND PERFORMANCE OF THE SALE TRANSACTION CONTEMPLATED BY AN ASSET PURCHASE AGREEMENT WITH A SUCCESSFUL BIDDER, INCLUDING THE**

**TRANSFER OF THE ASSETS TO THE APPLICABLE SUCCESSFUL BIDDER, FREE AND CLEAR OF ALL LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES PURSUANT TO BANKRUPTCY CODE SECTION 363(F).**

6. The Sale Hearing will take place on **August 2, 2017 at 10:00 a.m. (Prevailing Eastern Time)**, before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, Courtroom 701, located at One Bowling Green, New York, New York 10004-1408. The Debtor's presentation to the Bankruptcy Court for approval of a Successful Bid does not constitute the Debtor's acceptance of such bid. The Debtor will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to an Order entered by the Bankruptcy Court (a "Sale Order").

7. To the extent set forth in the Bidding Procedures and/or in the Bidding Procedures Order, the Debtor reserves the right to, in its reasonable business judgment, and in consultation with its professionals, the DIP Lender and its professionals, modify the Bidding Procedures at any time, including, without limitation, to extend deadlines and proposed dates set forth therein, including extending the Bid Deadline, modifying the date of the Auction, and adjourning and/or rescheduling the Sale Hearing. This Notice is subject to the full terms and conditions set forth in the Bidding Procedures Order and in the Bidding Procedures.

8. Parties interested in receiving additional information, including, with regard to the Sale, the Assets, the Auction or the Bidding Procedures may make requests to the Debtor's undersigned counsel.

9. To the extent they are not served enclosed herewith, copies of the Motion, the Bidding Procedures Order, and the Bidding Procedures may be obtained free of charge by contacting undersigned counsel and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.nysb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

Dated: July [ ], 2017  
New York, New York

**WOLLMUTH MAHER & DEUTSCH LLP**

/s/ \_\_\_\_\_  
John D. Giampolo  
500 Fifth Avenue  
New York, New York 10110  
Telephone: (212) 382-3300  
Email: [jgiampolo@wmd-law.com](mailto:jgiampolo@wmd-law.com)

*Counsel for Debtor and Debtor-in-Possession,  
Human Condition Safety Inc.*



**Exhibit D to the Bidding Procedures Order**

**(Assumption and Assignment Notice)**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HUMAN CONDITION SAFETY INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No: 17-10585-SHL

**NOTICE OF POSSIBLE ASSUMPTION AND ASSIGNMENT  
OF CERTAIN EXECUTORY CONTRACTS AND UNEXPIRED LEASES  
IN CONNECTION WITH SALE**

**PLEASE TAKE NOTICE OF THE FOLLOWING:**

1. On July [\_\_\_], 2017, the above-captioned debtor and debtor-in-possession (the “Debtor”) filed with the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”) in the above-captioned Chapter 11 case (the “Case”) a motion [Doc. \_\_\_] (the “Motion”) seeking entry of an Order (I)(A) approving bidding procedures (the “Bidding Procedures”) for sale (“Sale” or “Sale Transaction”) of any or substantially all Debtor’s assets (the “Assets”), (B) scheduling an auction for Sale(s) of Assets (“Auction”), (C) approving the form and manner of notice thereof, (D) approving certain procedures related to the Debtor’s assumption and assignment of executory contracts and unexpired leases in connection with any Sale, including notice to each non-Debtor counterparty (each, a “Counterparty”) to an executory contract or unexpired lease (collectively, the “Contracts”) of the Debtor’s proposed cure amounts to cure all monetary defaults under the Contracts (the “Cure Costs”), if any, and notice of proposed assumption and assignment of certain Contracts (collectively, the “Proposed Assumed Contracts”) in connection with any Sale, and (E) scheduling the hearing with respect to the approval of Sale(s) (the “Sale Hearing”) and approval of the form and manner of notice thereof, and (II) granting related relief.

2. On July [\_\_\_], 2017, the Bankruptcy Court entered an Order [Doc. \_\_] (the “Bidding Procedures Order”) in the Case approving, in part, the relief requested in the Motion, including the Bidding Procedures attached as an exhibit to the Bidding Procedures Order.

3. **The Sale Hearing will take place on August 2, 2017 at 10:00 a.m. (prevailing Eastern Time)** before the Honorable Sean H. Lane, United States Bankruptcy Judge, at the United States Bankruptcy Court, Southern District of New York, Courtroom 701, located at One Bowling Green, New York, New York 10004-1408. The Debtor’s presentation to the Bankruptcy Court for approval of one or more highest or otherwise best bid(s) resulting from Auction(s) (each a

<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor’s tax identification number, is Human Condition Safety Inc. (2476). The address of the Debtor’s corporate headquarters, and sole office location, for noticing purposes is 61 Broadway, Suite 2710, New York, New York 10006.

“Successful Bid”) does not constitute the Debtor’s acceptance of such bid(s). The Debtor will have accepted the terms of a Successful Bid only when such bid has been approved by the Bankruptcy Court pursuant to an Order entered by the Bankruptcy Court (a “Sale Order”).

4. In connection with the Sale, and in accordance with the procedures related to the Debtor’s assumption and assignment of executory contracts and unexpired leases in connection with any Sale, which procedures are set forth in the Bidding Procedures and in the Bidding Procedures Order (the “Assumption and Assignment Procedures”), the Debtor may seek to assume and assign to one or more Successful Bidder(s) (as defined in the Bidding Procedures) certain Contracts of the Debtor, which Contracts are referred to as the Proposed Assumed Contracts. Each of the Proposed Assumed Contracts are identified on Schedule 1 attached hereto. The inclusion of any Contract on Schedule 1 does not constitute an admission that a particular Contract is an executory contract or unexpired lease or require or guarantee that such Contract will be assumed or assigned, and all rights of the Debtor with respect thereto are reserved. The Cure Costs, if any, that the Debtor believes are required to be paid to the applicable Counterparty to cure any monetary defaults under each Proposed Assumed Contract pursuant to Bankruptcy Code sections 365(b)(1)(A) and (B), to the extent that such Contract is ultimately assumed and assigned, is set forth on the Schedule 1.

5. Any Counterparty to a Proposed Assumed Contract that wishes to object to the proposed assumption, assignment, and sale of the Contract on any grounds, including Adequate Assurance Objections (as defined below) and including the subject of which objection is either (i) the Debtor’s proposed Cure Costs to cure any outstanding monetary defaults then existing under such Proposed Assumed Contract (each, a “Cure Objection”) and/or (ii) an objection to the assignability of such Proposed Assumed Contract, whether on grounds that such Contract is not assignable, is not an executory contract or unexpired lease, or otherwise (each, an “Assignability Objection”) shall, by no later than the **Objection Deadline on July 28, 2017 at 5:00 p.m. (prevailing Eastern Time)**, file with the Bankruptcy Court and serve its Cure Objection, Assignability Objection, Adequate Assurance Objection, and/or other such objection on (i) counsel for the Debtor, Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110 (Attn.: John D. Giampolo) jgiampolo@wmd-law.com; (ii) counsel for the Debtor’s DIP Lender, AIG PC Global Services, Inc., DLA Piper LLP, 1251 Avenue of the Americas, 27th Floor, New York, New York 10020-1104 (Attn: Daniel G. Egan) daniel.egan@dlapiper.com; (iii) counsel (if applicable) for any Successful Bidder; and (iv) the Office of the United States Trustee for the Southern District of New York, U.S. Federal Office Building, 201 Varick Street, Suite 1006, New York, New York 10014 (Attn.: Serene Nakano) (collectively, the “Objection Recipients”).

6. The Bidding Procedures Order requires that the Debtor and a Counterparty that has filed An objection first confer in good faith to attempt to resolve the objection without Court intervention. If the parties are unable to consensually resolve the objection prior to the commencement of the Sale Hearing, the amount to be paid or reserved with respect to any objection shall be determined by the Bankruptcy Court at the Sale Hearing provided that, a Cure Objection may, at the Debtor’s discretion, after consulting with its professionals, the DIP Lender and its professionals and the applicable Successful Bidder, be adjourned (an “Adjourned Cure Objection”) to a subsequent hearing. An Adjourned Cure Objection may be resolved after the

closing date of the applicable Sale Transaction; provided that, the Debtor maintains a cash reserve equal to the cure amount the objecting Counterparty believes is required to cure the asserted monetary default under the applicable Contract. Upon resolution of an Adjourned Cure Objection and the payment of the applicable cure amount, if any, the applicable Contract that was the subject of such Adjourned Cure Objection shall be deemed assumed and assigned to the applicable Successful Bidder, as of the closing date of the applicable Sale Transaction. All objections to the proposed assumption and assignment of the Debtor's right, title, and interest in, to, and under a Contract will be heard at the Sale Hearing, except with respect to an Adjourned Cure Objection as set forth herein.

7. If a Counterparty fails to timely file with the Bankruptcy Court and serve on the Objection Recipients an objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Contract to the Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment, and sale of such Contract. The Cure Costs set forth in the Assumption and Assignment Notice shall be controlling and will be the only amount necessary to cure outstanding defaults under the Contract under Bankruptcy Code section 365(b), notwithstanding anything to the contrary in any Proposed Assumed Contract, or any other document, and the Counterparty to such Proposed Assumed Contract shall be deemed to have consented to the Cure Costs and forever shall be barred from asserting any other claims related to such Proposed Assumed Contract against the Debtor or any Successful Bidder(s) or their property.

8. In the event that the Debtor identifies Counterparties that were not served with the Assumption and Assignment Notice, the Debtor may subsequently serve such Counterparty with an Assumption and Assignment Notice, and the above procedures will nevertheless apply to such Counterparty; provided, however, that the deadline to file an objection with respect to such additional Counterparty may be extended or such Counterparty may be permitted to voice objection at the Sale Hearing without filing an objection.

9. Any Counterparty to a Contract that wishes to object to the proposed assumption, assignment, and sale of the Contract, the subject of which objection is a Successful Bidder's proposed form of adequate assurance of future performance with respect to such contract (each, an "Adequate Assurance Objection") shall file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, which must state, with specificity, the legal and factual bases thereof, including any appropriate documentation in support thereof, by no later than the **Sale Objection Deadline on July 28, 2017, at 5:00 p.m. (prevailing Eastern Time)**.

10. The Bidding Procedures Order requires that the Debtor and a Counterparty that has filed an Adequate Assurance Objection first confer in good faith to attempt to resolve the Adequate Assurance Objection without Bankruptcy Court intervention. If the parties are unable to consensually resolve the Adequate Assurance Objection prior to the commencement of the Sale Hearing, such objection and all issues of adequate assurance of future performance of the applicable Successful Bidder shall be determined by the Court at the Sale Hearing.

11. If a Counterparty fails to timely file with the Court and serve on the Objection Recipients an Adequate Assurance Objection, the Counterparty shall be deemed to have consented to the assumption, assignment, and sale of the Proposed Assumed Contract (unless the Counterparty has filed a timely Cure Objection or Assignability Objection with respect to the Contract) to the applicable Successful Bidder and forever shall be barred from asserting any objection with regard to such assumption, assignment, and sale. The applicable Successful Bidder shall be deemed to have provided adequate assurance of future performance with respect to the applicable Contract in accordance with Bankruptcy Code section 365(f)(2)(B), notwithstanding anything to the contrary in the Contract, or any other document.

12. The inclusion of a Contract or other document or Cure Costs on the Schedule 1 of Contracts attached hereto or on any notice of Proposed Assumed Contracts (together with Schedule 1 hereto, each a "Contract Notice") shall not constitute or be deemed a determination or admission by the Debtor, by the applicable Successful Bidder(s), or any other party in interest that such Contract or other document is an executory contract or an unexpired lease within the meaning of the Bankruptcy Code or that the stated Cure Costs are due (all rights with respect thereto being expressly reserved). The Debtor reserves all of its rights, claims, and causes of action with respect to each Contract or other document listed on any Contract Notice. **The Debtor's inclusion of any Contract on any Contract Notice shall not be a guarantee that such contract ultimately will be assumed or assumed and assigned.** The Contract Notices shall be without prejudice to the Successful Bidder's rights, if any, under the asset purchase agreement, to subsequently exclude Proposed Assumed Contracts from the assumption or assignment prior to the closing of the Sale Transaction.

13. The Debtor's assumption and/or assignment of any Proposed Assumed Contract is subject to approval by the Bankruptcy Court and consummation of one or more Sale Transactions. Absent consummation of one or more Sale Transactions and entry of a Sale Order approving the assumption and/or assignment of the Proposed Assumed Contracts, such Contracts shall be deemed neither assumed nor assigned, and shall in all respects be subject to subsequent assumption or rejection by the Debtor.

14. To the extent they are not served enclosed herewith, copies of the Motion, the Bidding Procedures Order, and the Bidding Procedures may be obtained free of charge by contacting undersigned counsel and may be viewed for a fee on the internet at the Bankruptcy Court's website (<http://www.nysb.uscourts.gov/>) by following the directions for accessing the ECF system on such website.

Dated: July [ ], 2017  
New York, New York

**WOLLMUTH MAHER & DEUTSCH LLP**

/s/

John D. Giampolo  
500 Fifth Avenue  
New York, New York 10110  
Telephone: (212) 382-3300  
Email: jgiampolo@wmd-law.com

*Counsel for Debtor and Debtor-in-Possession,  
Human Condition Safety Inc.*

**Exhibit 3 to the Sale Motion**

**(Sale Declaration)**

**UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK**

In re:

HUMAN CONDITION SAFETY INC.,

Debtor.<sup>1</sup>

Chapter 11

Case No: 17-10585-SHL

**DECLARATION OF GREGORY WOLYNIEC IN SUPPORT OF MOTION FOR ENTRY  
OF ORDERS (I)(A) APPROVING BIDDING PROCEDURES FOR SALE OF  
SUBSTANTIALLY ALL DEBTOR'S ASSETS, (B) SCHEDULING AN AUCTION, (C)  
APPROVING THE FORM AND MANNER OF NOTICE THEREOF, (D) APPROVING  
ASSUMPTION AND ASSIGNMENT PROCEDURES, AND (E) SCHEDULING A SALE  
HEARING AND APPROVING THE FORM AND MANNER OF NOTICE THEREOF,  
AND (II)(A) APPROVING THE SALE OF SUBSTANTIALLY ALL DEBTOR'S ASSETS  
FREE AND CLEAR OF LIENS, CLAIMS, INTERESTS, AND ENCUMBRANCES AND  
(B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF EXECUTORY  
CONTRACTS AND UNEXPIRED LEASES IN CONNECTION THEREWITH; AND  
(III) GRANTING RELATED RELIEF**

Pursuant to 28 U.S.C. §1746, under penalty of perjury, Gregory Wolyniec declares:

1. I am currently the President, Director and Chief Executive Officer of the above-captioned debtor, Human Condition Safety Inc. (the "Debtor"), a Delaware corporation with its principal assets and principal place of business located at 61 Broadway, Suite 2710, New York, New York 10006.

2. The Debtor filed a voluntary petition (the "Petition") for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101, et seq. (the "Bankruptcy Code") on March 10, 2017 (the "Petition Date") commencing the above-captioned Chapter 11 case (the "Case").

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<sup>1</sup> The Debtor in this chapter 11 case, along with the last four digits of the Debtor's tax identification number, is Human Condition Safety Inc. (2476). The address of the Debtor's corporate headquarters, and sole office location, for noticing purposes is 61 Broadway, Suite 2710, New York, New York 10006.



As of the date hereof the Debtor continues to operate its business and manage its property as a debtor in possession pursuant to Bankruptcy Code sections 1107(a) and 1108.

3. I submit this declaration in support of Debtor's accompanying Motion for Entry of Orders (I)(A) Approving Bidding Procedures for Sale of Substantially all Debtor's Assets, (B) Scheduling an Auction, (C) Approving the Form and Manner of Notice Thereof, (D) Approving Assumption and Assignment Procedures, and (E) Scheduling a Sale Hearing and Approving the Form and Manner of Notice Thereof, and (II)(A) Approving the Sale of Substantially All Debtor's Assets Free and Clear of Liens, Claims, Interests, and Encumbrances and (B) Approving the Assumption and Assignment of Executory Contracts and Unexpired Leases in Connection Therewith; and (III) Granting Related Relief dated July 11, 2017 (the "Sale Motion")<sup>2</sup>.

4. I have been the President, Director and Chief Executive Officer of the Debtor since November 2016 and I have over 10 years of experience in the relevant industry. In that capacity, I am familiar with the Debtor's day-to-day operations, business, financial affairs, and books and records. Except as otherwise indicated, the facts set forth herein are based upon my personal knowledge of the Debtor's operations and finances, information learned from my review of relevant documents, information supplied to me by other members of Debtor's management or Debtor's advisors, or my opinion based on my experience with and knowledge of the Debtor and in the relevant industry. I am authorized to submit this declaration on behalf of the Debtor, and, if called upon to testify, I could and would testify competently to the facts set forth herein.

5. Relevant facts regarding the Debtor, its business and events leading to this Chapter 11 filing are more fully set forth in the Declaration of Gregory Wolyniec Pursuant to Local Rule

1007-2 in Support of Debtor's Chapter 11 Petition and Requests for First Day Relief [Doc 7] filed on March 13, 2017 in this case which is incorporated herein by reference. In summary, the Debtor is a privately held company that develops, markets and sells innovative virtual reality and internet based technology products designed to improve workplace safety for clients in the construction industry and other hazardous industries, including developing virtual reality and internet based software programs with wearable sensors to remotely monitor and assess workers' safety conditions and to administer training helping workers learn to properly and safely perform their job duties. A client would pay a one-time fee for the Debtor to design and install such a program tailored to the individual client's needs and thereafter the client would pay monthly fees to use the program and for the Debtor to continue hosting and servicing it.

6. But the process of researching, developing and bringing the Debtor's groundbreaking new products to market proved to be much more time consuming and costly than anticipated. The process was plagued with unanticipated delays, as well as unanticipated and unsustainable costs and debt due, in part, to inefficiencies in the Debtor's operations. This ultimately led to the departure of some of the Debtor's leadership and a restructuring of the Debtor's operations.

7. Thanks to the skill and effort of Debtor's current leadership, within the months before the Petition Date, Debtor was finally able to finalize and begin marketing, selling and servicing its first products with much success, and continuing to do so long term was forecasted to be highly profitable as Debtor's products were well-received in the market place. In order to preserve the Debtor's value and its employees' jobs, it recently became clear that Debtor could not adequately address its liquidity needs outside of bankruptcy and that its only viable option was to proceed with this Chapter 11 effort and with the proposed debtor-in-possession financing

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<sup>2</sup> Capitalized terms used but not otherwise defined herein shall have the same meanings ascribed to them in the Sale

arrangement negotiated with AIG PC Global Services, Inc., as the postpetition lender (“DIP Lender”), which arrangement (the “DIP Facility”) was approved by the Court under the Final Order Pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364, and 507, Bankruptcy Rules 2002, 4001, and 6004, and Local Rule 4001-2 (I) Authorizing Debtor to Obtain Postpetition Financing, (II) Authorizing Use of Cash Collateral, (III) Granting Liens and Providing Super-Priority Administrative Expenses Status, (IV) Granting Adequate Protection, and (V) Granting Related Relief, entered on April 19, 2017 in the Case [Doc 39] (the “Final DIP Financing Order”).

8. The DIP Facility and Final DIP Financing Order provide for Debtor to continue operating in bankruptcy while implementing a dual-track process to maximize value for stakeholders and preserve employees’ jobs by simultaneously pursuing (i) a reorganization plan, and (ii) a sale of substantially all Debtor’s assets with the transition of its employees, operations, and files.

9. As above, around the time of the Petition Date, the Debtor’s products were well-received in the market place and were thus forecasted to be highly profitable. During the weeks after the Petition Date, potential customers continued to express interest in Debtor’s products and several new customer contracts were executed. However, in recent weeks market interest in Debtor’s products materially declined at an increasing rate with a growing number of potential customers expressing the same sentiment—that they are interested but not willing to contract for Debtor’s products because they are concerned that Debtor will not successfully reorganize and emerge from Chapter 11 and such customers may soon be left with no one to continue hosting and servicing the Debtor’s unique products.

10. Through its current leadership and other officers, the Debtor made its best and extensive efforts, both before and after the Petition Date, to secure sufficient customer contacts, to increase revenues, to seek additional financing and new potential investors to enable a successful reorganization effort, and, alternatively, seeking purchasers for the Debtor or its assets. Despite such efforts, there has been no means to fund or implement a confirmable reorganization plan and at this time the Debtor will soon exhaust the maximum funding under the DIP Facility and it has no viable option to preserve value except to conduct an expedited sale of substantially all assets and pursue a proposed Chapter 11 liquidating plan (the “Plan”) which will be filed shortly after the Sale Motion and which is estimated to provide distributions to allowed general unsecured claims after satisfaction of secured and priority claims. To accommodate this course of action, the DIP Lender has agreed to extend milestones under the DIP Facility and has agreed to permit a certain portion of DIP Facility advances to be used to help fund distributions to allowed general unsecured claims pursuant to a confirmed Plan agreeable to the DIP Lender and otherwise consistent with the Final DIP Financing Order.

11. As above, during several months before the Petition Date and throughout the months following the Petition Date, through its Debtor’s current leadership and other officers, the Debtor made robust and extensive efforts to market the Debtor and its assets to seek additional financing, new potential investors as well as purchasers. Such efforts included, without limitation, soliciting and engaging in meetings with a wide range of potential purchasers and investors familiar with the Debtor’s tech driven industry, including venture capital firms, private equity firms, family office managers, high net worth individuals, strategic partners and buyers, as well as competitors. Debtor’s current leadership engaged in approximately 30 extensive meetings with approximately 30 different targeted potential purchasers and investors.

Additionally, over the past months Debtor's current leadership has repeatedly invited all of its 36 different existing preferred equity shareholders to participate or otherwise assist in soliciting potential purchasers and investors for the Debtor or its assets.

12. Through the foregoing marketing process, a list of potential buyers (the "Potential Buyer List") was developed using three general introduction routes: (i) analysis of inbound requests to Debtor's website, emails, or phone calls received from interested parties who learned of the Debtor through the marketplace, (ii) proactive outreach by the Debtor to specifically targeted potential purchasers and investors, including potential purchasers and investors targeted based on their prior or existing relationships with the Debtor, its shareholders or its employees and those targeted based on the nature of the potential purchaser or investor (ex: strategic buyer or a competitor), and (iii) Debtor's use of family offices and prepetition advisors who assisted in helping to introduce Debtor to potential purchasers and investors.

13. Much of the foregoing marketing efforts were led by Adam Bellin, Debtor's Head of Business Development, and I. From my career prior to joining the Debtor, I have substantial experience in the mergers and acquisitions space, particularly regarding innovative tech driven companies such as the Debtor, as well as substantial contacts in that space. In addition to the foregoing, to assist in marketing the Debtor and its assets, Debtor prepared a high quality investor presentation which was approved by its board of directors and which included a company and product background, market overview, company financials, and management team resumes. These materials assisted in a well-rounded description of the business and the Debtor's business and its business assets which are largely centered on patent rights to its products for which non-provisional patent applications have been timely filed to preserve value.

14. Given my level of involvement in the foregoing efforts to market the Debtor and its assets to potential buyers, I will recuse myself from the Debtor's decision making process with respect to determining (i) whether or how to modify the Bidding Process, (ii) which bid is a Qualified Bid, (iii) which bid may participate in an auction, (iv) the value of bids received, and (v) which bid is the highest or otherwise best bid. While I do not believe I am required to recuse myself from that process, I will do so out of an abundance of caution to ensure the appearance of fair and competitive bidding and unbiased consideration of bids. As set forth in the Bidding Procedures, all bids are to be submitted to Debtor's counsel and to Gary Foreman, the Debtor's Chief Technology Officer who also serves on the Debtor's board of directors.

15. Given the foregoing marketing efforts which were robust and well-tailored to Debtor's niche industry and given the Debtor's liquidity constraints, I believe that there would be no material benefit from any further marketing efforts and that Debtor's liquidity constraints have made any further marketing efforts virtually impossible and unjustifiable.

16. I believe that conducting the Sale process by soliciting from the Potential Buyer List and pursuant to the procedures and expedited time periods set forth in the Bidding Procedures, annexed as an exhibit to the proposed Bidding Procedures Order which is attached as Exhibit 1 to the Sale Motion, is reasonable and is in the best interests of the Debtor's estate in light of the Debtor's liquidity and will provide parties with sufficient time and information necessary to formulate a bid to purchase the Debtor's assets.

17. Specifically, potential bidders will have access to comprehensive information prepared by the Debtor and a substantial body of data, inclusive of presentations and discussions with directors and officers as requested. Moreover, many of the potential bidders have already expressed interest and already become knowledgeable about the Debtor.

18. Because the Debtor will soon have insufficient capital to continue operating its business, the expedited Sale process under the Bidding Procedures is the most efficient avenue for selling Debtor's business while it still has realizable value and can be maintained as a going concern.

Dated: July 11, 2017

A handwritten signature in blue ink, appearing to read "Gregory Wolyniec", is positioned above a horizontal line.

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Gregory Wolyniec