

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

KIOR, INC.,<sup>1</sup>

Debtor.

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Chapter 11

Case No. 14-\_\_\_\_ (\_\_\_\_)

**DEBTOR’S MOTION PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, 507  
AND 552 FOR INTERIM AND FINAL ORDERS: (I) AUTHORIZING THE DEBTOR TO  
OBTAIN POSTPETITION FINANCING; (II) AUTHORIZING USE OF CASH  
COLLATERAL; (III) GRANTING ADEQUATE PROTECTION TO THE  
PREPETITION SECURED PARTIES; (IV) GRANTING LIENS AND PROVIDING  
SUPERPRIORITY ADMINISTRATIVE EXPENSE STATUS; (V) MODIFYING  
AUTOMATIC STAY; AND (VI) SCHEDULING A FINAL HEARING**

KiOR, Inc. (the “Debtor” or “Borrower”) hereby moves this Court (the “Motion”), pursuant to sections 105, 361, 362, 363, 364, 507 and 552 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 4001, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Bankruptcy Rules for the District of Delaware (the “Local Rules”), for entry of Interim and Final Orders (I) Authorizing the Debtor to Obtain Postpetition Financing; (II) Authorizing Use of Cash Collateral; (III) Granting Adequate Protection to the Prepetition Secured Parties; (IV) Granting Liens and Providing Superpriority Administrative Expense Status; (V) Modifying Automatic Stay; and (VI) Scheduling a Final Hearing. In support of this Motion, the Debtor relies upon and incorporates by reference the *Declaration of Christopher A. Artzer, President and Interim Chief Financial*

<sup>1</sup> The Debtor in this Chapter 11 case, along with the last four digits of the Debtor’s federal tax identification number, is KiOR, Inc. (2233). The above-captioned Debtor’s mailing address is 13011 Bay Park Road, Pasadena, Texas 77507.

*Officer of KiOR, Inc., in Support of First Day Motions*, filed with the Court concurrently herewith (the “Artzer Declaration”) and the Declaration of Alexander C. Fisch in Support of this Motion and the Sale Motion (defined therein) (the “Fisch Declaration”).

**SUMMARY OF RELIEF REQUESTED**<sup>2</sup>

By this Motion, the Debtor seeks interim and final orders (the “Interim Order,” the “Final Order” and collectively, the “DIP Orders”), among other things:

(i) authorizing the Debtor to obtain senior secured priming and superpriority postpetition financing, which will consist of incremental term loans in an aggregate original principal amount not to exceed \$15,000,000 (the “DIP Facility”), pursuant to the terms and conditions of that certain *Senior Secured and Superpriority Financing Agreement* dated as of November 9, 2014 (as amended, supplemented, restated, or otherwise modified from time to time, the “DIP Credit Agreement”), by and among the Debtor and Pasadena Investments, LLC (the “DIP Agent”), as administrative agent for the lenders from time to time party thereto (collectively, the “DIP Lenders”), substantially in the form attached hereto as **Exhibit 2**;

(ii) approving the terms of the DIP Credit Agreement and the other related credit documents by and among the Debtor and the DIP Lenders (collectively, the “DIP Loan Documents”) and authorizing the Debtor to execute and deliver the DIP Credit Agreement and the DIP Loan Documents, to be bound by the DIP Loan Documents, and to perform such other acts as may be necessary or desirable in connection with the DIP Loan Documents;

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<sup>2</sup> Capitalized terms not defined herein are defined in the Interim Order.

(iii) granting the DIP Facility and all obligations owing thereunder and under the DIP Loan Documents (collectively, the “DIP Obligations”) allowed superpriority administrative expense claim status in the Debtor’s bankruptcy case (the “Case”);

(iv) granting to the DIP Agent and the DIP Lenders automatically perfected security interests in and liens upon all of the DIP Collateral (as defined herein), including, without limitation, all property constituting “Cash Collateral,” as defined in section 363(a) of the Bankruptcy Code, which liens shall be subject to the priorities set forth herein and the Interim Order;

(v) authorizing the Debtor’s use of Cash Collateral of the Prepetition Secured Parties (as defined herein) under the pre-petition credit documents described below, and providing adequate protection to the Prepetition Secured Parties for any diminution in value of their interests in the Prepetition Collateral (as defined herein), including Cash Collateral;

(vi) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the Interim Order, as limited pursuant hereto;

(vii) authorizing the Debtor at any time prior to the earliest to occur of 11:59 p.m. prevailing Eastern time on December 1, 2014 (the “Interim Period Outside Date”) and the entry of the Final Order to borrow under the DIP Facility and use Cash Collateral in an aggregate original principal amount of up to \$2,500,000;<sup>3</sup>

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<sup>3</sup> December 1, 2014 is also the deadline to have the hearing to approve the Debtor’s proposed bid procedures. The failure to meet that deadline shall constitute a Default under the DIP Credit Agreement and shall mature into an Event of Default if such Milestone is not met by December 5, 2014.

(viii) scheduling a final hearing (the “Final Hearing”) to consider entry of a Final Order on the relief requested in this Motion and approving the form of notice with respect to the Final Hearing; and

(ix) waiving any applicable stay (including, without limitation, under Bankruptcy Rule 6004) and providing for immediate effectiveness of the Interim Order and the Final Order.

In accordance with Bankruptcy Rule 4001, the principal terms of the relief requested in this Motion, subject to entry of a Final Order, are summarized as follows:<sup>4</sup>

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| <p><b>Parties</b></p>              | <p>(a) <u>Borrower</u>: KiOR, Inc.</p> <p>(b) <u>Agent</u>: Pasadena Investments, LLC, as administrative agent for the lenders from time to time party to the DIP Credit Agreement.</p> <p>(c) <u>Lenders</u>: Pasadena Investments, LLC, in its capacity as a lender under the DIP Credit Agreement and any other lender that becomes party thereto in accordance with the terms and conditions thereof.</p>  |
| <p><b>DIP Facility/Purpose</b></p> | <p>(a) <u>Commitment and Availability</u>. The DIP Lenders have agreed to make incremental term loans to the Debtor at any time and from time to time from the Interim Facility Effective Date (as defined in the DIP Credit Agreement) to the Maturity Date or until the earlier reduction of its commitment under the DIP Credit Agreement to zero, subject to the terms and conditions of such agreement. The total commitment under the DIP Credit Agreement is \$15,000,000; provided that during the period from the Interim Facility Effective Date until the occurrence of the Final Facility Effective Date (as defined in the DIP Credit Agreement) the commitment under the DIP Credit Agreement is \$2,500,000.</p> <p>(b) <u>Maturity Date</u>: The earliest of:</p> <p>(i) thirty (30) days following the date of entry of the Interim</p> |

<sup>4</sup> This summary is qualified in its entirety by reference to the provisions of the DIP Loan Documents. To the extent of any discrepancy among this summary, and any of the DIP Loan Documents, the terms of the DIP Loan Documents shall govern and control. Capitalized terms not defined herein shall have the meanings ascribed to them in the Interim Order.

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|                                  | <p>Order if the Final Order has not been entered on or prior to such date;</p> <ul style="list-style-type: none"> <li>(ii) six (6) months from the date of the DIP Credit Agreement;</li> <li>(iii) the effective date or the substantial consummation (as defined in section 1101(2) of the Bankruptcy Code) of any plan of reorganization or liquidation in this case;</li> <li>(iv) the date on which sales of all or substantially all of the Debtor’s assets and/or stock have been consummated under section 363 of the Bankruptcy Code; or</li> <li>(v) such earlier date on which the Loans (as defined in the DIP Credit Agreement) and the other Obligations (as defined in the DIP Credit Agreement) for the payment of money shall become due and payable in accordance with the terms of the DIP Loan Documents.</li> </ul> <p>(c) <u>Purpose</u>: The DIP Facility shall be used to (i) fund, among other things, ongoing working capital, general corporate expenditures, and other financing needs of the Debtor, (ii) fund certain payments required to provide adequate protection to the Prepetition Secured Parties as described below, (iii) pay certain transaction fees and other costs and expenses of administration of the Case, and (iv) pay fees and expenses (including, without limitation, reasonable attorneys’ fees and expenses) owed to the DIP Agent and the DIP Lenders under the DIP Loan Documents;</p> |
| <p><b>Priority and Liens</b></p> | <ul style="list-style-type: none"> <li>(a) <u>Collateral</u>: All of the Debtor’s assets, whether such property was owned on the Petition Date or thereafter created (collectively, the “<u>DIP Collateral</u>”); <u>provided</u> that all liens on the DIP Collateral are subject to the Carve-Out.</li> <li>(b) <u>Liens and Superpriority Administrative Expense Status</u>: All of the DIP Liens and the super-priority status provided below shall be subject to the Carve-Out (as defined below), and shall be provided as security for the full and timely payment of all of the obligations arising pursuant to the DIP Facility (the “<u>DIP Obligations</u>”), as follows: <ul style="list-style-type: none"> <li>(i) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable first priority Lien on all unencumbered DIP Collateral;</li> </ul> </li> </ul>  |

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|   | <ul style="list-style-type: none"> <li>(ii) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable junior Lien on all DIP Collateral that is subject to the Prepetition Prior Liens, provided that such Lien shall be junior solely to and solely to the extent of any Prepetition Prior Liens; and</li> <li>(iii) pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable first priority, senior priming lien on all DIP Collateral (including, without limitation, Cash Collateral) that is senior to the Adequate Protection Replacement Liens and senior and priming to (x) the Prepetition Liens and (y) any Liens that are junior to the Prepetition Liens and the Adequate Protection Replacement Liens, after giving effect to any intercreditor or subordination agreements; <u>provided, however</u>, that the liens described in this clause (iii) shall be junior solely to the Carve-Out and the Prepetition Prior Liens; and</li> <li>(iv) pursuant to section 364(c)(1) of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative claims, which shall have priority, subject only to the payment of the Carve-Out, over any and all administrative expense claims, adequate protection, and other diminution claims (including, without limitation, the Adequate Protection Superpriority Claims), unsecured claims, and all other claims against the Debtor or its estate, now existing or hereafter arising.</li> </ul> |
| <p><b>Cash Collateral And Adequate Protection</b></p> | <ul style="list-style-type: none"> <li>(a) <u>Use of Cash Collateral</u>: The Prepetition Secured Agents consent to the interim use of Cash Collateral until a Termination Event occurs.</li> <li>(b) <u>Adequate Protection</u>: In consideration for the Debtor’s use of Cash Collateral and other Prepetition Collateral and the priming of the Prepetition Liens, the Prepetition Secured Parties shall receive, in accordance with their relative priority, only to the extent that there is a diminution in the value of their interest in the Prepetition Collateral:             <ul style="list-style-type: none"> <li>(i) <u>Adequate Protection Replacement Liens</u>. Replacement security interests and liens on all of the DIP Collateral subject and subordinate only to the DIP Liens, the Prepetition Prior Liens, and the Carve-Out.</li> </ul> </li> </ul>  |

- (ii) Adequate Protection Superpriority Claims. Superpriority claims having priority over all administrative expenses, subject and subordinate only to the DIP Liens and superpriority administrative claims granted to the DIP Lenders, the Prepetition Prior Liens, and the Carve-Out.
- (iii) Sale Process. As further adequate protection, the Debtor (A) has committed, as set forth in the Interim Order and Annex 1 to the DIP Credit Agreement, to adhere to the Sale Milestones and (B) shall simultaneously provide copies of any reports sent to the DIP Agent as may be required under the Interim Order or the DIP Credit Agreement to each of the Prepetition Secured Agents (both before and after Payment in Full of the DIP Obligations).
- (iv) Payments to Prepetition Secured Lenders. As further adequate protection, the Debtor shall (i) promptly following receipt of a written summary invoice, pay or reimburse currently the Prepetition First Lien Secured Agent and the Prepetition First Lien Lenders for any and all of their post-petition accrued and past-due reasonable fees, costs, expenses, and charges to the extent, and at the times, payable under the Prepetition Loan Documents and whether accrued before or after the Petition Date, and (ii) pay currently all reasonable out-of-pocket fees, costs, and expenses of the Prepetition First Lien Secured Agent and the Prepetition First Lien Lenders, including, without limitation, those incurred in connection with the sale of all or substantially all of the Debtor's assets or any chapter 11 plan, whether incurred prior to or after the Petition Date, in the case of each of sub-clauses (i) and (ii) above, all whether or not budgeted in the Approved Budget.
- (v) Credit Bidding Right. Subject to entry of the Final Order, the DIP Agent (on behalf of the DIP Lenders) and each of the Prepetition Secured Agents shall have the right to "credit bid" up to the full amount of the DIP Obligations and the applicable Prepetition Secured Obligations in any Court-approved sale process.

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| <p><b>Carve-Out</b></p> | <p>(a) <u>Carve-Out</u>: The DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Replacement Liens, and the Adequate Protection Superpriority Claims shall be subject to a Carve-Out for:</p> <ul style="list-style-type: none"> <li>(i) payment of fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), in such amounts as are determined by agreement with the Office of the United States Trustee or by final order of the Court;</li> <li>(ii) fees payable to the Clerk of this Court;</li> <li>(iii) the lesser of (1) the amount of the unpaid and outstanding reasonable fees, costs, and expenses actually incurred by the Debtor's Professionals and (2) the budgeted (on an accrued basis, not on a cash basis, regardless of whether or not such fees, costs and expenses are subject to hold back) and unpaid amount of the fees, costs, and expenses of each of the Debtor's Professionals (including ordinary course Professionals), as set forth in the applicable line item in the Approved Budget (the amount set forth in clauses (1) and (2), as applicable, along with the obligations referenced in subsection (v) below the "<u>Debtor Professional Fees</u>"), in each case, for the period from and after the Petition Date and prior to the earlier of the Termination Declaration Date (as defined below) or the Cash Collateral Termination Declaration Date (as defined below) (such earlier date, the "<u>Carve-Out Trigger Date</u>"); provided, that such Debtor Professional Fees are ultimately allowed by a final order of the Court pursuant to section 330 of the Bankruptcy Code (whether such Debtor Professional Fees are allowed before or after the Carve-Out Trigger Date);</li> <li>(iv) the lesser of (1) the amount of the unpaid and outstanding reasonable fees, costs, and expenses actually incurred by any Professionals retained, with the approval of the Bankruptcy Court, by any Committee and (2) the budgeted and unpaid amount of the fees, costs, and expenses of the Committee's Professionals, as set forth in the applicable line item in the Approved Budget (the amount set forth in clauses (1) and (2), as applicable, the "<u>Committee Professional Fees</u>"), in each case, for the period from and after the Petition Date and prior to the Carve-Out Trigger Date; provided, that such Committee Professional Fees are ultimately allowed by a final order</li> </ul> |
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|                             | <p>of the Bankruptcy Court pursuant to section 330 of the Bankruptcy Code (whether such Committee Professional Fees are allowed before or after the Carve-Out Trigger Date);</p> <p>(v) the amount of any fee, besides the Monthly Fee (as defined therein) in the engagement letter dated June 16, 2014, between KiOR, Inc. and Guggenheim Securities, LLC, defining the terms of Guggenheim's engagement as investment advisor, as such obligations become due and payable, but only to the extent that such fee results from a sale or transaction relating to the Debtor (for the avoidance of doubt, any fee resulting from a sale or transaction entered into by non-debtor KiOR Columbus, LLC that does not include the Purchased Assets (as defined in the Bid Procedures Order) shall not be included within the Carve-Out);</p> <p>(vi) the amount of the unpaid and outstanding reasonable Debtor Professional Fees that are incurred by the Debtor during any period on and after a Carve-Out Trigger Date (the "<u>Carve-Out Expense Reduction Period</u>") in an aggregate amount not to exceed \$100,000; and</p> <p>(vii) the amount of the unpaid and outstanding reasonable Committee Professional Fees that are incurred during the Carve-Out Expense Reduction Period in an aggregate amount not to exceed \$25,000 (items (vi) and (vii), collectively, the "<u>Professional Expense Carve-Out Cap</u>").</p> |
| <b>Interest/Fees</b>        | <p>(a) Interest (paid in kind): 7.50%</p> <p>(b) Fees and Expenses: Debtor shall pay all fees and expenses incurred by the DIP Agent and the DIP Lenders</p> <p>(c) No other fees (e.g., closing, commitment, or similar fees) will be charged</p>   |
| <b>Events of Default</b>    | <p>(a) Customary and appropriate terms, including certain milestones related to the maturity of the DIP Facility.</p>  |
| <b>Borrowing Conditions</b> | <p>(a) The DIP Credit Agreement provides usual and customary terms.</p>  |
| <b>Indemnification</b>      | <p>(a) The DIP Credit Agreement provides usual and customary terms.</p>  |

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| <b>Waiver of Applicability of Nonbankruptcy Law</b> | (a) The DIP Credit Agreement provides usual and customary terms. |
| <b>Relief From Automatic Stay</b>                   | (a) The DIP Credit Agreement provides usual and customary terms. |

**DISCLOSURE PURSUANT TO LOCAL RULE 4001-2**

In accordance with Local Rule 4001-2, the Debtor discloses the following:

- Validity of Pre-Petition Loan Obligations and Related Liens: Subject to the challenge procedures set forth in paragraph 6 of the Interim Order, the Interim Order contains findings that would bind the Debtor and its estate with respect to the amount due and owing under the Prepetition Loan Documents and the validity and perfection of liens granted thereunder. *See* Interim Order ¶¶ D, 6.
- Waiver of Section 506(c) Rights: *Subject to the entry of the Final Order*, the Interim Order contemplates the waiver of Bankruptcy Code section 506(c). *See* Interim Order ¶ 8.
- Liens on Avoidance Actions: The Interim Order provides that, *subject to entry of the Final Order*, Avoidance Actions are included in the DIP Collateral and the Adequate Protection Replacement Liens; except that the granting of liens on Avoidance Actions arising under section 549 of the Bankruptcy Code shall not be subject to entry of the Final Order<sup>5</sup>. *See* Interim Order ¶¶ 2(j); 4(b).
- Adequate Protection: The DIP Orders contemplate providing the adequate protection described above to the Prepetition Secured Parties. *See* Interim Order ¶ 4.
- Treatment of Committee Professionals: The Interim Order provides similar treatment for the Debtor's Professionals and the Committee's Professionals, except that payment of the Debtor's Professionals fees incurred during the Carve-Out Expense Reduction Period is limited to \$100,000 while the payment of the Committee's Professionals fees incurred during that period is limited to \$25,000. *See* Interim Order ¶ 7(a)(vii).
- Priming the Liens of Non-Consenting Prepetition Secured Parties: None. The Prepetition Secured Parties have consented to the priming of their liens and security interests. *See* Interim Order ¶ 4(e).<sup>6</sup>

<sup>5</sup> Although the DIP Collateral and Adequate Protection Replacement Liens will attach to all Avoidance Actions, the restructuring transaction contemplated by the Plan Support Agreement to which the Debtor is a party and which is subject to another motion filed or to be filed by the Debtor would vest certain Avoidance Actions in a creditor trust for the benefit of all general unsecured creditors.

<sup>6</sup> The term "Prepetition Secured Parties" does not include the holders of the Debtor's third-lien debt. However, pursuant to section 6.1(a) of that certain Second Amended and Restated Subordination

- Waiver or Modification of the Automatic Stay: The Interim Order provides that five (5) calendar days following a Termination Declaration Date, the DIP Agent shall have relief from the automatic stay. *See* Interim Order ¶ 13.
- Applicability of Non-Bankruptcy Law Relating to Perfection: The Interim Order provides for the automatic perfection and validity of the liens, security interests and adequate protection provided in the DIP Credit Agreement, without the necessity of any further filing or recording under the laws of any jurisdiction. *See* Interim Order ¶ 5.
- Bankruptcy Code section 552(b) Waiver: The Interim Order provides that, *subject to entry of a Final Order*, the “equities of the case” exception set forth in Bankruptcy Code section 552(b) shall not apply to the DIP Liens or the Adequate Protection Replacement Liens. *See* Interim Order ¶¶ 2(k); 4(a).

### JURISDICTION AND VENUE

1. This Court has jurisdiction over this case and this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2)(A), (D), (G), and (M) and the Debtor confirms its consent pursuant to Rule 9013-1(f) of the Local Rules to the entry of a final order by the Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

2. Venue is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409(a).

3. The statutory bases for the relief requested herein are Bankruptcy Code sections 105, 361, 362, 363, 364, 507 and 552, and Bankruptcy Rules 2002, 4001, 6004 and 9014.

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Agreement dated as of July 17, 2014, the holders of the Debtor’s third-lien debt expressly consented to the priming of their liens.

## **BACKGROUND**

### **A. General Background**

4. On November 9, 2014 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "Bankruptcy Code") in the United States Bankruptcy Court for the District of Delaware (the "Court").

5. The Debtor has continued in possession of its properties and has continued to operate and manage its business as a debtor-in-possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request has been made for the appointment of a trustee or examiner, and no official committee has yet been established in this case.

6. The Debtor and its wholly-owned, non-debtor subsidiary KiOR Columbus, LLC ("KiOR Columbus," and collectively with the Debtor, when applicable, the "KiOR Entities"), are development stage, renewable fuels companies based in Pasadena, Texas and Columbus, Mississippi, respectively. The Debtor's primary business is the development and commercialization of a ground-breaking proprietary technology designed to generate a renewable crude oil from non-food cellulosic biomass (e.g., trees, grasses, etc.), which can be refined into gasoline, diesel, and aviation fuels. The fuels produced by the Debtor's highly specialized process are true hydrocarbon fuels that are molecularly consistent with their traditional petroleum-based counterparts. However, the Debtor estimates that its cellulosic hydrocarbon fuels reduce lifecycle greenhouse gases by over 60% when compared to traditional fossil fuels.

7. The Debtor maintains corporate offices, research and development facilities and a test-scale demonstration facility in Pasadena, Texas. Currently, the Debtor employs

approximately 71 people. In mid-2012, the KiOR Entities completed construction of an initial-scale production facility with a design capacity for approximately 500 bone dry tons of biomass feedstock per day in Columbus, Mississippi (the "Columbus Facility"). When the Columbus Facility opened in 2012, it was the first large-scale plant in the U.S. to convert cellulosic non-food biomass into hydrocarbon gasoline and diesel. KiOR Columbus operated the Columbus Facility during 2013, producing and selling cellulosic fuels that met certain contractual specifications. However, KiOR Columbus encountered certain challenges at the Columbus Facility, including operational, production, and capacity issues as well as difficulties related to optimizing catalyst performance. In January 2014, KiOR Columbus suspended operations at the Columbus Facility, and has since idled and decommissioned the Columbus Facility, to minimize ongoing costs. The Debtor continues, however, to maintain its research and development facilities, as well as a test scale demonstration facility, in Pasadena, Texas, and also continues to provide certain shared services such as accounting, legal and human resources and other management to KiOR Columbus.

8. Prepetition, the Debtor faced challenges in commercializing its technology and scaling its production to the volumes necessary to meet its targets. At present, due to the idling of the Columbus Facility, the KiOR Entities generate no revenues, but continue to incur the ongoing costs related to their operations, including continued work on optimization of their technology, the cost of ongoing research and development, payment of obligations owed to employees, vendors, and governmental authorities, and substantial debt.

9. The Debtor seeks relief in this Court to protect, preserve, and maximize the value of its assets and to obtain, through a DIP loan facility, the funds needed for working capital

requirements and to further develop its proprietary renewable fuels production process, as well as provide for a sale or reorganization that will optimize the value of the assets for all creditors. Put simply, through this chapter 11 case, the Debtor intends to reorganize its business or sell substantially all of its assets so that it can continue its core research and development activities.

10. Additional factual background regarding the Debtor, including its current and historical business operations and the events precipitating this chapter 11 filing, is set forth in detail in the Artzer Declaration filed contemporaneously with this Motion and incorporated herein by reference.

**B. The Debtor's Pre-Petition Debt**

11. First Lien Prepetition Secured Debt. Pursuant to that certain Protective Advance Loan and Security Agreement, dated as of July 17, 2014 (as amended, restated, or otherwise modified from time to time prior to the Petition Date, the "Prepetition First Lien Loan Agreement") and collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the "Loan Documents" as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "Prepetition First Lien Loan Documents"), by and among the Debtor, the lenders party thereto (collectively, the "Prepetition First Lien Lenders"), and the KFT Trust, Vinod Khosla, Trustee (the "KFT Trust"), as administrative agent for the Prepetition First Lien Lenders (in such capacity, the "Prepetition First Lien Secured Agent" and, together with the Prepetition First Lien Lenders and any other party to which Prepetition First Lien Obligations (as defined below) are owed, the "Prepetition First Lien Secured Parties"), the Prepetition First Lien Secured Parties agreed to extend loans and other financial accommodations to the Debtor pursuant to the

Prepetition First Lien Loan Agreement. All obligations of the Debtor arising under the Prepetition First Lien Loan Agreement (including, without limitation, the “Secured Obligations” as defined therein) or the other Prepetition First Lien Loan Documents shall collectively be referred to herein as the “Prepetition First Lien Obligations.” As of the Petition Date, approximately \$16,273,500 in principal is due and owing under the Prepetition First Lien Obligations.

12. 2013 Second Lien Prepetition Secured Debt. Pursuant to that certain Senior Secured Convertible Note Purchase Agreement, dated as of October 18, 2013 (as amended, restated, or otherwise modified from time to time prior to the Petition Date, the “2013 Second Lien Purchase Agreement” and collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the “Transaction Documents” as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “2013 Second Lien Note Documents”), by and among the Debtor, the note purchasers party thereto (collectively, the “2013 Second Lien Lenders”), and Khosla Ventures III, LP (“KV III”), as administrative agent for the 2013 Second Lien Lenders (in such capacity, the “2013 Second Lien Agent” and, together with the 2013 Second Lien Lenders and any other party to which 2013 Second Lien Obligations (as defined below) are owed, the “2013 Second Lien Secured Parties”), the 2013 Second Lien Secured Parties agreed to purchase notes and extend other financial accommodations pursuant to the 2013 Second Lien Purchase Agreement. All obligations of the Debtor arising under the 2013 Second Lien Purchase Agreement (including, without limitation, the “Secured Obligations” as defined therein) or the other 2013 Second Lien Note Documents shall collectively be referred to herein as the “2013 Second Lien

Obligations.” As of the Petition Date, approximately \$95,700,000 is due and owing under the 2013 Second Lien Obligations.

13. 2014 Second Lien Prepetition Secured Debt. Pursuant to that certain Senior Secured Promissory Note and Warrant Purchase Agreement, dated as of March 31, 2014 (as amended, restated, or otherwise modified from time to time prior to the Petition Date, the “2014 Second Lien Purchase Agreement” and collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the “Transaction Documents” as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “2014 Second Lien Note Documents”) (collectively, the Prepetition First Lien Loan Documents, the 2013 Second Lien Note Documents, and the 2014 Second Lien Note Documents are referred to as the “Prepetition Loan Documents”), by and among the Debtor, the note purchasers party thereto (collectively, the “2014 Second Lien Lenders” and together with the Prepetition First Lien Lenders and 2013 Second Lien Lenders, the “Prepetition Secured Lenders”), and the KFT Trust, as administrative agent for the 2014 Second Lien Lenders (in such capacity, the “2014 Second Lien Agent” and, together with the 2014 Second Lien Lenders and any other party to which 2014 Second Lien Obligations (as defined below) are owed, the “2014 Second Lien Secured Parties”) (collectively, the Prepetition First Lien Secured Parties, the 2013 Second Lien Secured Parties, and the 2014 Second Lien Secured Parties are referred to as the “Prepetition Secured Parties”), the 2014 Second Lien Secured Parties agreed to purchase notes and extend other financial accommodations pursuant to the 2014 Second Lien Purchase Agreement. As of the Petition Date, approximately \$10,400,000 is due and owing under the 2014 Second Lien Note Documents. All obligations of the Debtor



arising under the 2014 Second Lien Purchase Agreement (including, without limitation, the “Secured Obligations” as defined therein) or the other 2014 Second Lien Note Documents shall collectively be referred to herein as the “2014 Second Lien Obligations” (together with the 2013 Second Lien Obligations, the “Prepetition Second Lien Obligations” and collectively with the Prepetition First Lien Obligations and the 2013 Second Lien Obligations, the “Prepetition Secured Obligations”).

14. Third Lien Prepetition Debt. Pursuant to that certain Loan and Security Agreement, dated as of January 26, 2012 (as amended, restated, or otherwise modified from time to time prior to the Petition Date, the “Prepetition Third Lien Loan Agreement” and collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the “Loan Documents” as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Third Lien Loan Documents”), by and among the Debtor, the lenders party thereto (collectively, the “Prepetition Third Lien Lenders”), and 1538731 Alberta Ltd, as administrative agent for the Prepetition Third Lien Lenders (in such capacity, the “Prepetition Third Lien Agent” and, together with the Prepetition Third Lien Lenders and any other party to which Prepetition Third Lien Obligations (as defined below) are owed, the “Prepetition Third Lien Parties”), the Prepetition Third Lien Parties agreed to extend loans and other financial accommodations pursuant to the Prepetition Third Lien Loan Agreement. All obligations of the Debtor arising under the Prepetition Third Lien Loan Agreement (including, without limitation, the “Secured Obligations” as defined therein) or the other Prepetition Third Lien Loan Documents shall collectively be referred to herein as the “Prepetition Third Lien Obligations.” As of the Petition

Date, there is approximately \$115,000,000 due and owing under the Prepetition Third Lien Obligations.

15. Prepetition Liens and Prepetition Collateral. Pursuant to certain Prepetition Loan Documents (as such documents were amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the “Prepetition Collateral Documents”), by and among the Debtor and one or more of the Prepetition First Lien Secured Agent, the 2013 Second Lien Agent, and the 2014 Second Lien Agent (collectively, the “Prepetition Secured Agents”), the Debtor granted to the applicable Prepetition Secured Agent, for the benefit of itself and the applicable Prepetition Secured Lenders, to secure the applicable Prepetition Secured Obligations, a first priority security interest (with respect to the Prepetition First Lien Obligations) or second priority security interest (with respect to the Prepetition Second Lien Obligations) in and continuing lien (the “Prepetition Liens”) on substantially all of the Debtor’s assets and properties (which, for the avoidance of doubt, includes Cash Collateral) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising. All “Collateral” as defined in the Prepetition First Lien Loan Agreement granted or pledged pursuant to any Prepetition Collateral Document or any other Prepetition Loan Document shall collectively be referred to herein as the “Prepetition Collateral.”<sup>7</sup> As of the Petition Date, (I) the Prepetition Liens (a) are legal, valid, binding, enforceable, and perfected liens, (b) were granted to, or for the benefit of, the Prepetition Secured Parties for fair

<sup>7</sup> In addition to their perfected liens on the Prepetition Collateral that belongs to the Debtor, the Prepetition Secured Agents, for the benefit of themselves and the applicable Prepetition Secured Lenders, assert that they hold first and second liens and security interests on certain personal property of KiOR Columbus, *i.e.*, all property not subject to the liens of the Mississippi Development Authority, which holds a first lien on most of the land and on certain items of personal property of KiOR Columbus.

consideration and reasonably equivalent value, (c) are not subject to avoidance, disallowance, impairment, recharacterization, or subordination pursuant to the Bankruptcy Code or any applicable non-bankruptcy law (except for the priming contemplated herein), and (d) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below), (C) the Adequate Protection Replacement Liens (as defined below), and (D) the Prepetition Prior Liens; and (II) (x) the Prepetition Secured Obligations constitute legal, valid, and binding obligations of the Debtor, enforceable in accordance with the terms of the applicable Prepetition Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (y) no setoffs, recoupments, offsets, objections, defenses, or counterclaims to any of the Prepetition Secured Obligations exist, and (z) no portion of the Prepetition Secured Obligations or any payments made to any or all of the Prepetition Secured Parties are subject to avoidance, disallowance, impairment, recharacterization, recovery, disgorgement, subordination, attack, setoff, offset, recoupment, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or any applicable non-bankruptcy law.

16. Amounts Owed under Prepetition Loan Documents. As of the Petition Date, the Debtor owed the Prepetition Secured Parties, pursuant to the Prepetition Loan Documents, without defense, counterclaim, reduction, or offset of any kind, in respect of loans made by the Prepetition Secured Parties, (a) protective advances in the amount of not less than approximately \$16,273,500 in principal pursuant to the Prepetition First Lien Loan Documents, (b) notes in the principal amount of not less than \$95,700,000 pursuant to the 2013 Second Lien Loan Documents, and (c) notes in the principal amount of not less than \$10,400,000 pursuant to the

2014 Second Lien Loan Documents, in each case *plus* all accrued and hereafter accruing and unpaid interest thereon and any additional fees, expenses (including, without limitation, any reasonable attorneys', accountants', appraisers', and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition Loan Documents), and other amounts now or hereafter due under the Prepetition Loan Documents.

**RELIEF REQUESTED**

17. The Debtor seeks, pursuant to sections 105, 361, 362, 363, 364, 507, 552 of the Bankruptcy Code and Bankruptcy Rules 4001(b) and (c), the entry of the Interim Order and the Final Order *inter alia*:

(i) authorizing the Debtor to obtain secured postpetition financing on a priming superpriority basis pursuant to the terms and conditions of the DIP Credit Agreement;

(ii) authorizing the Debtor to execute and deliver the DIP Loan Documents;

(iii) granting the DIP Obligations allowed superpriority administrative expense claim status in this Case;

(iv) granting to DIP Lenders automatically perfected priming security interests in and liens upon all of the DIP Collateral, including, without limitation, Cash Collateral;

(v) authorizing the use of Cash Collateral of the Prepetition Secured Parties under the Prepetition Loan Documents, and providing adequate protection to the Prepetition Secured Parties for any diminution in value of their interests in the Prepetition Collateral, including the Cash Collateral;

(vi) vacating and modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and the DIP Orders;

(vii) authorizing the Debtor at any time prior to the earliest to occur of the Interim Period Outside Date and the entry of the Final Order to borrow under the DIP Facility and use Cash Collateral in an aggregate original principal amount of up to \$2,500,000;

(viii) scheduling the Final Hearing to consider entry of the Final Order and approving the manner of notice with respect to the Final Hearing; and

(ix) waiving any applicable stay (including, without limitation, under Bankruptcy Rule 6004) and provides for immediate effectiveness of the Interim Order and the Final Order.

18. The Debtor requires the DIP Facility to pay administrative costs associated with this case, to provide the cash necessary to maintain and maximize the going concern value of its assets (through operation and/or sale), to satisfy payroll and employee obligations, and to avoid the immediate liquidation of its estate. The Debtor simply does not have available sources of working capital to take such actions without the proposed DIP Facility. The proposed use of the DIP Facility will maintain the value of the Debtor's estate for the benefit of all parties in interest, and will provide working capital to the extent necessary to cover cash shortfalls during this case. In light of the foregoing, the Debtor has determined, in the exercise of its sound business judgment, that the proposed DIP Facility, which permits the Debtor to obtain up to \$15,000,000 in financing and to use such credit to finance the operation of its business and maintain its assets, is critical to its ability to reorganize.

**BASIS FOR RELIEF REQUESTED**

**A. DIP Financing**

**i. Legal Standard**

19. Section 364(c) of the Bankruptcy Code provides, among other things, that if a debtor is unable to obtain unsecured credit allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, then the court may authorize the debtor to obtain credit or incur debt (i) with priority over any and all administrative expenses as specified in sections 503(b) or 507(b) of the Bankruptcy Code, (ii) secured by a lien on property of the estate that is not otherwise subject to a lien, (iii) secured by a junior lien on property of the estate that is subject to a lien. 11 U.S.C. § 364(c); *In re Crouse Grp. Inc.*, 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (stating three-part test for obtaining credit under Section 364(c): (1) debtor is unable to obtain unsecured credit by allowing a lender an administrative claim; (2) credit is necessary to preserve the assets of the estate; and (3) the terms of transaction are fair, reasonable and adequate).

20. If a debtor is unable to obtain financing under the provisions of section 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a “priming” lien. In particular, section 364(d)(1) of the Bankruptcy Code provides that the Court, after notice and a hearing, may authorize a debtor to obtain credit secured by a senior or equal lien on property of the estate if:

- (A) the trustee is unable to obtain such credit otherwise; and
- (B) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d)(1); see *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[T]he court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest.”).

**ii. The Legal Standard is Satisfied Because the Debtor Has No Viable Alternative to the DIP Facility**

21. The Debtor has been unable to obtain unsecured credit or debt allowable as an administrative expense under section 503(b)(1) of the Bankruptcy Code, and has been unable to obtain financing on more favorable terms and conditions than the DIP Facility. The Debtor has no viable alternative to the DIP Facility and, as provided herein, the Prepetition Secured Parties are adequately protected.

22. A working capital facility of the type needed in this case could not have been obtained on an unsecured basis. Moreover, potential sources of the proposed DIP Facility for the Debtor, obtainable on an expedited basis and on reasonable terms, were extremely limited. In these circumstances, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” *Bray v. Shenandoah Fed. Savs. & Loan Assoc. (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986). A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of Bankruptcy Code section 364(c) and (d). *Id.* Where there are few lenders likely to be able and willing to extend the necessary credit to the debtor, “it would be unrealistic and unnecessary to require [the debtor] to conduct . . . an exhaustive search for financing.” *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff’d*, 99 B.R. 117 (N.D. Ga. 1989).

23. Thus, evidence to be introduced at the interim hearing on this Motion will satisfy the requirement of section 364(c) and (d) of the Bankruptcy Code that alternative credit on more favorable terms was unavailable to the Debtor. The Debtor believes, following its investigation into potential sources of financing that the financing arrangements provided by the DIP Lenders are the best available at this time. The terms and conditions of the DIP Facility are, under the circumstances, fair and reasonable and were negotiated by the parties in good faith and at arm's length.

**iii. The Legal Standard is Satisfied Because Entry Into the DIP Facility is a Reasonable Exercise of the Debtor's Business Judgment**

24. After appropriate investigation and analysis and given the exigencies associated with the Debtor's bankruptcy filing, the Debtor's management has concluded that the DIP Facility is the only available option in the circumstances of this case. Bankruptcy courts routinely defer to the debtor's business judgment on most business decisions, including the decision to borrow money. *See Grp. of Institutional Investors v. Chicago, Mil., St. P., & Pac. R.R. Co.*, 318 U.S. 523, 550 (1943); *In re Simasko Prod. Co.*, 47 B.R. 444, 449 (D. Colo. 1985) ("Business judgments should be left to the board room and not to this Court."); *In re Lifeguard Indus., Inc.* 37 B.R. 3, 17 (Bankr. S.D. Ohio 1983) (same). "More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N. A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

25. In general, a bankruptcy court should defer to a debtor's business judgment regarding the need for and the proposed use of funds, unless such decision is arbitrary and



capricious. *In re Curlew Valley Assocs.*, 14 B.R. 506, 511-13 (Bankr. D. Utah 1981). Courts generally will not second-guess a debtor's business decisions when those decisions involve "a business judgment made in good faith, upon a reasonable basis, and within the scope of authority under the Code." *Id.* at 513-14 (footnotes omitted).

26. The Debtor has exercised sound business judgment in determining that the DIP Facility is appropriate, and the Debtor has satisfied the legal prerequisites to borrow under the DIP Facility. The terms of the DIP Facility are fair and reasonable and are in the best interests of the Debtor's estate.

27. Indeed, the DIP Facility contains several features that make it superior to any alternative available to the Debtor and to the terms of the Debtor's prepetition secured debt. For example,

- all obligations under the DIP Facility will accrue interest at a rate that is lower than the rate applicable to the Debtor's pre-petition secured debt;
- all interest under the DIP Facility is exclusively payment-in-kind (PIK) interest, as opposed to the cash interest payments that were required by another potential lender that the Debtor contacted; and
- the DIP Facility does not contain various fees, such as commitment fees, up-front fees, or closing fees, that are common in DIP financing and were required by another potential lender that the Debtor contacted.

*See* Fisch Declaration at ¶ 8. These features further cement the fair and reasonable nature of the proposed DIP Facility. Accordingly, the Debtor should be granted authority to enter into the DIP Facility and borrow funds from the DIP Lenders on the secured, administrative super-priority

basis described above, pursuant to sections 364(c) and 364(d) of the Bankruptcy Code and take the other actions contemplated by the DIP Credit Agreement and as requested herein.

**iv. The Legal Standard is Satisfied Because DIP Facility is Necessary to Effectively Preserve the Value of the Assets of the Debtor's Estate, to Operate Its Business and to Successfully Maximize Value of the Estate**

28. No party in interest can seriously contend that the Debtor does not need immediate access to financing to preserve the value of its assets. The DIP Facility will permit the Debtor to take steps to preserve the going concern value of its assets. It is imperative that the Debtor maintains the value of its assets for purposes of a potential sale under Bankruptcy Code section 363(b) and for purposes of a potential chapter 11 plan.

29. The DIP Facility will permit the Debtor to maintain the value of its assets in several specific ways. First, certain of the Debtor's employees have received specialized training regarding the operation and maintenance of the Debtor's manufacturing facilities and those employees possess the expertise necessary to reactivate and operate those facilities. The DIP Facility will enable the Debtor to retain those employees, which will substantially reduce the time and cost for the Debtor or a potential purchaser to operate the plant and generate revenues. Thus, retention of these employees will make the Debtor's manufacturing assets more attractive to potential purchasers who wish to purchase the Debtor's assets on a going concern basis. Second, proceeds from the DIP Facility will permit the Debtor to properly maintain its assets so that their value will not deteriorate. Third, proceeds from the DIP Facility will permit the Debtor to continue to market its assets for sale.

30. However, if the DIP Facility is not approved, the Debtor likely will be unable to retain the employees described in the preceding paragraph and will be unable to take other steps

necessary to preserve the value of its assets. Further, absent the proposed DIP Facility, there is a high likelihood that the Debtor will be forced to liquidate its assets, which will likely involve the piecemeal fire sale of parts for a small fraction of their collective going concern value. This result is contrary to the interests of the Debtor, creditors, and all parties in interest.

31. In sum, the value of the property securing the Prepetition Secured Parties' claims will be preserved and enhanced by approval of the DIP Facility by this Court. Absent such approval, the Debtor would be unable to pay its employees and other critical expenses in the ordinary course of business, which would lead to a significant disruption. Such disruption would likely cause a forced liquidation of what would remain of the Debtor's business and assets. A failure to preserve the Debtor's going concern operations would have a dramatic adverse impact on the value of the estate.

**v. The Legal Standard is Satisfied Because the Prepetition Secured Parties Are Adequately Protected**

32. Section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of post-petition debt secured by senior or "priming" liens, provides that the Court may only authorize incurring debt secured by such liens if, *inter alia*, "there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted." 11 U.S.C. § 364(d).

33. The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. *See Resolution Trust Corp. v. Swedeland Dev. Grp., Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) (holding that "courts [have] discretion in fashioning the protection. . . a determination of whether there is adequate protection is made on a case by case basis"); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996)

“Its application is left to the vagaries of each case . . . but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process.” (quotation marks omitted)).

34. The purpose of the adequate protection requirement is to insure that the secured creditor receives the value that the secured creditor bargained for pre-bankruptcy. House Rep. No. 95-595, 95 Cong., 2d Sess. 53, reprinted in 1978 U.S.C.C.A.N. 5787, 5963, 6295; *see In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996) (“The goal of adequate protection for purposes of the provision entitling a debtor to obtain financing secured by liens senior to all other interests is to safeguard the secured creditor from diminution in the value of its interests.”).

35. Examples of adequate protection listed in section 361 of the Bankruptcy Code include, but are not limited to: (i) “periodic cash payments” to a secured creditor to the extent that the estate’s use of property “results in a decrease in value of such entity’s interest in such property”; (ii) “additional or replacement lien[s] to the extent that [the use of cash collateral] results in a decrease in the value of such entity’s interest in the property”; and (iii) granting such other relief as will result in the realization by the creditor of the indubitable equivalent of such creditor’s interest in the property. *See* 11 U.S.C. § 361.

36. The section 361 list is non-exclusive and other factors can provide adequate protection. *See In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564; *see also In re Briggs Transp. Co.*, 780 F.2d 1348, 1349-50 (8th Cir. 1985) (discussing Bankruptcy Code section 361 in the automatic stay context); *In re Yellowstone Dev., LLC*, No. 08-61570-11, 2008 WL 5875547, at \*9-\*12, \*17-\*18 (Bankr. D. Mont. Dec. 17, 2008) (“[T]he use of the DIP Loan proceeds [for] the

maintenance of the going concern value of the Debtors' businesses and their assets, is reasonable and sufficient to protect the interests of the [Pre-Petition secured creditors.]"). Ultimately, "whether protection is adequate depends directly on how effectively it compensates the secured creditor for loss of value caused by the superpriority given the post-petition loan. In other words, the proposal should provide the pre-petition secured creditor with the same level of protection it would have had if there had not been post-petition superpriority financing." *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564.

37. The foregoing standards are satisfied here. The Debtor requires the proposed DIP Facility to continue to operate its business and maintain the value of its assets, as described above. In particular, the DIP Facility will permit the Debtor to retain key employees who possess valuable skills necessary to reactivate and operate its manufacturing facilities, which will dramatically reduce the time it would take the Debtor or a potential purchaser to begin operating and generating revenues. This will make the Debtor's assets more attractive to potential purchasers. The Debtor will also use the DIP Facility to prevent deterioration of its assets to preserve the possibility of a going concern sale of some or all of the Debtor's assets, as well as for a possible restructuring under a chapter 11 plan.<sup>8</sup>

38. Simply put, the DIP Facility will enable the Debtor to maintain the going concern value of its assets and avoid liquidation. By using the DIP Facility to protect creditors from diminution in the value of its collateral, the Debtor's proposed use of such funds is consistent with the purpose of Bankruptcy Code section 361. *See In re Sun Healthcare Grp., Inc.*, 245 B.R.

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<sup>8</sup> The Debtor recognizes that it is not currently manufacturing or selling any products or otherwise generating revenues. The Debtor uses the term "going concern" herein because approval of the DIP Facility will permit the Debtor to preserve its assets such that a purchaser can begin operating with a trained group of employees and a team that continues to conduct essential research and process enhancement.

779, 781 (Bankr. D. Del. 2000) (noting that the court had approved debtor-in-possession financing to “permit the Debtors to continue to operate to preserve their estates”); *see also In re Dynaco Corp.*, 162 B.R. 389, 394 (Bankr. D.N.H. 1993); *In re Mosello*, 195 B.R. at 289 (“[The] focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process.” (quotation marks omitted)). Moreover, the going concern value of the Debtor’s assets exceeds their liquidation value to a degree sufficient to provide pre-petition secured parties with adequate protection.

39. Finally, consent by the secured creditors to priming can obviate the need to show adequate protection. *See Anchor Sav. Bank FSB v. Sky Valley, Inc.*, 99 B.R. 117, 122 (N.D. Ga. 1989) (“[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.”). The Debtor has obtained the express consent of the Prepetition Secured Parties to use the Cash Collateral and enter into the DIP Facility, but only subject to and on the terms set forth in the DIP Orders, and the Prepetition Third Lien Parties are deemed to consent to such relief under the applicable prepetition subordination agreement.

**vi. The Terms of the DIP Facility Are Fair, Reasonable, and Appropriate**

40. The proposed terms of the DIP Facility referenced herein are fair, reasonable and adequate in that these terms neither (a) tilt the conduct of this case and prejudice the powers and rights that the Bankruptcy Code confers for the benefit of all creditors, nor (b) prevent motions by parties in interest from being decided on their merits. The purpose of the DIP Facility is to enable the Debtor to maintain the value of its assets and to meet ongoing operational expenses, including administrative expenses.

41. The proposed DIP Facility provides that the security interests and administrative expense claims granted to the DIP Lenders are subject to the Carve-Out. Bankruptcy courts generally find that such “carve-outs” are not only reasonable, but necessary to insure that official committees and the debtor’s estate will be assured of the assistance of counsel. *See In Ames Dep’t Stores, Inc.*, 115 B.R. at 38.

42. Likewise, the limited fees and charges required by the DIP Lenders under the DIP Facility are reasonable and appropriate under the circumstances. Indeed, courts routinely authorize similar lender incentives beyond the explicit liens and other rights specified in section 364 of the Bankruptcy Code. *See Miller v. Greenwich Capital Fin. Prods. (In re Am. Bus. Fin. Servs.)*, 375 B.R. 112, 115 (Bankr. D. Del. 2007) (noting the fees and other terms previously approved by the court); *In re Stoney Creek Techs., LLC*, 364 B.R. 882, 885 (Bankr. E.D. Pa. 2007) (same); *In re Defender Drug Stores, Inc.*, 145 B.R. 312, 316-18 (9th Cir. BAP 1992) (authorizing credit arrangement under section 364, including a lender “enhancement fee”). As noted above, many of the fees typically included in DIP financing agreements are absent here.

43. The terms and conditions of the DIP Credit Agreement are fair and reasonable and were negotiated by the parties in good faith and at an arm’s length. Accordingly, the DIP Lenders under the DIP Credit Agreement should be accorded the benefits of section 364(e) of the Bankruptcy Code in respect of such agreement.

44. The fairness and reasonableness of the terms of the DIP Facility will be further shown at the Interim and Final Hearings.

**vii. Request for Modification of Automatic Stay**

45. The proposed DIP Facility contemplates a modification of the automatic stay established pursuant to section 362 of the Bankruptcy Code under terms usual and customary with transactions of this nature. Such stay modification provisions are ordinary and usual features of post-petition debtor-in-possession financing facilities and, in the Debtor's business judgment, are reasonable under the present circumstances. The Court accordingly should modify the automatic stay to the extent contemplated by the DIP Credit Agreement and the Interim Order.

**B. Cash Collateral**

46. In addition to seeking approval of the DIP Facility, the Debtor is also requesting interim and final orders authorizing the use of the Cash Collateral, for the purposes and amounts set forth in the budget attached hereto as Exhibit 1. Section 363(c)(2) of the Bankruptcy Code provides that:

The trustee [or debtor in possession] may not use, sell, or lease cash collateral . . . unless—(A) each entity that has an interest in such cash collateral consents; or (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).<sup>9</sup> Section 363(e) of the Bankruptcy Code provides that “on request of an entity that has an interest in property . . . proposed to be used, sold, or leased, by the trustee, the court, with or without a hearing, shall prohibit or condition such use, sale or lease as is necessary

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<sup>9</sup> Section 363(a) of the Bankruptcy Code defines “cash collateral” as:

cash, negotiable instruments, documents of title, securities, deposit accounts, or other cash equivalents whenever acquired in the estate and an entity other than the estate have an interest and includes the proceeds, products, offspring, rents, or profits of property ... subject to a security interest as provided in section 552(b) of this title, whether existing before or after the commencement of a case under this title.

11 U.S.C. § 363(a).



to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Thus, the Court can approve the Debtor’s use of Cash Collateral if the Debtor provides adequate protection to the Prepetition Secured Parties. *See Harvis Trien & Beck, P.C. v. Federal Home Loan Mortg. Corp. (In re Blackwood Assocs., L.P.)*, 153 F.3d 61, 67 (2d Cir. 1998).

47. As discussed above, the determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. *In re Swedeland Dev. Grp., Inc.*, 16 F.3d at 564. In exchange for the use of Cash Collateral, and for any diminution in the value of the Prepetition Secured Parties’ interest in other Prepetition Collateral, the Debtor proposes to provide the Prepetition Secured Parties, with the forms of adequate protection set forth in the summary above.

48. Accordingly, the Debtor requests that the Court authorize the Debtor’s use of Cash Collateral subject to the applicable budget.

**C. Request for Immediate Interim Relief**

49. The Debtor requests that the Court conduct an expedited preliminary hearing on this Motion and authorize the Debtor, from and after entry of the Interim Order, and pending the Final Hearing, to obtain credit under the DIP Facility in the amount of not more than \$2,500,000, which the Debtor shall, among other things, use as critical working capital.

50. It is essential that the Debtor immediately stabilize its operations and pay for ordinary, post-petition operating expenses. Absent immediate access to the DIP Facility, the Debtor will be unable to pay ongoing operational expenses. Consequently, if interim relief is not obtained, the Debtor’s assets will be immediately and irreparably jeopardized, to the detriment of its estate, its creditors and other parties in interest.

51. Bankruptcy Rule 4001(c) permits a court to approve a debtor's request for financing during the 14-day period following the filing of a motion requesting authorization to obtain post-petition financing, "only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing." FED. R. BANKR. P. 4001(c)(2). In examining requests for interim relief under this rule, courts apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. at 38. After the 14-day period, the request for financing is not limited to those amounts necessary to prevent destruction of the debtor's business. A debtor is entitled to borrow those amounts that it believes prudent in the operation of its business. *See, e.g., In re Simasko Prod. Co.*, 47 B.R. at 449; *In re Ames Dep't Stores, Inc.*, 115 B.R. at 36.

52. The Debtor submits that, for the reasons set forth herein, immediate approval of borrowings under the DIP Facility in an amount up to \$2,500,000, plus use of Cash Collateral in accordance with the Budget, upon entry of the Interim Order is necessary to avert immediate and irreparable harm to the Debtor's estate.

**D. Request for Final Hearing**

53. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtor requests that the Court schedule the Final Hearing.

54. The Debtor requests that it be authorized to serve a copy of the signed Interim Order, which fixes the time and date for the filing of objections, if any, by first-class mail upon the notice parties listed below. The Debtor further requests that the Court consider such notice of the Final Hearing to be sufficient notice under Bankruptcy Rule 4001.

**E. Waiver of Bankruptcy Rules 6004(a) and (h)**

55. Should the Court grant this Motion and enter the Interim Order and the Final Order, the Debtor seeks, in order to implement the DIP Facility successfully, a waiver of the notice requirements under Bankruptcy Rule 6004(a) and the ten-day stay of an order authorizing the use, sale or lease of property under Bankruptcy Rule 6004(h).

#### NOTICE

56. Notice of this Motion has been provided by the Debtor, whether by facsimile, email, overnight courier, or hand delivery, to certain parties in interest, or, in lieu thereof, to their counsel, if known, including: (i) the United States Trustee for the District of Delaware; (ii) the United States Attorney for the District of Delaware; (iii) the parties included on the Debtor's list of twenty (20) largest unsecured creditors; (iv) all persons or entities known to the Debtor that have asserted a lien or interest in any of the DIP Collateral; (v) counsel to the DIP Lenders; (vi) counsel to the Prepetition Secured Agents; (vii) all financial institutions listed in the Debtor's *Motion For Order Authorizing Continued Use of Pre-petition Bank Accounts, Cash Management System, Forms, Books and Records, and Investment Accounts and Procedures*; and (viii) all parties entitled to notice pursuant to Local Rule 9013-1(m). The Debtor submits that, in light of the nature of the relief requested, no other or further notice need be given.

#### CONCLUSION

WHEREFORE, the Debtor requests entry of the Interim Order and, following the Final Hearing, entry of the Final Order, granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Date: November 9, 2014  
Wilmington, Delaware



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Proposed Attorneys For Debtor and Debtor in  
Possession

**EXHIBIT 1**

**DIP BUDGET**

KCOR  
Kcor Inc - DHP Budget  
\$  
DBART - Subject to Change  
Privileged & Confidential

|  | Payroll Date |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
|--|--------------|------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|-------------|
|  | 1            | 2          | 3           | 4           | 5           | 6           | 7           | 8           | 9           | 10          | 11          | 12          | 13          | 14          | 15          | 16          | Total       |
| Key In:                                | 11/10/2014   | 11/17/2014 | 11/24/2014  | 12/1/2014   | 12/8/2014   | 12/15/2014  | 12/22/2014  | 12/29/2014  | 1/5/2015    | 1/12/2015   | 1/19/2015   | 1/26/2015   | 2/2/2015    | 2/9/2015    | 2/16/2015   | 2/23/2015   |             |
| Week Ending:                           | 11/16/2014   | 11/23/2014 | 11/30/2014  | 12/7/2014   | 12/14/2014  | 12/21/2014  | 12/28/2014  | 1/4/2015    | 1/11/2015   | 1/18/2015   | 1/25/2015   | 2/1/2015    | 2/8/2015    | 2/15/2015   | 2/22/2015   | 3/1/2015    |             |
| Beginning Cash Balance                 | \$           | (260,300)  | (660,630)   | (1,145,917) | (1,730,967) | (2,325,033) | (2,920,065) | (3,515,117) | (4,111,580) | (4,708,097) | (5,304,617) | (5,901,137) | (6,497,657) | (7,094,177) | (7,690,697) | (8,287,217) | 344,117     |
| Receipts                               |              |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| Customer Receipts                      |              |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| DHP Proceeds                           |              |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| Other                                  |              |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| Total Receipts                         |              |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| Operating Disbursements                |              |            |             |             |             |             |             |             |             |             |             |             |             |             |             |             |             |
| Employees, Payroll, Benefits and Other | 7,500        | 86,930     | 315,647     | 86,930      | 315,647     | 86,930      | 7,500       | 395,117     | 7,500       | 395,117     | 7,500       | 395,117     | 7,500       | 395,117     | 7,500       | 395,117     | 2,912,947   |
| Laboratory / R&D Operating             | 23,800       | 27,500     | 23,800      | 15,500      | 23,800      | 23,800      | 23,800      | 15,500      | 23,800      | 15,500      | 35,800      | 15,500      | 23,800      | 15,500      | 35,800      | 15,500      | 862,400     |
| Donor / KCR / Pilot Operating          | 101,500      | 143,000    | 101,500     | 86,000      | 96,500      | 106,500     | 106,500     | 86,000      | 96,500      | 86,000      | 148,500     | 86,000      | 96,500      | 86,000      | 148,500     | 86,000      | 1,683,000   |
| Utilities                              | 6,400        | 17,400     | 10,700      | 6,400       | 7,000       | 10,700      | 6,400       | 4,700       | 7,000       | 11,400      | 17,900      | 6,400       | 11,400      | 7,000       | 14,700      | 6,400       | 132,100     |
| Rents, Insurance and Taxes             | 7,000        | -          | -           | 7,000       | -           | -           | -           | 4,700       | -           | -           | -           | 4,700       | -           | -           | -           | -           | 54,200      |
| Professional Fees                      | 53,500       | 63,000     | 19,000      | 36,000      | 16,500      | 80,500      | 80,500      | 212,500     | 46,500      | 34,500      | 38,500      | 21,500      | 33,500      | 14,000      | 80,500      | 81,500      | 668,500     |
| Reimbursement Professional Fees        | -            | -          | 207,500     | -           | -           | -           | -           | 222,500     | -           | -           | -           | 1,245,500   | -           | -           | -           | -           | 4,421,600   |
| US Travel Fees                         | -            | -          | -           | -           | 28,500      | -           | -           | 25,000      | -           | -           | -           | -           | -           | -           | -           | -           | 25,000      |
| IT Fees                                | 24,600       | 3,500      | 4,600       | 28,500      | 104,600     | 3,500       | 4,600       | 28,500      | 4,600       | 3,500       | 4,600       | 28,500      | 4,600       | 3,500       | 4,600       | 28,500      | 30,000      |
| Utilities Deposit                      | 15,000       | -          | 5,600       | 10,000      | 5,000       | 5,000       | 5,000       | 10,000      | 3,000       | 5,000       | 5,000       | 10,000      | 5,000       | 5,000       | 10,000      | 10,000      | 150,000     |
| Miscellaneous                          | 5,000        | -          | -           | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 100,000     |
| Contingency                            | 25,000       | 25,000     | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 25,000      | 400,000     |
| Total Operating Disbursements          | 202,300      | 371,330    | 505,587     | 385,030     | 594,687     | 392,330     | 242,600     | 882,317     | 215,900     | 1,576,017   | 278,600     | 1,878,717   | 428,300     | 344,117     | 325,600     | 3,156,417   | 14,193,347  |
| Ending Cash Balance                    | (260,300)    | (660,630)  | (1,145,917) | (1,730,967) | (2,325,033) | (2,920,065) | (3,515,117) | (4,111,580) | (4,708,097) | (5,304,617) | (5,901,137) | (6,497,657) | (7,094,177) | (7,690,697) | (8,287,217) | (8,883,737) | (9,479,857) |

EXHIBIT 2

**DIP CREDIT AGREEMENT**

EXECUTION VERSION

SENIOR SECURED AND SUPERPRIORITY FINANCING AGREEMENT

THIS SENIOR SECURED AND SUPERPRIORITY FINANCING AGREEMENT (the “**Agreement**”), dated as of November 9, 2014, is entered into by and among KIOR, INC., a Delaware corporation (“**KIOR**” or the “**Borrower**”), as a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code (as defined herein), the lenders from time to time party hereto (collectively, the “**Lenders**”, and each a “**Lender**”), and Pasadena Investments, LLC “**PI LLC**”), as agent for the Lenders (in such capacity, “**Agent**”).

RECITALS

WHEREAS, the Borrower has commenced a case (the “**Chapter 11 Case**”) under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Court**”), and the Borrower has retained possession of its assets and is authorized under the Bankruptcy Code to continue the operation of its businesses and operations as a debtor in possession.

WHEREAS, the Borrower has requested that the Lenders provide, and the Lenders have agreed to make available on the terms and conditions set forth herein an incremental term loan facility in an original principal amount up to \$15,000,000; provided that until the Final DIP Order shall have been entered by the Bankruptcy Court, no loans or advances shall be made or issued, other than incremental term loans in an aggregate original principal amount not to exceed \$2,500,000. The proceeds of the incremental term loans shall be used, subject to the other terms and conditions of this Agreement, to (a) pay fees and expenses related to this Agreement and the Chapter 11 Case and (b) fund expenditures of the Borrower consistent with the Budget. The Lenders are severally, and not jointly, willing to extend such credit to the Borrower subject to the terms and conditions hereinafter set forth.

WHEREAS, the Borrower desires to secure the Loans and all other Obligations, as applicable, under the Loan Documents by granting to the Agent, for its own benefit and the benefit of the Lenders, a security interest in and lien upon its property and assets, as provided herein and in the DIP Orders.

NOW THEREFORE, in consideration of the mutual agreements, provisions and covenants contained herein, the parties hereto agree as follows:

AGREEMENT

SECTION 1. DEFINITIONS AND RULES OF CONSTRUCTION.

1.1 **Definitions.** Unless otherwise defined herein, the following capitalized terms shall have the following meanings:

“**Account Control Agreement(s)**” means any control agreement entered into by and among the Agent, the Borrower and a third party bank or other institution in which the Borrower maintains a Deposit Account, securities account or investment account.



“**Adequate Protection Replacement Liens**” has the meaning specified therefor in the Interim DIP Order or the Final DIP Order, as applicable.

“**Affiliate**” means, with respect to any Person, any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” of a Person means the power, directly or indirectly, either to (a) vote 10% or more of the shares or other equity interests having ordinary voting power for the election of members of the board of directors or similar managing body of such Person or (b) direct or cause the direction of the management and policies of such Person whether by contract or otherwise. Notwithstanding anything herein to the contrary, in no event shall the Agent or any Lender be considered an “Affiliate” of the Borrower.

“**Agent Indemnitees**” means the Agent and its officers, directors, employees, affiliates, agents and attorneys.

“**Agent Professionals**” means attorneys, accountants, appraisers, auditors, business valuation experts, environmental engineers or consultants, financial advisors, turnaround consultants, and other professionals and experts retained by the Agent.

“**Agreement**” means this Senior Secured and Superpriority Financing Agreement, including all amendments, modifications and supplements and any exhibits or schedules to any of the foregoing, and shall refer to the Agreement as the same may be in effect at the time such reference becomes operative.

“**Assignee**” has the meaning given to it in Section 10.13.

“**Auction**” means that certain auction for the KiOR Sale; provided that such auction shall occur only if more than one bona fide offer meeting the conditions established by the Borrower is received for the KiOR Sale.

“**Available Term Loan Commitment**” has the meaning specified therefor in Section 2.1(a).

“**Avoidance Actions**” means all causes of action arising under Sections 510, 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, or any similar state or federal law.

“**Bankruptcy Code**” means the United States Bankruptcy Code (11 U.S.C. § 101, et seq.) and any successor statute.

“**Bankruptcy Court**” has the meaning specified therefor in the recitals hereto, or any other court having jurisdiction over the Chapter 11 Case from time to time.

“**Bid Procedures Motion**” means that certain bid procedures motion to the Bankruptcy Court moving for entry of the Bid Procedures Order.

“**Bid Procedures Order**” means that certain bid procedures order to be entered by the Bankruptcy Court, among other things, designating one or more of the Agent, the Prepetition

Secured Agents, an entity formed by the Agent and/or certain of the Lenders or one of the Prepetition Secured Agents and/or certain of the Prepetition Secured Lenders, as applicable, as the “stalking horse” bidder for the KiOR Sale, such order to be in form and substance satisfactory to the Agent.

“**Board of Directors**” means the board of directors of KiOR.

“**Borrower**” has the meaning specified therefor in the preamble hereto.

“**Borrower Products**” means all products, software, service offerings, technical data or technology currently being designed, manufactured or sold by the Borrower or which the Borrower intends to sell, license, or distribute in the future including any products or service offerings under development, collectively, together with all products, software, service offerings, technical data or technology that have been sold, licensed or distributed by the Borrower since its incorporation.

“**Budget**” means the (a) 16-week cash requirements forecast setting forth cash receipts, if any, and the disbursements of the Borrower for the period covered thereby, delivered by the Borrower to the Agent and the Lenders on or before the Interim Facility Effective Date pursuant to Section 4.1(h), which shall be in form and substance satisfactory to the Agent and the Lenders and (b) any updated cash requirements forecast setting forth cash receipts, if any, and the disbursements of the Borrower for the period covered thereby, delivered to the Agent and the Lenders pursuant to Section 7.1(c), which shall have a duration and otherwise be in form and substance satisfactory to the Agent and the Lenders. The Budget shall include a listing of monthly accrual fees and expenses budgeted for the Borrower’s Professionals.

“**Business Day**” means any day, except Saturday, Sunday or legal holiday on which banking institutions in the city of New York are authorized or obligated by law or executive order to close.

“**Carve-Out Expenses**” means:

(a) payment of fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6) ), in such amounts as are determined by agreement with the Office of the United States Trustee or by final order of the Bankruptcy Court;

(b) fees payable to the Clerk of the Bankruptcy Court;

(c) the lesser of (i) the amount of the unpaid and outstanding reasonable fees, costs and expenses actually incurred by the Borrower’s Professionals (including ordinary course Professionals) and (ii) the budgeted (on an accrual basis, not on a cash basis, regardless of whether or not such fees, costs and expenses are subject to hold back) and unpaid amount of the fees, costs and expenses of the Borrower’s Professionals (including ordinary course Professionals), as set forth in the applicable line item in the Budget for the Borrower (the amount set forth in clauses (c)(i) and (c)(ii), as applicable, along with the amounts referenced in clause (e) below, the “**Borrower Professional Fees**”), in each case, for the period from and after the Petition

Date and prior to the Carve-Out Trigger Date; provided, that the Borrower Professional Fees are ultimately allowed by a final order of the Bankruptcy Court pursuant to Section 330 of the Bankruptcy Code (whether the Borrower Professional Fees are allowed before or after the Carve-Out Trigger Date);

(d) the lesser of (i) the amount of the unpaid and outstanding reasonable fees, costs and expenses actually incurred by the Committee's Professionals and (ii) the budgeted and unpaid amount of the fees, costs and expenses of the Committee's Professionals (including ordinary course Professionals), as set forth in the applicable line item in the Budget (the amount set forth in clauses (d)(i) and (d)(ii), as applicable, the "**Committee Professional Fees**"), in each case, for the period from and after the Petition Date and prior to the Carve-Out Trigger Date; provided, that such Committee Professional Fees are ultimately allowed by a final order of the Bankruptcy Court pursuant to Section 330 of the Bankruptcy Code (whether such Committee Professional Fees are allowed before or after the Carve-Out Trigger Date);

(e) the amount of any fee, besides the Monthly Fee (as defined therein) in the engagement letter, dated June 16, 2014, between the Borrower and Guggenheim (as such engagement letter may be amended or otherwise modified with the consent of the Agent), defining the terms of Guggenheim's engagement as investment advisor, as such obligations become due and payable, but only to the extent that such fee results from a sale or transaction relating to the Borrower (for the avoidance of doubt, any fee resulting from a sale or transaction entered into by Columbus that does not include the Purchased Assets shall not be included within the Carve-Out Expenses);

(f) the amount of the unpaid and outstanding reasonable Borrower Professional Fees that are incurred by the Borrower during the Carve-Out Expense Reduction Period in an aggregate amount not in excess of \$100,000; and

(g) the amount of the unpaid and outstanding reasonable Committee Professional Fees that are incurred during the Carve-Out Expense Reduction Period in an aggregate amount not in excess of \$25,000.

**"Carve-Out Expense Reduction Period"** means any period on and after a Carve-Out Trigger Date.

**"Carve-Out Trigger Date"** means a date on which a Carve-Out Trigger Notice is delivered.

**"Carve-Out Trigger Notice"** means a notice delivered by the Agent to the Borrower, or its lead counsel, the United States Trustee, and lead counsel to the Committee indicating that an Event of Default under this Agreement or any other Loan Document or a default by the Borrower in any of its obligations under any of the DIP Orders, in either case, has occurred.

**"Cash Equivalents"** means (a) marketable direct obligations issued or unconditionally guaranteed by the United States of America or any agency thereof and backed by the full faith and credit of the United States of America, in each case maturing within one year from the date

of acquisition thereof, (b) commercial paper maturing no more than one year from the date of creation thereof and currently having a rating of at least A-2 or P-2 from either Standard & Poor's Corporation or Moody's Investors Service, (c) certificates of deposit issued by members of the Federal Reserve System with assets of at least \$500,000,000 maturing no more than one year from the date of investment therein, and (d) money market funds substantially all of whose assets are invested in the types of assets described in clauses (a)-(c) herein.

**"Change in Control"** means: (i) any reorganization, recapitalization, consolidation or merger (or similar transaction or series of related transactions) of the Borrower in which the holders of the Borrower's outstanding shares immediately before consummation of such transaction or series of related transactions (together with affiliates of such holders) do not, immediately after consummation of such transaction or series of related transactions (together with any affiliates of such holders), retain shares representing more than fifty percent (50%) of the voting power of the surviving entity of such transaction or series of related transactions (or the parent of such surviving entity if such surviving entity is wholly owned by such parent), in each case without regard to whether the Borrower is the surviving entity, (ii) any Person or two or more Persons acting in concert, acquiring beneficial ownership, directly or indirectly, of shares of the Borrower (or other securities convertible into such shares) representing more than fifty percent (50%) of the aggregate voting power of the Borrower, (iii) [reserved], or (iv) any sale, lease, transfer, exclusive license or other disposition, in a single transaction or series of related transactions, by the Borrower of all or substantially all its assets.

**"Chapter 11 Case"** has the meaning specified therefor in the recitals hereto.

**"Collateral"** has the meaning specified therefor in Section 3.1.

**"Columbus"** means KiOR Columbus, LLC.

**"Committee"** means, collectively, any official committee of unsecured creditors and any other official committee appointed or approved in any of the Chapter 11 Case.

**"Contingent Obligation"** means, as applied to any Person, any direct or indirect liability, contingent or otherwise, of that Person with respect to (i) any Indebtedness of another, including any such obligation directly or indirectly guaranteed, endorsed, co-made or discounted or sold with recourse by that Person; (ii) any obligations with respect to undrawn letters of credit, corporate credit cards or merchant services issued for the account of that Person; and (iii) all obligations arising under any interest rate, currency or commodity swap agreement, interest rate cap agreement, interest rate collar agreement, or other agreement or arrangement designated to protect a Person against fluctuation in interest rates, currency exchange rates or commodity prices; provided, however, that the term "Contingent Obligation" shall not include endorsements for collection or deposit in the ordinary course of business. The amount of any Contingent Obligation described in clauses (i) and (ii) above, shall be deemed to be an amount equal to the stated or determined amount of the primary obligation in respect of which such Contingent Obligation is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such Person in good faith; provided, however, that such amount shall not in any event exceed the maximum amount of the obligations under the guarantee or other support arrangement.

“**Copyright License**” means any written agreement granting any right to the Borrower to use any Copyright or Copyright registration, now owned or hereafter acquired by the Borrower or in which the Borrower now holds or hereafter acquires any interest.

“**Copyrights**” means all copyrights, whether registered or unregistered, held pursuant to the laws of the United States, any State thereof, or of any other country.

“**Default**” means an event which, with the giving of notice or the lapse of time or both, would constitute an Event of Default.

“**Deposit Accounts**” means any “deposit accounts,” as such term is defined in the UCC, and includes any checking account, savings account, or certificate of deposit.

“**DIP Orders**” means the Interim DIP Order and the Final DIP Order.

“**Dollar,**” “**Dollars**” and the symbol “**\$**” each means lawful money of the United States of America.

“**Enforcement Action**” means any action to enforce any Obligations or Loan Documents or to exercise any rights or remedies relating to any Collateral (whether by judicial action, self-help, notification of account debtors, exercise of setoff or recoupment, exercise of any right to vote or act in the Borrower’s Insolvency Proceeding, or otherwise).

“**Environmental Actions**” means any complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter or other communication from any Person or Governmental Authority involving violations of Environmental Laws or Releases of Hazardous Materials (a) from any assets, properties or businesses owned or operated by and Borrower or any predecessor in interest; (b) from adjoining properties or businesses; or (c) onto any facilities which received Hazardous Materials generated by the Borrower or any predecessor in interest.

“**Environmental Laws**” means the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), the Hazardous Materials Transportation Act (49 U.S.C. § 1801, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. § 6901, et seq.), the Federal Clean Water Act (33 U.S.C. § 1251 et seq.), the Clean Air Act (42 U.S.C. § 7401 et seq.), the Toxic Substances Control Act (15 U.S.C. § 2601 et seq.) and the Occupational Safety and Health Act (29 U.S.C. § 651 et seq.), as such laws may be amended or otherwise modified from time to time, and any other present or future federal, state, local or foreign statute, ordinance, rule, regulation, order, judgment, decree, permit, license or other binding determination of any Governmental Authority imposing liability or establishing standards of conduct for protection of the environment or other government restrictions relating to the protection of the environment or the Release, deposit or migration of any Hazardous Materials into the environment.

“**Environmental Liabilities and Costs**” means all liabilities, monetary obligations, Remedial Actions, losses, damages, punitive damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel,

experts and consultants and costs of investigations and feasibility studies), fines, penalties, sanctions and interest incurred as a result of or in response to any adverse environmental condition or a Release of Hazardous Materials at, on, under or from (a) any property or facility presently or formerly owned or operated by the Borrower or (b) any property or facility which received Hazardous Materials generated, transported, stored or disposed of by the Borrower.

**“Environmental Lien”** means any Lien in favor of any Governmental Authority for Environmental Liabilities and Costs.

**“ERISA”** means the Employee Retirement Income Security Act of 1974, and its regulations, as amended from time to time.

**“Event of Default”** means any of the events set forth in Section 9.1.

**“Exchange Act”** means the Securities Exchange Act of 1934, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

**“Excluded Taxes”** means any of the following Taxes imposed on or with respect to the Agent or any Lender or required to be withheld or deducted from a payment to or on behalf of the Agent or any Lender, (a) Taxes imposed on or measured by net income and franchise taxes (imposed in lieu of net income taxes), in each case, imposed by the jurisdiction (or any political subdivision thereof) under the laws of which the Agent or such Lender is organized or in which its principal office is located, or imposed as a result of a present or former connection between the Agent or such Lender and the jurisdiction imposing such net income or franchise tax (other than connections arising from the Agent or such Lender having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan Document), (b) taxes imposed by FATCA and (c) Taxes attributable to any Lender's failure to comply with Section 2.6(e) of this Agreement, other than any failure attributable to a change in applicable law occurring after the date hereof.

**“Extraordinary Receipts”** means any cash received by any Person not in the ordinary course of operations (and not consisting of proceeds described in Section 2.4(b)(i)), including (a) proceeds of insurance, (b) condemnation awards (and payments in lieu thereof) and (c) in accordance with the DIP Order, proceeds of Avoidance Actions.

**“FATCA”** means Sections 1471 through 1474 of the Internal Revenue Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with) and any current or future regulations or official interpretations thereof.

**“Final DIP Order”** means the final order of the Bankruptcy Court, substantially in the form of the Interim DIP Order and otherwise in form and substance satisfactory to the Agent and the Required Lenders, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Agent and the Borrower.

“**Final Facility Effective Date**” has the meaning specified therefor in Section 4.2.

“**Final Period**” means the period commencing on the Final Facility Effective Date and ending on the Maturity Date.

“**GAAP**” means generally accepted accounting principles in the United States of America, as in effect from time to time, provided that the parties agree that GAAP as in effect on the date of this Agreement shall be applicable for the interpretation of “capital lease obligations” in the definition of “Indebtedness” unless the parties otherwise agree in writing.

“**Governmental Authority**” means the government of the United States of America or of any other nation, or any political subdivision of any of them, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

“**Guggenheim**” means Guggenheim Securities, LLC.

“**Hazardous Material**” means (a) any element, compound or chemical that is defined, listed or otherwise classified as a contaminant, pollutant, toxic pollutant, toxic or hazardous substance, extremely hazardous substance or chemical, hazardous waste, special waste, or solid waste under Environmental Laws or that is likely to cause immediately, or at some future time, harm to or have an adverse effect on, the environment or risk to human health or safety, including any pollutant, contaminant, waste, hazardous waste, toxic substance or dangerous good which is defined or identified in any Environmental Law and which is present in the environment in such quantity or state that it contravenes any Environmental Law; (b) petroleum and its refined products; (c) polychlorinated biphenyls; (d) any substance exhibiting a hazardous waste characteristic, including corrosivity, ignitability, toxicity or reactivity as well as any radioactive or explosive materials; and (e) any raw materials, building components (including asbestos-containing materials) and manufactured products containing hazardous substances listed or classified as such under Environmental Laws.

“**Indebtedness**” means, with respect to any Person, (a) all indebtedness of such Person for borrowed money or the deferred purchase price of property or services (excluding trade credit entered into in the ordinary course of business due within ninety (90) days), including reimbursement and other obligations with respect to surety bonds, bankers acceptances or letters of credit; (b) all obligations evidenced by notes, bonds evidencing borrowed money, debentures or similar instruments or upon which interest payments are customarily made; (c) all capital lease obligations; (d) all reimbursement, payment or other obligations and liabilities of such Person created or arising under any conditional sales or other title retention agreement with respect to property used and/or acquired by such Person, even though the rights and remedies of the lessor, seller and/or lender thereunder may be limited to repossession or sale of such property; (e) all Contingent Obligations with respect to Indebtedness, and (f) all obligations referred to in clauses (a) through (e) of this definition of another Person secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) a Lien upon property owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness (provided, that, to the extent that such Indebtedness is non-

recourse to such Person, the outstanding principal amount of such Indebtedness at any time of determination thereof shall be deemed to be an amount equal to the lesser at such time of (i) the then unpaid principal amount of such Indebtedness and (ii) the fair market value of the property subject to such Lien).

**“Indemnified Claims”** has the meaning given to it in Section 6.3.

**“Indemnified Taxes”** means (a) Taxes other than Excluded Taxes and (b) to the extent not otherwise encompassed by clause (a), Other Taxes.

**“Insolvency Proceeding”** is any proceeding by or against any Person as a debtor under the Bankruptcy Code, or any other state, federal or foreign bankruptcy or insolvency law, including assignments of all or substantially all of such Person’s assets for the benefit of creditors, compositions, extensions generally with its creditors, or proceedings seeking reorganization, arrangement, or other similar relief.

**“Intellectual Property”** means all of the Borrower’s Copyrights, Trademarks, Patents, Licenses, trade secrets, proprietary information and inventions, mask works; the Borrower’s applications therefor and reissues, extensions, or renewals thereof; and the Borrower’s goodwill associated with any of the foregoing, together with the Borrower’s rights to sue for past, present and future infringement of Intellectual Property and the goodwill associated therewith.

**“Interest Rate”** means for any day a per annum rate of interest equal to 7.50%.

**“Interim DIP Order”** means an order of the Bankruptcy Court, substantially in the form of Exhibit A and otherwise in form and substance satisfactory to the Agent and the Required Lenders, as the same may be amended, modified or supplemented from time to time with the express written joinder or consent of the Agent and the Borrower.

**“Interim Facility Effective Date”** means the date on which all of the conditions precedent set forth in Section 4.1 are satisfied or waived in accordance therewith.

**“Interim Period”** means the period commencing on the Interim Facility Effective Date and ending on the earlier to occur of (a) the Final Facility Effective Date and (b) the Maturity Date.

**“Internal Revenue Code”** means the Internal Revenue Internal Revenue Code of 1986, as amended.

**“Investment”** means with respect to any Person, (a) any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances or other extensions of credit (excluding accounts receivable arising in the ordinary course of business), capital contributions or acquisitions of Indebtedness or any beneficial ownership (including stock, partnership or limited liability company interests) of or in any Person, or the acquisition of all, or substantially all, of the assets of another Person or business unit of another Person or (b) any investment in any other items that are or would be classified as investments on a balance sheet of such Person prepared in accordance with GAAP.



“**KiOR Sale**” means a transaction involving all or substantially all of the Borrower’s assets or equity interests pursuant to Section 363 or Chapter 11 of the Bankruptcy Code.

“**Lender**” and “**Lenders**” have the meanings specified therefor in the preamble hereto.

“**Lender Expenses**” are all audit fees and expenses, costs and expenses (including reasonable attorneys’ fees and expenses and other professionals’ fees and expenses) incurred by the Agent or any Lender in connection with this Agreement, the Loan Documents, any other document or agreement described in or related to this Agreement, and the transactions contemplated by this Agreement and the other Loan Documents, including, without limitation, all such costs, expenses and fees: (a) incurred in connection with the preparation, negotiation, execution, delivery, amendment, administration, performance, collection, defense and enforcement of the Loan Documents and the Indebtedness arising thereunder (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings); (b) incurred in connection with the creation, perfection, protection, satisfaction, foreclosure, or enforcement of any security interest granted under the Loan Document (including, without limitation, those incurred in connection with appeals or Insolvency Proceedings); and (c) otherwise incurred with respect to the Borrower.

“**License**” means any Copyright License, Patent License, Trademark License or other license of rights or interests.

“**Lien**” means any mortgage, deed of trust, pledge, lien (statutory or otherwise), security interest, charge or other encumbrance or security or preferential arrangement of any nature, including any conditional sale or title retention arrangement, any capital lease obligation and any assignment, deposit arrangement or financing lease intended as, or having the effect of, security.

“**Loan**” means, as the context may require, any loan made or deemed made by any Lender hereunder, including, without limitation, the Term Loans.

“**Loan Documents**” means this Agreement, the Account Control Agreements, the Interim DIP Order, the Final DIP Order, any mortgage, any guaranty, any security agreement or any pledge agreement entered into by the Borrower or any other Person with respect to the Obligations, and any other agreement, instrument, certificate, report and other document executed and delivered pursuant hereto or thereto or otherwise evidencing, pertaining to or securing any Loan or any other Obligation.

“**Material Adverse Effect**” means the occurrence of an event that has a material adverse effect upon any of: (i) the business, operations, results of operations, properties, assets, liabilities or condition (financial or otherwise) of the Borrower (except for the commencement of the Chapter 11 Case and events that typically result from the commencement of a case under Chapter 11 of the Bankruptcy Code), or (ii) the ability of the Borrower to perform any of its obligations under the Loan Documents, including, without limitation, repayment of the Obligations, as applicable, when due in accordance with the terms of the Loan Documents, or (iii) the rights or remedies of the Agent or any Lender under the Loan Documents, or the ability of the Agent or any Lender to exercise or enforce such rights and remedies, with respect to the Obligations or the Collateral in accordance with this Agreement; or (iii) the Collateral or the

status, existence, perfection, priority, or enforceability of any Lien in favor of the Agent on the Collateral.

“**Maturity Date**” means, in respect to the Loans and the other Obligations, the date which is the earliest of:

- (a) the third (3<sup>rd</sup>) Business Day after the hearing on the Bid Procedures Motion, if the Final DIP Order has not been entered by the Bankruptcy Court on or prior to such date;
- (b) the date that is six (6) months from the date of this Agreement;
- (c) the effective date or the substantial consummation (as defined in Section 1101(2) of the Bankruptcy Code) of any plan of reorganization or liquidation in the Chapter 11 Case for the Borrower;
- (d) the date on which sales of all or substantially all of the Borrower’s assets and/or stock (including, if applicable, the KiOR Sale), as the case may be, have been consummated under Section 363 of the Bankruptcy Code; and
- (e) such earlier date on which the Loans and the other Obligations for the payment of money shall become due and payable in accordance with the terms of this Agreement and the other Loan Documents.

“**Maximum Rate**” shall have the meaning assigned to such term in Section 2.2.

“**Measurement Period**” means the trailing four-week period ending on Sunday of each week; provided, that, with respect to the Measurement Periods ending on each of the three Sundays following the Petition Date, the Measurement Period shall mean the trailing one-, two- or three- week period, as applicable.

“**Milestones**” means the milestones set forth on Annex I.

“**Net Cash Proceeds**” means, with respect to any sale or disposition of any asset by any Person or receipt by an Person of Extraordinary Receipts, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of such Person, in connection therewith after deducting therefrom only, and in all instances subject to the limitations under and provisions of the DIP Orders, (a) the amount of any Indebtedness secured by any Permitted Priority Lien on any asset (other than Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition (other than Indebtedness under this Agreement), (b) reasonable expenses related thereto incurred by such Person in connection therewith, (c) transfer taxes paid to any taxing authorities by such Person in connection therewith, and (d) net income taxes to be paid in connection with such sale or disposition (after taking into account any tax credits or deductions and any tax sharing arrangements); in each case, to the extent that the amounts so deducted are (x) actually paid to a Person that, except in

the case of reasonable out-of-pocket expenses, is not an Affiliate of such Person and (y) properly attributable to such transaction or to the asset that is the subject thereof.

**“Obligations”** means the Term Loans and all other present and future indebtedness, obligations, and liabilities of the Borrower to the Agent and the Lenders under the Loan Documents and, whether or not the right of payment in respect of such claim is reduced to judgment, liquidated, unliquidated, fixed, contingent, matured, disputed, undisputed, legal, equitable, secured, unsecured, and whether or not such claim is discharged, stayed or otherwise affected by the Chapter 11 Case. Without limiting the generality of the foregoing, the obligations of the Borrower under the Loan Documents include (a) the obligation to pay principal, interest, charges, fees, Lender Expenses, indemnities and other amounts payable by the Borrower under the Loan Documents, and (b) the obligation of the Borrower pursuant to the Loan Documents to reimburse any amount in respect of any of the foregoing that the Agent or any Lender may elect to pay or advance on behalf of the Borrower.

**“Other Taxes”** means all present or future stamp, court or documentary, intangible, recording, filing or similar Taxes that arise from any payment made under, from the execution, delivery, performance, enforcement or registration of, from the receipt or perfection of a security interest under, or otherwise with respect to, this Agreement, the Loans or any other Loan Document.

**“Patent License”** means any written agreement granting any right to the Borrower with respect to any invention on which a Patent is in existence or a Patent application is pending, in which agreement the Borrower now holds or hereafter acquires any interest.

**“Patents”** means all letters patent of, or rights corresponding thereto, in the United States or in any other country, all registrations and recordings thereof, and all applications for letters patent of, or rights corresponding thereto, in the United States or any other country.

**“Permitted Dispositions”** means (i) dispositions of Inventory or worn-out, obsolete or surplus equipment at fair market value for cash in an amount not to exceed \$100,000 in respect such Inventory or equipment of the Borrower, (ii) the use or transfer of cash and Cash Equivalents by the Borrower in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents; or (iii) the expiration in accordance with its terms of any contract, contract right or other agreement to which the Borrower is a party.

**“Permitted Indebtedness”** means (i) Indebtedness of the Borrower in favor of the Agent or Lenders arising under this Agreement or any other Loan Document; (ii) Indebtedness existing on the Interim Facility Effective Date which is disclosed in Schedule 7.11; provided that there shall be no increase to the principal amount of any Indebtedness listed on such Schedule; (iii) Indebtedness to trade creditors, including Indebtedness incurred with corporate credit cards, in each case consistent with the Budget, and (iv) Indebtedness owed to any Person, consistent with the Budget, providing property, casualty, liability, or other insurance to the Borrower, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the year in which such Indebtedness is incurred and such Indebtedness is outstanding only during such year;

**“Permitted Investment”** means (i) Investments existing on the Interim Facility Effective Date, which are disclosed in Schedule 7.13; (ii) cash and Cash Equivalents; and (iii) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business.

**“Permitted Liens”** means any and all of the following: (i) Liens in favor of the Agent securing the Obligations; (ii) Liens existing on the Interim Facility Effective Date which are disclosed in Schedule 7.12; provided that there shall be no extension of coverage of the Liens listed on such Schedule to other property or the increase of the Indebtedness secured thereby (other than with the consent of the Required Lenders); (iii) Liens for taxes, fees, assessments or other governmental charges or levies, either not delinquent or being contested in good faith by appropriate proceedings; (iv) Liens securing claims or demands of materialmen, artisans, mechanics, carriers, warehousemen, landlords and other like Persons arising in the ordinary course of the Borrower’s operations and imposed without action of such parties; provided, that the payment thereof is not yet required or is being contested in good faith by appropriate proceedings; (v) Liens arising from judgments, decrees or attachments in circumstances which do not constitute an Event of Default hereunder; (vi) the following deposits, to the extent made in the ordinary course of operations: deposits under worker’s compensation, unemployment insurance, social security and other similar laws, or to secure statutory obligations (other than liens securing a material obligation and arising under ERISA or environmental laws) or surety or appeal bonds, or to secure indemnity, performance or other similar bonds or obligations; (vii) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of custom duties that are promptly paid on or before the date they become due; (viii) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness and consistent with the Budget; (ix) statutory, common law and contractual rights of set-off and other similar rights as to deposits of cash and securities in favor of banks, other depository institutions and brokerage firms solely to the extent incurred in connection with the maintenance of such deposit or securities accounts in the ordinary course of business; (x) easements, zoning restrictions, rights-of-way and similar encumbrances on real property imposed by law or arising in the ordinary course of business so long as they do not materially impair the value or marketability of the related property; (xi) Liens on cash or Cash equivalents securing Permitted Indebtedness under corporate credit cards as described in the definition of Permitted Indebtedness so long as the aggregate amount of such cash and Cash Equivalents does not exceed \$200,000 at any time and (xii) any interest or title of a non-exclusive licensor or lessor or sub-lessor under any lease, sublease, license or sublicense permitted by this Agreement.

**“Permitted Priority Liens”** means valid, perfected and unavoidable Liens to the extent that (i) such Liens are in existence as of the Petition Date and (ii) “Permitted Liens” as defined under the Prepetition First Lien Loan Agreement, which are senior in priority to the Liens securing the Prepetition First Lien Obligations as of the Petition Date, after giving effect to any intercreditor or subordination agreement.

“**Person**” means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, other entity or Governmental Authority.

“**Petition Date**” means November 9, 2014.

“**PIK Interest**” means interest paid in kind by adding such interest then due to the unpaid principal amount of any Loan.

“**Preferred Stock**” means at any given time any equity security issued by the Borrower that has any rights, preferences or privileges senior to the Borrower’s common stock.

“**Prepetition 2013 Second Lien Agent**” means the “Agent” as defined under the Prepetition 2013 Second Lien Purchase Agreement.

“**Prepetition 2013 Second Lien Lenders**” means the “Purchasers” as defined under the Prepetition 2013 Second Lien Purchase Agreement.

“**Prepetition 2013 Second Lien Loan Documents**” means the “Loan Documents” as defined under the Prepetition 2013 Second Lien Purchase Agreement.

“**Prepetition 2013 Second Lien Obligations**” means the “Secured Obligations” as defined under the Prepetition 2013 Second Lien Purchase Agreement

“**Prepetition 2013 Second Lien Purchase Agreement**” means that certain Senior Secured Convertible Note Purchase Agreement, dated as of October 18, 2013, by and among the Borrower, Columbus, the purchasers from time to time party thereto, and Khosla Ventures III LP, in its capacity as the administrative agent, as amended.

“**Prepetition 2014 Second Lien Agent**” means the “Agent” as defined under the Prepetition 2014 Second Lien Purchase Agreement.

“**Prepetition 2014 Second Lien Lenders**” means the “Purchasers” as defined under the Prepetition 2014 Second Lien Purchase Agreement.

“**Prepetition 2014 Second Lien Loan Documents**” means the “Loan Documents” as defined under the Prepetition 2014 Second Lien Purchase Agreement.

“**Prepetition 2014 Second Lien Obligations**” means the “Secured Obligations” as defined under the Prepetition 2014 Second Lien Purchase Agreement.

“**Prepetition 2014 Second Lien Purchase Agreement**” means that certain Senior Secured Promissory Note and Warrant Purchase Agreement, dated as of March 31, 2014, by and among the Borrower, Columbus, the purchasers from time to time party thereto, and KFT Trust, in its capacity as the administrative agent, as amended.

“**Prepetition Collateral**” means the “Collateral” as defined under each of the Prepetition Secured Loan Documents.

**“Prepetition First Lien Agent”** means the “Agent” as defined under the Prepetition First Lien Loan Agreement.

**“Prepetition First Lien Lenders”** means the “Lenders” as defined under the Prepetition First Lien Loan Agreement.

**“Prepetition First Lien Loan Agreement”** means that certain Protective Advance Loan and Security Agreement, dated as of July 17, 2014, by and among, the Borrower, Columbus, KFT Trust, as agent, and the lenders from time to time party thereto, as amended.

**“Prepetition First Lien Loan Documents”** means the “Loan Documents” as defined under the Prepetition First Lien Loan Agreement.

**“Prepetition First Lien Obligations”** means the “Secured Obligations” as defined under the Prepetition First Lien Loan Agreement.

**“Prepetition Second Lien Agents”** means the Prepetition 2013 Second Lien Agent and the Prepetition 2014 Second Lien Agent.

**“Prepetition Second Lien Lenders”** means the Prepetition 2013 Second Lien Lenders and the Prepetition 2014 Second Lien Lenders.

**“Prepetition Second Lien Loan Documents”** means the Prepetition 2013 Second Lien Loan Documents and the Prepetition 2014 Second Lien Loan Documents.

**“Prepetition Second Lien Obligations”** means Prepetition 2013 Second Lien Obligations and the Prepetition 2014 Second Lien Obligations.

**“Prepetition Second Lien Purchase Agreements”** means the Prepetition 2013 Second Lien Purchase Agreement and the Prepetition 2014 Second Lien Purchase Agreement.

**“Prepetition Secured Agents”** means the Prepetition First Lien Agent and the Prepetition Second Lien Agents.

**“Prepetition Secured Lenders”** means the Prepetition First Lien Lenders and the Prepetition Second Lien Lenders.

**“Prepetition Secured Loan Documents”** means the Prepetition First Lien Loan Documents and the Prepetition Second Lien Loan Documents.

**“Prepetition Secured Obligations”** means the outstanding Prepetition First Lien Obligations and the Prepetition Second Lien Obligations.

**“Professionals”** means the attorneys, accountants, and other professionals retained, with the approval of the Bankruptcy Court, by the Borrower and the Committee and each referred to herein as a “Professional.”

**“Pro Rata”** means, with respect to any Lender, a percentage (rounded to the ninth decimal place) determined (a) while Term Loan Commitments are outstanding, by dividing (i) the aggregate amount of such Lender's Available Term Loan Commitment plus the aggregate amount of such Lender's outstanding Loans by (ii) the Total Available Term Loan Commitments plus the aggregate amount of all outstanding Loans; and (b) at any other time, by dividing (i) the aggregate amount of such Lender's outstanding Loans by (ii) the aggregate amount of all outstanding Loans.

**“Purchased Assets”** has the meaning specified therefor in the Bid Procedures Order.

**“Qualifying Cash Sale”** means a KiOR Sale to include, among other things, the following terms: (a) the proceeds of such sale shall be used to Pay in Full (as defined in the DIP Orders) all Obligations promptly upon the closing of such sale or such sale shall otherwise be on terms, and pursuant to definitive documentation, acceptable to the Agent, and (b) after the Obligations have been Paid in Full (as defined in the DIP Orders), the proceeds of such sale allocable to the Prepetition Collateral shall be used to immediately repay all Prepetition Secured Obligations in accordance with the Prepetition Secured Loan Documents; provided, however, that such payment or application shall be without prejudice to (x) any timely Challenge (as defined in the DIP Orders) asserted before or after such payment or application of proceeds and (y) any rights under section 506(b) of the Bankruptcy Code with respect to whether the Prepetition Secured Obligations are oversecured or undersecured.

**“Receivables”** means, with respect to the Borrower (i) all Accounts, Instruments, Documents, Chattel Paper, Supporting Obligations, letters of credit, proceeds of any letter of credit, and Letter of Credit Rights, and (ii) all customer lists, software, and business records related thereto.

**“Release”** means any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, seeping, migrating, dumping or disposing of any Hazardous Material (including the abandonment or discarding of barrels, containers and other closed receptacles containing any Hazardous Material) into the indoor or outdoor environment, including the movement of Hazardous Materials through or in the ambient air, soil, surface or ground water, or property.

**“Remedial Action”** means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate or in any other way address Hazardous Materials in the indoor or outdoor environment; (b) prevent or minimize a Release or threatened Release of Hazardous Materials so they do not migrate or endanger or threaten to endanger public health or welfare or the indoor or outdoor environment; (c) perform pre-remedial studies and investigations and post-remedial operation and maintenance activities; or (d) perform any other actions authorized by 42 U.S.C. § 9601.

**“Required Lenders”** means Lenders having (a) in excess of 50% of the sum of the Total Available Term Loan Commitments plus the aggregate amount of all outstanding Loans; and (b) if all Term Loan Commitments have terminated, in excess of 50% of the aggregate amount of all outstanding Loans.

“**Sale Hearing**” means the hearing conducted by the Bankruptcy Court to approve the KiOR Sale to the winning bidder.

“**SEC**” means the Securities and Exchange Commission or any other similar or successor agency of the Federal government administering the Securities Act or the Exchange Act.

“**Securities Act**” means the Securities Act of 1933, as amended, or any similar Federal statute, and the rules and regulations of the SEC thereunder, all as the same shall be in effect from time to time.

“**Subsidiary**” means an entity, whether corporate, partnership, limited liability company, joint venture or otherwise, in which a Person owns or controls, directly or indirectly, more than 50% of the outstanding voting securities of such entity.

“**Taxes**” means all present or future taxes, levies, imposts, duties, deductions, withholdings (including backup withholding), assessments, fees or other charges in the nature of a tax imposed by any Governmental Authority, including any interest, additions to tax or penalties applicable thereto.

“**Term Loan**” means a term loan made by a Lender to the Borrower pursuant to Section 2.1(a), as the same may be assigned in accordance with Section 10.13.

“**Term Loan Commitment**” means, with respect to each Lender, the commitment of such Lender to make Term Loans to the Borrower, prior to the Final Facility Effective Date and on and after the Final Facility Effective Date, in each case, in the amount set forth opposite such Lender’s name on Schedule 1.1(A).

“**Term Loan Date**” means the funding date of any Term Loan.

“**Total Available Term Loan Commitments**” means the sum of the amounts of the Lenders’ Available Term Loan Commitments”

“**Total Term Loan Commitments**” means the sum of the amounts of the Lenders’ Term Loan Commitments; provided that (a) prior to the Final Facility Effective Date such aggregate amount shall not exceed \$2,500,000 and (b) on and after the Final Facility Effective Date such aggregate amount shall not exceed \$15,000,000. For the avoidance of doubt, the Total Term Loan Commitment amount on the Final Facility Effective Date includes and is not in addition to the Total Term Loan Commitment amount in effect on the Interim Facility Effective Date.

“**Trademark License**” means any written agreement granting any right to the Borrower to use any Trademark or Trademark registration, now owned or hereafter acquired by the Borrower or in which the Borrower now holds or hereafter acquires any interest.

“**Trademarks**” means all trademarks (registered, common law or otherwise) and any applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency of the United States, any State thereof or any other country or any political subdivision thereof.



“**Treasury Regulation**” means the regulations (including any proposed and temporary regulations) promulgated by the United States Department of Treasury with respect to the Internal Revenue Code or other United States federal Tax statutes.

“**UCC**” means the Uniform Commercial Code as the same is, from time to time, in effect in the State of New York; provided, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, the Agent’s Lien on any Collateral is governed by the Uniform Commercial Code as the same is, from time to time, in effect in a jurisdiction other than the State of New York, then the term “UCC” shall mean the Uniform Commercial Code as in effect, from time to time, in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

## **1.2 Certain Matters of Construction.**

The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words “include”, “includes” and “including” shall be deemed to be followed by the phrase “without limitation”. The word “will” shall be construed to have the same meaning and effect as the word “shall”. Any reference herein to any Person shall be construed to include such Person’s successors and assigns. The words “herein”, “hereof” and “hereunder”, and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof. Unless otherwise specified, all references in this Agreement or any Annex or Schedule hereto to a “Section,” “subsection,” “Exhibit,” “Annex,” or “Schedule” shall refer to the corresponding Section, subsection, Exhibit, Annex, or Schedule in or to this Agreement. Unless otherwise specifically provided herein, any accounting term used in this Agreement or the other Loan Documents shall have the meaning customarily given such term in accordance with GAAP, and all financial computations hereunder shall be computed in accordance with GAAP, consistently applied. Unless otherwise defined herein or in the other Loan Documents, terms that are used herein or in the other Loan Documents and defined in the UCC shall have the meanings given to them in the UCC. The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any right or interest in or to assets and properties of any kind whatsoever, whether real, personal or mixed and whether tangible or intangible.

References in this Agreement to “determination,” “satisfaction,” “waiver,” “consent,” “approval” or words of similar import with respect to any action by the Agent or any Lender shall, in each case, be in the Agent’s or such Lender’s sole and absolute discretion unless otherwise expressly modified by a different standard. A Default or Event of Default shall be deemed to exist at all times during the period commencing on the date that such Default or Event of Default occurs to the date on which such Default or Event of Default is waived in writing pursuant to this Agreement or, only in the case of a Default, is cured within any period of cure expressly provided for in this Agreement; and an Event of Default shall “continue” or be “continuing” until such Event of Default has been waived in writing by the Required Lenders. Any Lien referred to in this Agreement or any other Loan Document as having been created in favor of the Agent, any agreement entered into by the Agent pursuant to this Agreement or any other Loan Document, any payment made by or to or funds received by the Agent pursuant to or

as contemplated by this Agreement or any other Loan Document, or any act taken or omitted to be taken by the Agent, shall, unless otherwise expressly provided, be created, entered into, made or received, or taken or omitted, for the benefit or account of the Agent and the Lenders. Wherever the phrase “to the knowledge of the Borrower” or words of similar import relating to the knowledge or the awareness of the Borrower are used in this Agreement or any other Loan Document, such phrase shall mean and refer to (i) the actual knowledge of a senior officer of the Borrower or (ii) the knowledge that a senior officer would have obtained if such officer had engaged in good faith and diligent performance of such officer’s duties, including the making of such reasonably specific inquiries as may be necessary of the employees or agents of the Borrower and a good faith attempt to ascertain the existence or accuracy of the matter to which such phrase relates. All covenants hereunder shall be given independent effect so that if a particular action or condition is not permitted by any of such covenants, the fact that it would be permitted by an exception to, or otherwise within the limitations of, another covenant shall not avoid the occurrence of a default if such action is taken or condition exists. In addition, all representations and warranties hereunder shall be given independent effect so that if a particular representation or warranty proves to be incorrect or is breached, the fact that another representation or warranty concerning the same or similar subject matter is correct or is not breached will not affect the incorrectness of a breach of a representation or warranty hereunder. Unless otherwise indicated herein, all references to time of day refer to Eastern Standard Time or Eastern daylight saving time, as in effect in New York City on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word “from” means “from and including” and the words “to” and “until” each means “to but excluding”; provided, however, that with respect to a computation of fees or interest payable to any Agent or any Lender, such period shall in any event consist of at least one full day.

## SECTION 2. THE LOANS.

### 2.1 Term Loan Commitments.

- (a) Term Loans. Each Lender severally agrees to make certain incremental term loans to the Borrower (the “**Term Loans**”) at any time and from time to time from the Interim Facility Effective Date to the Maturity Date or until the earlier reduction of its Term Loan Commitment to zero, subject to the terms and conditions and relying upon the representations and warranties set forth in this Agreement, in an aggregate original principal amount of Term Loans not to exceed such Lender’s Term Loan Commitment (in effect on the Interim Facility Effective Date or the Final Facility Effective Date, as applicable). The available Term Loan Commitment for each Lender in effect from time to time for the making of Term Loans (during the Interim Period or the Final Period, as applicable) shall be the Term Loan Commitment minus an amount equal to the sum of the original principal amount of all Term Loans made on and after the Interim Facility Effective Date by such Lender (such available commitment amount, the “**Available Term Loan Commitment**”).
- (b) Notwithstanding the foregoing:
- (i) The aggregate principal amount of outstanding Term Loans (excluding capitalized PIK Interest) at any time shall not exceed the Total Term Loan Commitment.

- (ii) No Term Loan may be reborrowed. The Available Term Loan Commitment of each Lender, if any, shall automatically and permanently be reduced to zero on the Maturity Date.
- (c) Making the Term Loans. The Borrower, as applicable, shall give the Agent prior telephonic notice (immediately confirmed in writing, in substantially the form of Exhibit B hereto (a “**Notice of Borrowing**”)), not later than 2:00 p.m. (Eastern time) on the date which is one (1) business day prior to the date of the proposed Term Loan, as applicable, (or such shorter period as the Agent is willing to accommodate from time to time, but in no event later than 1:00 p.m. (Eastern time) on the funding date of the proposed Term Loan). Such Notice of Borrowing shall be irrevocable and shall specify (i) the principal amount of the proposed Term Loan, as applicable, (ii) the proposed borrowing date which shall occur every 7 days after the initial funding of Term Loans, unless an earlier date is consented to by the Agent; provided that if such date is not a business day, such funding date shall be the next succeeding business day and (iii) the disbursements to be funded with the proposed Term Loan, in accordance with the Budget, within 7 days thereof. The disbursements to be funded and paid with the proposed Term Loan shall only be the disbursements set forth in such Notice of Borrowing, consistent with the Budget. The Agent and the Lenders may act without liability upon the basis of written, faxed or telephonic notice believed by the Agent in good faith to be from the Borrower (or from any Authorized Officer thereof designated in writing purportedly from the Borrower to the Agent). The Borrower hereby waives the right to dispute the Agent’s record of the terms of any such telephonic notice. The Agent and each Lender shall be entitled to rely conclusively on any Authorized Officer’s authority to request a Term Loan on behalf of the Borrower until the Agent receives written notice to the contrary. The Agent and the Lenders shall have no duty to verify the authenticity of the signature appearing on any written Notice of Borrowing. Notwithstanding the foregoing, if a Default or Event of Default has occurred and is continuing, no Lender shall have any obligation to make any requested Term Loan hereunder.
- (d) [reserved].
- (e) Interest; PIK Interest; Payments.
  - (i) The principal balance of each Term Loan (which, for clarification, will include any capitalized PIK Interest) shall bear interest thereon from the Term Loan Date at the Interest Rate based on a year consisting of 365 days, with interest computed daily based on the actual number of days elapsed.
  - (ii) The Borrower will pay interest on the Loans on the first day of each calendar month, beginning on the first day of the month immediately following the Interim Facility Effective Date; provided that interest due will be paid as PIK Interest calculated at the Interest Rate.
  - (iii) The entire principal balance of the Term Loans and all other Obligations, including all accrued but unpaid interest hereunder (including PIK Interest) and

all fees and Lender Expenses, shall be due and payable on the Maturity Date. The Borrower shall make all payments under this Agreement without setoff, recoupment or deduction and regardless of any counterclaim or defense. Payments to each Lender hereunder shall be made to such Lender at the account from time to time designated by such Lender by written notice to the Borrower. Each installment or other payment on account of any Loan shall be paid to the Lenders in accordance with their Pro Rata shares. For clarification, the addition of PIK Interest to the outstanding principal balance of any Loan shall constitute part of the outstanding principal amount of such Loan but the addition of PIK Interest shall not reduce the Available Term Loan Commitment of any Lender.

**2.2 Maximum Interest.** Notwithstanding any provision in this Agreement or any other Loan Document, it is the parties' intent not to contract for, charge or receive interest at a rate that is greater than the maximum rate permissible by law that a court of competent jurisdiction shall deem applicable hereto (which under the laws of the State of New York shall be deemed to be the laws relating to permissible rates of interest on commercial loans) (the "**Maximum Rate**"). If a court of competent jurisdiction shall finally determine that the Borrower has actually paid to the Lenders an amount of interest in excess of the amount that would have been payable if all of the Obligations had at all times borne interest at the Maximum Rate, then such excess interest actually paid by the Borrower shall be applied as follows: first, to the payment of principal outstanding on the Loans, as applicable; second, after all principal is repaid, to the payment of the Lenders' accrued interest, costs, expenses, professional fees and any other applicable Obligations; and third, after all applicable Obligations are repaid, the excess (if any) shall be refunded to the Borrower.

**2.3 Default Interest.** Upon the occurrence and during the continuation of an Event of Default hereunder, all Obligations, including principal (including capitalized PIK Interest), unpaid professional fees and other expenses, shall bear interest at a rate per annum equal to the Interest Rate plus two percent (2%) per annum. Such default interest shall be payable on demand and in the event such interest is not paid when due hereunder, delinquent interest shall be added to principal and shall bear interest on interest, compounded at the Interest Rate.

**2.4 Prepayment.**

- (a) Optional Prepayment. At its option and with five (5) days' prior written notice to the Agent and each Lender, the Borrower may prepay, without penalty or premium, all or a portion of its outstanding applicable Loans by paying such principal amount (including capitalized PIK Interest) and all accrued and unpaid PIK Interest thereon.
- (b) Mandatory Prepayment.
  - (i) Dispositions. Immediately upon any sale or disposition of the Borrower's property or assets (including upon a KiOR Sale but other than a disposition described under clauses (ii) and (iii) of the definition of Permitted Disposition), the Borrower shall prepay the outstanding principal amount of the applicable Loans in accordance with Section 9.2 in an amount equal to 100% of the Net Cash Proceeds from such sale or disposition. Nothing contained in this clause shall

permit the Borrower to sell or dispose of its property or assets other than in accordance with Section 7.12.

- (ii) Extraordinary Receipts. Promptly upon the receipt by the Borrower of any Extraordinary Receipts, and in any event within two (2) Business Days, the Borrower shall prepay the outstanding principal amount of the applicable Loans in accordance with Section 9.2 in an amount equal to 100% of the Net Cash Proceeds from such Extraordinary Receipts.
- (iii) DIP Orders. Without limiting any other provision of this Agreement or any other Loan Document permitting or requiring prepayment of any Term Loans, in whole or in part, the Borrower shall repay its Obligations in full in cash on the third (3<sup>rd</sup>) Business Day after the hearing on the Bid Procedures Motion, if the Final DIP Order has not been entered on or before such date.
- (c) Interest and Fees. Any prepayment made pursuant to this Section 2.4 shall be accompanied by the payment of (i) accrued interest on the principal amount being prepaid to the date of prepayment and (ii) if such prepayment would reduce the amount of the outstanding Loans to zero at a time when the Total Term Loan Commitments have been reduced to zero, such prepayment by the Borrower shall be accompanied by the payment of all fees accrued to such date and all Lender Expenses.

**2.5 Payment of Other Obligations**. Other Obligations shall be paid by the Borrower as provided in the Loan Documents or, if no payment date is specified, on demand.

**2.6 Taxes**.

- (a) Payments Free of Taxes. Any and all payments by or on account of any Loan or any other obligation of the Borrower under this Agreement or any other Loan Document shall be made without deduction or withholding for any Taxes, except as required by applicable law. If any applicable law requires the deduction or withholding of any Tax from any such payment by the Borrower, then the Borrower shall be entitled to make such deduction or withholding and shall timely pay the full amount deducted or withheld to the relevant Governmental Authority in accordance with applicable law and, if such Tax is an Indemnified Tax, the sum payable by the Borrower to the Agent and each Lender shall be increased as necessary so that after such deduction or withholding has been made (including such deductions and withholdings applicable to additional sums payable under this Section 2.6) the Agent and each Lender receives an amount equal to the sum it would have received had no such deduction or withholding been made.
- (b) Payment of Other Taxes by the Borrower. The Borrower shall timely pay any Other Taxes to the relevant Governmental Authority in accordance with applicable law.
- (c) Evidence of Payment. As soon as practicable after any payment of Taxes or Other Taxes by the Borrower to a Governmental Authority pursuant to this Section 2.6, the Borrower shall deliver to the Agent and each Lender the original or a certified copy of a

receipt issued by such Governmental Authority evidencing such payment, a copy of the return reporting such payment, or other evidence of such payment reasonably satisfactory to the Agent and each Lender.

- (d) Indemnification by the Borrower. The Borrower shall indemnify the Agent and each Lender for (i) any Indemnified Taxes that are paid or payable by the Agent or such Lender in connection with or relating to any Loan of the Borrower and the other transactions contemplated by this Agreement or any other Loan Documents (including amounts paid or payable as a result of any additional payments made under this Section 2.6), (ii) any Taxes that are paid or payable by the Agent or such Lender as a result of any breach by the Borrower of any of its covenants under this Agreement, and (iii) any costs or expenses incurred by the Agent or such Lender with respect to a Tax described in clause (i) or (ii) immediately above. The indemnity under this Section 2.6(d) shall be paid within 10 days after the Agent or any Lender delivers to the Borrower a certificate stating the amount of any Taxes so paid or payable by the Agent or such Lender together with a statement of any related costs or expenses, and shall be payable by the Borrower whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority; provided that the Borrower are given a reasonable opportunity to contest such Taxes (at the sole cost and expense of the Borrower). Such certificate shall be conclusive of the amount so paid or payable and of the costs or expenses related thereto absent manifest error.
- (e) Status of Lenders. Each Lender shall have delivered, and any Assignee shall deliver, to the Borrower an original duly completed (i) Internal Revenue Service Form W-9 (or any successor form) or (ii) U.S. Internal Revenue Service Form W-8BEN, W-8ECI or W-8IMY or other applicable form or documentation (or any subsequent versions thereof or successors thereto), if claiming complete exemption from, or reduced rate of, U.S. Federal withholding tax and payments of interest hereunder. In addition, upon the request of the Borrower, a Lender or any Assignee shall deliver such other documentation prescribed by applicable law or reasonably requested by the Borrower as will enable the Borrower to determine whether or not such Lender or Assignee is subject to backup withholding or information reporting requirements. Each Lender or Assignee agrees that, upon the occurrence of any change in circumstances which would modify or render invalid any such claimed exemption or reduction or form delivered by such Person, will, if requested by the Borrower, use reasonable efforts to designate another lending office for the Loans with the object of avoiding the consequences of such event; provided that such designation is made on terms that shall not cause (in the sole judgment of such Lender or such Assignee) such Lender or Assignee and its lending office to suffer any material economic, legal or regulatory disadvantage.
- (f) FATCA. If a payment made to a Lender under any Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Internal Revenue Code, as applicable), such Lender shall deliver to the Borrower and the Agent at the time or times prescribed by law and at such time or times reasonably requested by the Borrower or the Agent

such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the Internal Revenue Code) and such additional documentation reasonably requested by the Borrower or the Agent as may be necessary for the Borrower and the Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this clause (f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

- (g) Survival. Each party's obligations under this Section 2.6 shall survive any assignment of rights by, or the replacement of, a Lender, and shall survive the repayment, satisfaction or discharge of all of the Loans and the other obligations under this Agreement or under any other Loan Document, subject only to the limitation on the rights of an Assignee as specifically set forth in Section 11.14 of this Agreement.

**2.7 Pro Rata**. All principal, interest, and fees (other than fees under Section 10.11 or otherwise as expressly provided herein) due and payable hereunder shall be paid by the Borrower to each Lender on a Pro Rata basis.

### **SECTION 3. SECURITY INTERESTS.**

#### **3.1 Collateral; Grant of Liens and Security Interests**

- (a) As security for the full and timely payment and performance of all of the Obligations, upon entry of the Interim DIP Order but retroactive to the Petition Date, the Borrower hereby assigns, pledges and grants (or causes the assignment, pledge and grant in respect of any indirectly owned assets) to the Agent, for its benefit and the benefit of the Lenders, pursuant to Section 364(c)(2), Section 364(c)(3) and Section 364(d) of the Bankruptcy Code, under this Agreement, the other Loan Documents and the DIP Orders, as applicable, a fully perfected first priority security interest and liens, superior to all other liens, claims or security interests that any creditor of the Borrower and its estate may have (but subject only to the Carve-Out Expenses and Permitted Priority Liens, as and to the extent expressly provided in DIP Orders, as applicable), all tangible and intangible assets and property of the Borrower, now existing or hereinafter acquired, including all cash and Cash Equivalents (whether maintained with the Agent or otherwise), and any investment in such cash or Cash Equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, securities (whether or not marketable), properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, bank accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds, real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, permits, franchise rights, capital stock and other equity interests of Subsidiaries, tax and other refunds, insurance or other proceeds, commercial tort claims, causes of action, Avoidance Actions and proceeds relating thereto, rights under Section 506(c) of the Bankruptcy Code, and all other property or "property of the estate" (as defined in

Section 541 of the Bankruptcy Code) of any kind or nature, real or personal, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, wherever located (collectively, the “**Collateral**”).

- (b) Upon entry of the Interim DIP Order or Final DIP Order, as the case may be, the Liens and security interests in favor of the Agent referred to in Section 3.1(a) shall be valid and perfected Liens on, and security interests in, the Collateral, prior to all other Liens on, and security interests in, the Collateral, other than Permitted Priority Liens. Such Liens and security interests and their priority shall remain in effect until the Total Term Loan Commitments shall have been terminated and all Obligations shall have been repaid in full in cash.
- (c) Notwithstanding anything herein to the contrary, all proceeds received by the Agent and the Lenders from the Collateral subject to the Liens granted in Section 3.1(a) or in any other Loan Document or the DIP Orders, shall be subject to the prior payment of Carve-Out Expenses; provided, that no Person entitled to such Carve-Out Expenses shall be entitled to sell or otherwise dispose, or seek or object to the sale or other disposition, of any of the Collateral.
- (d) Except for the Carve-Out Expenses, no costs or expenses of administration shall be imposed against (i) the Agent, the Lenders or any of the Collateral or (ii) the Prepetition First Lien Agent or any of the Prepetition First Lien Lenders or the “Collateral” (as defined in the Prepetition First Lien Loan Agreement) under Sections 105, 506(c) (subject to the Final DIP Order), or 552 of the Bankruptcy Code, or otherwise, and the Borrower hereby waives for itself and on behalf of its estate in bankruptcy, any and all rights under Sections 105, 506(c) (subject to entry of the Final DIP Order) or 552, or otherwise, to assert or impose or seek to assert or impose, any such costs or expenses of administration against the Agents the Lenders or any of the Collateral or the Prepetition First Lien Agent or any of the Prepetition First Lien Lenders.

### **3.2 Administrative Priority.**

The Borrower agrees that the Obligations shall constitute allowed administrative expenses in the Chapter 11 Case, having priority over all administrative expenses of and unsecured claims against the Borrower now existing or hereafter arising, of any kind or nature whatsoever, including all administrative expenses of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 364(c)(1), 503(a), 503(b), 506(c) (subject to entry of the Final DIP Order), 507(a), 507(b), 546, 726, 1113 and 1114 of the Bankruptcy Code, subject only to Permitted Priority Liens and the prior payment of Carve-Out Expenses.

### **3.3 Grants, Rights and Remedies.**

The Liens and security interests granted pursuant to Section 3.1 and the administrative priority granted pursuant to Section 3.2 may be independently granted by the Loan Documents and by other Loan Documents hereafter entered into. This Agreement, the DIP Orders and such



other Loan Documents supplement each other, and the grants, priorities, rights and remedies of the Agent and the Lenders hereunder and thereunder are cumulative.

### **3.4 No Filings Required.**

The Liens and security interests referred to herein shall be deemed valid and perfected solely by and upon entry of the Interim DIP Order or the Final DIP Order, as the case may be, and entry of the Interim DIP Order shall have occurred on or before the date any Term Loan is made by any Lender. None of the Agent, the Lenders or any other Person shall be required to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect any Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document; provided, that the Agent shall be permitted to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office and to take any other action with respect to the Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document; provided, further that should the Agent so choose and attempt to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office and to take any other action with respect to such Lien or security interest, no defect or failure in connection with such attempt shall in any way limit, waive or alter the validity, enforceability, attachment, or perfection of any Liens and security interests granted herein by virtue of the entry of the Interim DIP Order or the Final DIP Order.

### **3.5 Survival.**

The Liens, lien priority, administrative priorities and other rights and remedies granted to the Agent and the Lenders pursuant to this Agreement, the DIP Orders and the other Loan Documents (specifically including the existence, perfection and priority of the Liens and security interests provided herein and therein, and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by the Borrower (pursuant to Section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of the Chapter 11 Case, or any successor bankruptcy case, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, successor bankruptcy case act or omission:

- (a) except for the Carve-Out Expenses, no costs or expenses of administration which have been or may be incurred in the Chapter 11 Case or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on parity with any claim of the Agent and the Lenders against the Borrower in respect of any Obligation;
- (b) upon entry of the Interim DIP Order or Final DIP Order, as the case may be, but retroactive to the Petition Date in each case, the Liens in favor of the Agent and the Lenders set forth in Section 3.1 shall constitute valid and perfected first priority Liens and security interests to which all other Liens and security interests shall be subordinate

and junior, subject only to Permitted Priority Liens, and which Liens and security interests shall be prior to all other Liens and security interests, now existing or hereafter arising, in favor of any other creditor or any other Person whatsoever; and

- (c) the Liens in favor of the Agent and the Lenders set forth herein, in the DIP Orders and in the other Loan Documents shall continue to be valid and perfected without the necessity that the Agent file financing statements, mortgages, certificates of title, notices of Lien or other similar instruments or otherwise perfect its Lien under applicable non-bankruptcy law.

### **3.6 Further Assurances.**

The Borrower shall take any other actions reasonably requested by the Agent from time to time to cause the attachment, perfection and first priority of, and the ability of the Agent and the Lenders to enforce, the security interest of the Agent and the Lenders in any and all of the Collateral, including, (a) executing and delivering any requested security agreement, pledge agreement or mortgage, (b) executing, delivering and, where appropriate, filing financing statements and amendments relating thereto under the UCC or other applicable law, to the extent, if any, that the Borrower's signature thereon is required therefor, (c) causing the Agent's name to be noted as secured party on any certificate of title for a titled good if such notation would be a condition, if not for the Chapter 11 Case, to attachment, perfection or priority of, or ability of the Agent to enforce, the security interest of the Agent in such Collateral, (d) complying with any provision of any statute, regulation or treaty of the United States as to any Collateral if compliance with such provision would be a condition, if not for the Chapter 11 Case, to attachment, perfection or priority of, or ability of the Agent to enforce, the security interest of the Agent in such Collateral, (e) using commercially reasonable efforts to obtain the consent and approval of any Governmental Authority or third party, including any consent of any licensor, lessor or other Person obligated on Collateral, and taking all actions required by any earlier versions of the UCC or by other law, as applicable in any relevant jurisdiction, and (f) complying with any changing requirements to effectuate the provisions of Section 10.9. For the avoidance of doubt, the failure to execute, deliver, obtain or file any agreement or other document, obtain any consent, approval or compliance by any Person or Governmental Authority or any other action, as further described above, shall not impair or otherwise affect the Liens and security interests granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document.

## **SECTION 4. CONDITIONS PRECEDENT.**

**4.1 Conditions Precedent to Interim Period Effectiveness.** This Agreement shall become effective as of the Business Day (the "**Interim Facility Effective Date**") when each of the following conditions precedent shall have been satisfied in a manner satisfactory to the Agent and the Lenders or waived by the Agent and the Lenders:

- (a) Interim DIP Order. The Interim DIP Order shall have been entered by the Bankruptcy Court within 3 Business Days after the Petition Date, and the Agent shall have received a true and complete copy of such order, and such shall be in full force and effect and shall not have been reversed, modified, amended, stayed, or vacated, absent prior

written consent of the Agent and the Borrower. The Interim DIP Order shall, among other things, (i) find and conclude that the Loan Documents were negotiated in good faith and that the Agent and the Lenders are entitled to the protections of Section 364(e) of the Bankruptcy Code and (ii) order that, during the Interim Period, the Liens and security interests in favor of the Agent referred to in Section 3.1 hereof shall be valid and perfected Liens and security interests in the Collateral prior to all other Liens and security interests in such Collateral and subject only to Permitted Priority Liens and the Carve-Out Expenses.

- (b) Fees and Expenses. The Borrower shall have (i) paid in full in cash all fees and expenses incurred by the Agent, including all legal fees and (ii) reimbursed each Lender for such Lender's current expenses reimbursable pursuant to this Agreement (including all Lender Expenses), in each case which amounts may be deducted or paid substantially concurrently from the initial Term Loans, as applicable, if made on the Interim Facility Effective Date.
- (c) Delivery of Loan Documents. The Borrower shall have delivered to the Agent an executed copy of this Agreement, together with all schedules and exhibits thereto, and all other documents and instruments required by the Agent and the Lenders to effectuate the transactions contemplated hereby, in all cases in form and substance acceptable to the Agent and the Lenders.
- (d) Representation and Warranties; No Event of Default. The representations and warranties set forth in Section 5 of this Agreement shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Interim Facility Effective Date. No Event of Default shall have occurred and be continuing.
- (e) Closing Certificate. A certificate of the Chief Executive Officer or the Chief Financial Officer of the Borrower, certifying as to the matters set forth in clause (d) of this Section.
- (f) Company Certificate. A certificate of the Chief Executive Officer or the Chief Financial Officer of the Borrower, certifying (i) a copy of the resolutions of the Board of Directors, evidencing approval of this Agreement, the borrowings hereunder, the grant of the security interests and liens and the other transactions evidenced by the Loan Documents and (ii) certifying the names and true signatures of the representatives of the Borrower authorized to sign each Loan Document to which it is or will be a party and the other documents to be executed and delivered by the Borrower in connection herewith and therewith, together with evidence of the incumbency of such authorized officers.
- (g) Good Standing. The Borrower shall have delivered to the Agent a certificate of good standing for the Borrower from its state of incorporation and similar certificates from all other jurisdictions in which it does business and where the failure to be qualified would have a Material Adverse Effect.

- (h) Budget. The Borrower shall have delivered a copy of the Budget together with a certificate of the Chief Executive Officer or the Chief Financial Officer of each of the Borrower, stating that such Budget has been prepared on a reasonable basis and in good faith and is based on assumptions believed by the Borrower to be reasonable at the time made and from the best information then available to the Borrower, which Budget shall be in form and substance satisfactory to the Agent and the Lenders.
- (i) Insurance. The Borrower shall have provided evidence of the insurance coverage required by Section 6 and such other insurance coverage with respect to the operations and property of the Borrower as the Agent may request together with evidence of the payment of all premiums due in respect thereof for such period as the Agent may request.
- (j) Material Adverse Effect. The Agent shall have determined in its sole judgment that no event or development shall have occurred, which could reasonably be expected to have a Material Adverse Effect.
- (k) Lien Priority. The Agent shall be satisfied that it has been granted, and holds for the benefit of the Agent and the Lenders, a perfected, first priority Lien on, and security interest in, all of the Collateral, subject only to Permitted Priority Liens and the Carve-Out Expenses.
- (l) Approvals. All consents, authorizations and approvals of, and filings and registrations with, and all other actions in respect of, any Governmental Authority or other Person required in connection with the making of the Term Loans or the conduct of the Borrower's operations shall have been obtained and shall be in full force and effect.
- (m) First Day Motions and Orders. The Agent shall have received on or before the Petition Date, copies of the "first day" motions, including the orders attached thereto, relating to this Agreement, the employees of the Borrower, the cash management of the Borrower and other operational issues of the Borrower, to be filed by the Borrower with the Bankruptcy Court in the Chapter 11 Case, each of which shall be in form and substance reasonably satisfactory to the Agent, and the orders of the Bankruptcy Court approving such motions, in form and substance satisfactory to the Agent, shall have been entered by the Bankruptcy Court within three (3) Business Days after the Petition Date.
- (n) Commencement of Chapter 11 Case. The Borrower shall have commenced the Chapter 11 Case and no trustee, examiner or receiver shall have been appointed or designated with respect to the Borrower's operations, properties or assets and no motion shall be pending seeking any relief or seeking any other relief in the Bankruptcy Court to exercise control over any of the Collateral with an aggregate value in excess of \$100,000.
- (o) Proceedings; Receipt of Documents. All proceedings in connection with the making of the initial Term Loans and the other transactions contemplated by this Agreement and the other Loan Documents, and all documents incidental hereto and thereto, shall be satisfactory to the Agent and its counsel, and the Agent and such counsel shall have

received all such information and such counterpart originals or certified or other copies of such documents as the Agent or such counsel may reasonably request.

**4.2 Conditions Precedent to Final Period Effectiveness.** The obligation of any Lender to make any Term Loan during the Final Period shall commence as of the Business Day (the “**Final Facility Effective Date**”) when each of the following conditions precedent shall have been satisfied in a manner satisfactory to the Agent and the Lenders or waived by the Agent and the Lenders:

- (a) Final DIP Order. The Final DIP Order shall have been signed and entered by the Bankruptcy Court on or prior to the third (3<sup>rd</sup>) Business Day after the hearing on the Bid Procedures Motion, and the Agent shall have received a true and complete copy of such order, and such order shall be in full force and effect and shall not have been reversed, modified, amended, stayed, or vacated, absent prior written consent of the Agent and the Borrower. The Final DIP Order shall, among other things, (i) find and conclude that the Loan Documents were negotiated in good faith and that the Agent and the Lenders are entitled to the protections of Section 364(e) of the Bankruptcy Code and (ii) order that, on the Final Facility Effective Date, the Liens and security interests in favor of the Agent referred to in Section 3.1 hereof shall be valid and perfected Liens and security interests in the Collateral prior to all other Liens and security interests in the Collateral and subject only to Permitted Priority Liens and the Carve-Out Expenses;
- (b) Fees and Expenses. The Borrower shall have (i) paid in full in cash all fees and expenses incurred by the Agent, including all legal fees and (ii) reimbursed each Lender for such Lender’s current expenses reimbursable pursuant to this Agreement (including all Lender Expenses).
- (c) Representation and Warranties; No Default or Event of Default. The representations and warranties set forth in Section 5 of this Agreement shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Final Facility Effective Date. No Default or Event of Default shall have occurred and be continuing in respect of the Borrower.
- (d) Lien Priority. The Agent shall be satisfied that it has been granted, and continues to hold, for the benefit of the Agent and the Lenders, a perfected, first priority Lien on, and security interest in, all of the Collateral, subject only to Permitted Priority Liens and the Carve-Out Expenses.
- (e) Material Adverse Effect. The Agent shall have determined in its sole judgment that no event or development shall have occurred, which could reasonably be expected to have a Material Adverse Effect.
- (f) Delivery of Documents. The Agent shall have received such other agreements, instruments, approvals and other documents, each in form and substance satisfactory to the Agent, as any Agent may reasonably request.

**4.3 Conditions Precedent to Term Loans.** In addition to the conditions precedent under Section 4.1 and Section 4.2, as applicable, the obligation of any Lender to make any Term Loan upon and after the Interim Facility Effective Date is subject to the fulfillment, in a manner satisfactory to the Agent, of each of the following conditions precedent:

- (a) Fees and Expenses. The Borrower shall have (i) paid in full in cash all fees and expenses incurred by the Agent, including all legal fees and (ii) reimbursed each Lender for such Lender's current expenses reimbursable pursuant to this Agreement (including all Lender Expenses).
- (b) Representation and Warranties; No Default or Event of Default. The representations and warranties set forth in Section 5 of this Agreement shall be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Term Loan Date. No Default or Event of Default shall have occurred and be continuing, in respect of the Borrower, as of the Term Loan Date.
- (c) Notice of Borrowing. The Agent shall have received a Notice of Borrowing pursuant to Section 2.1(c) hereof.
- (d) Delivery of Documents. The Agent shall have received such other agreements, instruments, approvals and other documents, each in form and substance satisfactory to the Agent, as any Agent may reasonably request.

**4.4 Conditions Subsequent to Effectiveness**

As an accommodation to the Borrower, the Agent and the Lenders have agreed to execute this Agreement and to make Terms Loans on and after the Interim Facility Effective Date notwithstanding the failure by the Borrower to satisfy the conditions set forth below on or before the Interim Facility Effective Date. In consideration of such accommodation, the Borrower agrees that, in addition to all other terms, conditions and provisions set forth in this Agreement and the other Loan Documents, including those conditions set forth in Section 4.1 and Section 4.3, the Borrower shall satisfy each of the conditions subsequent set forth below on or before the date applicable thereto (it being understood that (i) the failure by the Borrower to perform or cause to be performed any such condition subsequent on or before the date applicable thereto shall constitute an immediate Event of Default (not subject to any grace or cure period) and (ii) to the extent that the existence of any such condition subsequent would otherwise cause any representation, warranty or covenant in this Agreement or any other Loan Document to be breached, the Lenders hereby waive such breach for the period from the Interim Facility Effective Date until the date on which such condition subsequent is required to be fulfilled pursuant to this Section 4.4):

- (a) within four (4) days after the Petition Date, each of the Schedules to this Agreement, other than Schedule 1.1(A) Total Term Loan Commitments; and
- (b) within ten (10) Business Days after the Petition Date, certificates of insurance stating that the Agent is an additional insured for commercial general liability and a loss payee

for property insurance with respect to the Collateral and attaching additional insured endorsements for liability and lender's loss payable endorsements for property damage insurance with respect to the Collateral.

## **SECTION 5. REPRESENTATIONS AND WARRANTIES OF THE BORROWER.**

The Borrower represents and warrants that:

**5.1 Corporate Status.** The Borrower (i) is a corporation duly organized, validly existing and in good standing under the laws of the state or jurisdiction of its organization, (ii) subject to the entry and the terms of the DIP Orders, has all requisite power and authority to conduct its business and operations as now conducted and as presently contemplated and to make the borrowings hereunder, and to execute and deliver each Loan Document to which it is a party, and to consummate the transactions contemplated thereby, and (iii) is duly qualified to do business and is in good standing in each jurisdiction in which the character of the properties owned or leased by it or in which the transaction of its business makes such qualification necessary, except, in the case of clause (iii), where the failure to be so qualified or in good standing could not reasonably be expected to result in a Material Adverse Effect.

**5.2 Collateral.** The Borrower owns the Collateral, free and clear of all Liens, except for Permitted Liens. The Borrower has the power and authority to grant to the Agent a Lien in the Collateral as security for the Obligations. All Liens of the Agent in the Collateral are duly perfected Liens, subject only to Permitted Priority Liens that are expressly allowed to have priority over the Agent's Liens. Schedule 5.2 sets forth a description of the following Collateral (a) all real property, (b) all Deposit Accounts, securities account and investment accounts and (c) all Commercial Tort Claims.

**5.3 Consents.** The Borrower's execution, delivery and performance of this Agreement and all other Loan Documents, (i) have been duly authorized by all necessary corporate or limited liability action of the Borrower, (ii) will not result in the creation or imposition of any Lien upon the Collateral, other than Permitted Liens and the Liens created by this Agreement and the other Loan Documents, (iii) do not violate any provisions of the Borrower's Certificate of Incorporation, bylaws or any material law, regulation, order, injunction, judgment, decree or writ to which the Borrower is subject and (iii) do not, except for the entry of the DIP Orders, require any authorization or approval or other action by, and no notice to or filing with, any Governmental Authority or require the consent or approval of any other Person that has not been obtained. The individual or individuals executing the Loan Documents are duly authorized to do so.

**5.4 Litigation.** Except for pre-petition litigation that is stayed by 11 U.S.C. § 362, the Chapter 11 Case or as otherwise set forth in Schedule 5.4, there is no pending or, to the best knowledge of the Borrower, threatened action, suit or proceeding affecting the Borrower or any of its properties before any court or other Governmental Authority or any arbitrator that (i) if adversely determined, could have a Material Adverse Effect or (ii) relates to this Agreement or any other Loan Document or any transaction contemplated hereby or thereby

**5.5 Enforceability.** Subject to entry of the DIP Orders, this Agreement is, and each other Loan Document to which the Borrower is or will be a party when delivered hereunder, a legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its terms.

**5.6 Use of Proceeds.** The proceeds of the Term Loans shall be, or have been, used, subject to the other terms and conditions of this Agreement, to (a) pay fees and expenses related to this Agreement and the Chapter 11 Case and (b) fund certain other expenditures of the Borrower, in each case, as set forth in each Notice of Borrowing and consistent with the Budget. The Borrower shall not fund, and has not funded, any payment, expenditure, disbursement, fee, expense or other obligation of Columbus with the proceeds of any Term Loan.

**5.7 Laws.** Except as set forth on Schedule 5.7, the Borrower is not in violation of any law, rule or regulation, or in default with respect to any judgment, writ, injunction or decree of any governmental authority, where such violation or default is reasonably expected to result in a Material Adverse Effect.

**5.8 Information Correct and Current.** No financial statement, exhibit or schedule furnished, by or on behalf of the Borrower to the Agent or any Lender in connection with any Loan Document contained or contains any material misstatement of fact or omitted or omits to state any material fact necessary to make the statements therein, in the light of the circumstances under which they were or are made, not misleading in any material respect at the time such statement was made or deemed made. Additionally, any and all financial or business projections provided by the Borrower to the Agent and each Lender shall be at the time delivered provided in good faith and based on the most current data and information available to the Borrower, it being recognized by the Agent and each Lender that such financial information as it relates to future events is not to be viewed as fact and that actual results during the period or periods covered by such financial information may differ from the projected results set forth therein by a material amount.

**5.9 Tax Matters.** Except as described on Schedule 5.9, (a) the Borrower has filed all federal and material state and local tax returns that it is required to file (or extensions thereof) within the time and manner required by applicable law, (b) the Borrower has duly paid or fully reserved for all material taxes or installments thereof (including any interest or penalties) as and when due, which have or may become due pursuant to such returns, and (c) the Borrower has paid or fully reserved for any material tax assessment received by the Borrower (including any taxes being contested in good faith and by appropriate proceedings).

**5.10 Intellectual Property Claims.** Except for Permitted Liens, the Borrower is the sole owner of, or otherwise has the right to use, the Intellectual Property material to its business. As of the Interim Facility Effective Date, except as described on Schedule 5.10, to the Borrower's knowledge, (i) each of the material Copyrights, Trademarks and Patents is valid and enforceable, (ii) no material Intellectual Property of the Borrower has been judged invalid or unenforceable, in whole or in part, by a final, non-appealable decision of a court of competent jurisdiction, and (iii) no claim has been made in writing to the Borrower that any material Intellectual Property of the Borrower violates the rights of any third party, which claim the Borrower believes to be valid and could reasonably be expected to result in a Material Adverse Effect. The Borrower is not in



material breach of, nor has the Borrower failed to perform any material obligations under, any of the foregoing contracts, licenses or agreements and, to the Borrower's knowledge, no third party to any such contract, license or agreement is in material breach thereof or has failed to perform any material obligations thereunder, in each case, where such breach or failure would reasonably be expected to result in a Material Adverse Effect.

**5.11 Intellectual Property.** Except as described on Schedule 5.11, the Borrower has all material rights with respect to Intellectual Property necessary in the operation or conduct of the Borrower's business as currently conducted. Except as would not reasonably be expected to result in a Material Adverse Effect, to the Borrower's knowledge, the Borrower owns or has the right to use, pursuant to valid licenses, all software development tools, library functions, compilers and all other third-party software and other items that are used in the design, development, promotion, sale, license, manufacture, import, export, use or distribution of Borrower Products.

**5.12 Borrower Products.** Except as described on Schedule 5.12, no Intellectual Property owned by the Borrower or Borrower Product has been or is subject to any actual or, to the knowledge of the Borrower, threatened (in writing) litigation, proceeding (including any proceeding in the United States Patent and Trademark Office or any corresponding foreign office or agency) or outstanding decree, order, judgment, settlement agreement or stipulation that restricts in any manner the Borrower's use, transfer or licensing thereof or that affects the validity, use or enforceability thereof, except in each case, as would not reasonably be expected to have a Material Adverse Effect. There is no decree, order, judgment, agreement, stipulation, arbitral award or other provision entered into in connection with any litigation or proceeding against the Borrower that obligates the Borrower to grant licenses or ownership interest in any future Intellectual Property related to the operation or conduct of the business of the Borrower or Borrower Products, except in each case, as would not reasonably be expected to have a Material Adverse Effect. The Borrower has not received any written notice or claim challenging or questioning the Borrower's ownership in any Intellectual Property (or written notice of any claim challenging or questioning the ownership in any licensed Intellectual Property of the owner thereof) or suggesting that any third party has any claim of legal or beneficial ownership with respect thereto, except in each case, as would not reasonably be expected to have a Material Adverse Effect. To the Borrower's knowledge, neither the use of its Intellectual Property nor the production and sale of Borrower Products infringes the Intellectual Property or other rights of others, except in each case, as would not reasonably be expected to have a Material Adverse Effect.

**5.13 Capitalization and Subsidiaries.** The Borrower's capitalization is set forth on Schedule 5.13 annexed hereto. The Borrower does not own any stock, partnership interest or other securities of any Person, except as set forth on Schedule 5.13.

**5.14 Not a Regulated Entity.** The Borrower is not (a) an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" within the meaning of the Investment Company Act of 1940; or (b) subject to regulation under the Federal Power Act, the Interstate Commerce Act, any public utilities code or any other applicable law regarding its authority to incur Indebtedness.

**5.15 Margin Stock.** The Borrower is not engaged, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any Margin Stock (as defined in Regulation U of the Board of Governors). No proceeds of the Term Loans will be, or have been, used by the Borrower to purchase or carry, or to reduce or refinance any Indebtedness incurred to purchase or carry, any Margin Stock or for any related purpose in violation of Regulations T, U or X of the Board of Governors.

**5.16 Filings.** The Borrower has timely filed, with the SEC, each report or other document required to be so filed by the Borrower pursuant to Section 13(a), 14 or 15(d) of the Exchange Act and no such report or document, as of the date it was so filed, contained an untrue statement of a material fact or omitted to state a material fact required to be stated therein or necessary to make the statements therein, in the light of the circumstances under which they were made, not misleading.

## SECTION 6. INSURANCE; INDEMNIFICATION.

**6.1 Coverage.** The Borrower shall cause to be carried and maintained commercial general liability insurance, on an occurrence form, against risks customarily insured against in the Borrower's line of business. Such risks shall include the risks of bodily injury, including death, property damage, personal injury, advertising injury, and contractual liability per the terms of the indemnification agreement found in Section 6.3. The Borrower must maintain a minimum of \$2,000,000 of commercial general liability insurance (including umbrella) in the aggregate. The Borrower has and agrees to maintain directors' and officers' insurance. So long as the Borrower has Obligations outstanding, the Borrower shall also cause to be carried and maintained insurance upon the Collateral, insuring against physical loss or damage with replacement cost coverage in an amount not less than \$35,000,000, provided that such insurance may be subject to standard exceptions and deductibles.

**6.2 Certificates.** The Borrower shall deliver to the Agent and Lenders certificates of insurance that evidence the Borrower's compliance with its insurance obligations in Section 6.1 and the obligations contained in this Section 6.2. The Borrower's insurance certificate shall state the Agent is an additional insured for commercial general liability and a loss payee for property insurance with respect to the Collateral. Attached to the certificates of insurance will be additional insured endorsements for liability and lender's loss payable endorsements for property damage insurance with respect to the Collateral, or other endorsements reasonably acceptable to the Agent. All certificates of insurance with respect to the Collateral will provide for a minimum of thirty (30) days advance written notice to the Agent of cancellation (except for 10 days for nonpayment), or other evidence of notice of cancellation reasonably acceptable to the Agent. Any failure of the Agent or any Lender to scrutinize such insurance certificates for compliance is not a waiver of the Agent's or any Lender's rights, all of which are reserved.

**6.3 Indemnity.** The Borrower agrees to indemnify and hold the Agent and each Lender and its officers, directors, employees, agents, attorneys, representatives and shareholders harmless (each, an "**Indemnitee**"), on an after tax basis, from and against any and all claims, costs, expenses, damages and liabilities (including such claims, costs, expenses, damages and liabilities based on liability in tort, including strict liability in tort), including reasonable attorneys' fees and disbursements and other costs of investigation or defense (including those incurred upon any

appeal), that may be instituted or asserted against or incurred by any Indemnitee as the result of credit having been extended, suspended or terminated under this Agreement and the other Loan Documents or the administration of such credit, or in connection with or arising out of the transactions contemplated hereunder and thereunder, or any actions or failures to act in connection therewith, or arising out of the disposition or utilization of the Collateral, excluding in all cases claims of any Indemnitee resulting from such Indemnitee's bad faith, breach of contract, gross negligence or willful misconduct (collectively, the "**Indemnified Claims**"). This Section 6.3 shall not apply with respect to Taxes other than any Taxes that represent costs, expenses, losses, claims, damages or liabilities arising from any non-Tax claim. .

## **SECTION 7. COVENANTS OF THE BORROWER.**

So long as any principal of or interest on any Loan or any other Obligation of the Borrower (whether or not due) shall remain unpaid or any Lender shall have any Term Loan Commitment to the Borrower hereunder, the Borrower, as applicable, agrees as follows:

**7.1 Reports.** The Borrower shall furnish to the Agent and the Lenders the following financial statements and reports:

- (a) as soon as practicable (and in any event within 30 days) after the end of each month, unaudited balance sheet and income statement (prepared on a consolidated basis, if applicable), certified by the Borrower's Chief Executive Officer or Chief Financial Officer to the effect that they have been prepared in accordance with GAAP, except (i) for the absence of footnotes, (ii) that they are subject to normal year-end adjustments, and (iii) that they do not contain certain non-cash items;
- (b) as soon as practicable (and in any event within 45 days) after the end of each calendar quarter, (i) unaudited interim and year-to-date financial statements as of the end of such calendar quarter (prepared on a consolidated basis, if applicable), including balance sheet and related statements of income and cash flows, certified by the Borrower's Chief Executive Officer or Chief Financial Officer to the effect that they have been prepared in accordance with GAAP, except (x) for the absence of footnotes, a (y) that they are subject to normal year-end adjustments, and (z) that they do not contain certain non-cash items; and (ii) the most recent capitalization table for Borrowers;
- (c) no earlier than four weeks after the Petition Date and no more frequently than every four weeks thereafter, an updated Budget for the succeeding period, superseding the Budget previously delivered for such succeeding periods, setting forth projected cash receipts, if any, and disbursements of the Borrower (on a separate basis) for the period covered thereby, which updated Budget, when delivered and as so updated, shall be in duration and form and substance satisfactory to the Agent and the Lenders, and (1) believed by the Borrower at the time furnished to be reasonable, (2) prepared on a reasonable basis and in good faith with supporting information in detail acceptable to the Agent and the Lenders, and (3) based on assumptions believed by the Borrower to be reasonable at the time made and upon the best information then reasonably available to the Borrower, and shall be accompanied by a certificate of the Chief Executive

Officer or Chief Financial Officer of the Borrower certifying as to the matters set forth in subclauses (1), (2) and (3);

- (d) commencing on Wednesday, November 19, 2014 and on Wednesday of each subsequent week, by 2:00 p.m. (Eastern time) on such date:
  - (i) a variance and compliance report, in a form and with supporting information in detail acceptable to the Agent showing the comparison of, and the variances between, actual performance to projections for each line item of the Budget and reconciling the sources, uses and disbursements of cash, (1) for the week ending on the immediately preceding Sunday and (2) the Measurement Period most recently ended; and
  - (ii) simultaneously with the delivery of the report required by Section 7.1(d)(i), a certificate from the Chief Executive Officer or Chief Financial Officer of the Borrower showing the calculation of the financial covenants specified in Section 7.24;
- (e) promptly after the sending or filing thereof, as the case may be, copies of any proxy statements, financial statements or reports that the Borrower has made available to holders of its common stock and/or Preferred Stock and copies of any regular, periodic and special reports or registration statements that the Borrower files with the SEC or any governmental authority that may be substituted therefor, or any national securities exchange;
- (f) as soon as possible, and in any event within two (2) days after the occurrence of a Default or an Event of Default or the occurrence of any event or development that could reasonably be expected to result in a Default or Event of Default or to have, either individually or in the aggregate, a Material Adverse Effect, the written statement of the Chief Executive Officer or the Chief Financial Officer of the Borrower setting forth the details of such Default or Event of Default or other event or development having a Material Adverse Effect and the action which the Borrower propose to take with respect thereto;
- (g) promptly after the commencement thereof but in any event not later than three (3) days after service of process with respect thereto on, or the obtaining of knowledge thereof by, the Borrower, notice of each action, suit or proceeding before any court or other Governmental Authority or other regulatory body or any arbitrator, which, if adversely determined, could have a Material Adverse Effect;
- (h) as soon as possible and in any event within three (3) Business Days after execution, receipt or delivery thereof, copies of any material notices that the Borrower executes or receives in connection with the KiOR Sale or any other sale or disposition of any of its property or assets;
- (i) [reserved];

- (j) promptly and in any event within three (3) Business Days after the filing thereof and to the extent the same is not publicly available on the Bankruptcy Court's electronic docket, copies of all pleadings, motions, applications, financial information and other papers and documents filed by the Borrower in the Chapter 11 Case, which papers and documents shall also be given or served on the Agent's counsel;
- (k) promptly and in any event within three (3) Business Days after the sending thereof, copies of all written reports (excluding information concerning the identification of bidders and the amount of bids submitted pursuant to the Bid Procedures Order) given by the Borrower to any official or unofficial creditors' committee in the Chapter 11 Case;
- (l) [reserved]; and
- (m) promptly and in any event within two (2) Business Days after request thereof, such other information concerning the condition or operations, financial or otherwise, of the Borrower as the Agent may from time to time may reasonably request.

**7.2 Taxes.** The Borrower and its Subsidiaries shall pay when due all material Taxes (unless being contested in good faith and by appropriate proceedings) fees or other charges of any nature whatsoever (together with any related interest or penalties) now or hereafter imposed or assessed against the Borrower or its Subsidiaries or the Collateral or upon the Borrower's or its Subsidiaries ownership, possession, use, operation or disposition thereof or upon the Borrower's or its Subsidiaries rents, receipts or earnings arising therefrom, subject to and only as permitted by the Bankruptcy Code. The Borrower or its applicable Subsidiary shall file on or before the due date therefor all material personal property tax returns (or extensions) in respect of the Collateral.

**7.3 Compliance with Laws.** The Borrower shall comply with all laws, rules and regulations, subject to and only as permitted by the Bankruptcy Code, unless failure to comply could not reasonably be expected to have a Material Adverse Effect.

**7.4 Status Calls; Financial Advisors.** The Borrower and their respective professional and financial advisors shall participate in weekly conference calls with the Agent, the Lenders and/or their financial advisors to review and discuss the KiOR Sale process and the Milestones, variances from the Budget, operational issues and financial information. In addition, the advisors of the Agent and the Lenders shall have reasonable access to the Borrower and their respective professional and financial advisors.

**7.5 Inspection Rights.** The Borrower shall permit the Agent and any representative of the Agent, including its attorneys and accountants, to examine and make copies of and abstracts from its records and books of account, to visit and inspect its properties, to verify materials, leases, notes, accounts receivable, deposit accounts and its other assets, to conduct audits, physical counts, valuations, appraisals, or examinations and to discuss its affairs, finances and accounts with any of its directors, officers, managerial employees, independent accountants, auditors, financial advisors or any of its other representatives, in each case at reasonable times and upon reasonable notice during normal business hours.

**7.6 Environmental.** (i) The Borrower shall keep any property either owned or operated by it free of any Environmental Liens; (ii) comply with all material Environmental Laws and provide to the Agent any documentation of such compliance which the Agent may reasonably request; (iii) provide the Agent written notice within five (5) days of any Release of a Hazardous Material in excess of any reportable quantity from or onto property at any time owned or operated by it and take any Remedial Actions required to abate said Release; (iv) provide the Agent with written notice within five (5) days of the receipt of any of the following: (A) notice that an Environmental Lien has been filed against any property of the Borrower; (B) commencement of any Environmental Action or notice that an Environmental Action will be filed against the Borrower; and (C) notice of a violation, citation or other administrative order which could have a Material Adverse Effect and (v) defend, indemnify and hold harmless the Agent and the Lenders and their Assignees, and their respective employees, agents, officers and directors, from and against any claims, demands, penalties, fines, liabilities, settlements, damages, costs or expenses (including reasonable attorney and consultant fees, investigation and laboratory fees, court costs and litigation expenses) arising out of (A) the presence, disposal, release or threatened release of any Hazardous Materials on any property at any time owned or occupied by any Loan Party or any of its Subsidiaries (or its predecessors in interest or title), (B) any personal injury (including wrongful death) or property damage (real or personal) arising out of or related to such Hazardous Materials, (C) any investigation, lawsuit brought or threatened, settlement reached or government order relating to such Hazardous Materials, (D) any violation of any Environmental Law or (E) any Environmental Action filed against the Agent or any Lender.

**7.7 Use of Proceeds; Budget Compliance.** The proceeds of the Term Loans shall be used, subject to the other terms and conditions of this Agreement, to fund expenditures and disbursements of the Borrower (including fees and expenses related to this Agreement and the Chapter 11 Case), in each case, as set forth in each Notice of Borrowing and consistent with the Budget. The Borrower shall not make any payment or incur any obligation that is not provided for in the Budget (within the variances from budgeted amounts permitted by Section 7.24), other than with the prior written consent of the Agent. The Borrower shall not fund any payment, expenditure, disbursement, fee, expense or other obligation of Columbus with the proceeds of any Term Loan.

**7.8 Register.** The Agent shall maintain at its offices a register for the recordation of the names and addresses of the Lenders and the amount of principal and interest due and payable or to become due and payable from the Borrower to each Lender hereunder or any other Loan Documents (the "Register"). Any assignment or transfer of an interest in any Loan shall be effective only upon appropriate entries with respect thereto being made in the Register, which the Agent shall promptly record upon receiving notice of any such proposed assignment or transfer. The Register shall be available for inspection by each party hereto, at any reasonable time and from time to time upon reasonable prior notice. Notwithstanding the generality of the foregoing, the Agent shall reflect ownership interests in the Loans in a book entry system in accordance with all applicable provisions of the Internal Revenue Code and Treasury Regulations, including for purposes of establishing that the Loans are in registered form under Sections 1.871-14(c)(1)(i) and 5f.103-1(c) of the Treasury Regulations.

**7.9 Milestones.** The Borrower shall comply with and achieve the Milestones.

**7.10 Further Assurances.** Subject to the terms of the DIP Orders, the Borrower shall from time to time execute, deliver and/or file, alone or with the Agent or any Lender, any financing statements, security agreements, mortgages, deeds of trust, collateral assignments, notices or other documents requested by the Agent with respect to the Collateral. The Borrower shall from time to time procure any instruments or documents as may be requested by the Agent or any Lender with respect to the Collateral. In addition, and for such purposes only, the Borrower hereby authorizes the Agent to prepare and deliver on behalf of the Borrower and to file financing statements either in the Agent's name or in the name of the Agent as agent and attorney-in-fact for the Borrower. The Borrower shall protect and defend the Borrower's title to the Collateral and the Agent's Lien thereon against all Persons claiming any interest adverse to the Borrower or the Agent or any Lender other than holders of Permitted Liens. For the avoidance of doubt, nothing herein shall require the Agent or any Lender to file any financing statements, mortgages, certificates of title, notices of Lien or similar instruments in any jurisdiction or filing office or to take any other action in order to validate or perfect any Lien and security interest granted by or pursuant to this Agreement, the Interim DIP Order or the Final DIP Order, as the case may be, or any other Loan Document.

**7.11 Indebtedness.** The Borrower shall not create, incur, assume, guarantee or be or remain liable with respect to any Indebtedness other than Permitted Indebtedness.

**7.12 Liens; Collateral.** The Borrower shall not enter into any agreement with any Person, or suffer any agreement to exist (in each case, other than the Agent and Lenders and any other holder of a Permitted Lien), granting a Lien on the Collateral. The Borrower shall at all times keep the Collateral and all other property and assets used in the Borrower's operations or in which the Borrower now or hereafter holds any interest free and clear from any Liens whatsoever other than Permitted Liens. The Borrower shall give the Agent and Lenders prompt written notice when the Borrower knows of any legal process affecting title to any of the Collateral, or any pending or threatened (in writing) litigation against the Borrower that would reasonably be expected to have a Material Adverse Effect.

**7.13 Investments.** The Borrower shall not directly or indirectly acquire or own, or make any Investment in or to any Person other than Permitted Investments.

**7.14 Payments on Indebtedness.** The Borrower shall not make any payment or prepayment of interest on, principal of, premium, if any, fees, redemption, conversion, exchange, purchase, retirement, defeasance, sinking fund or similar payment with respect to, any Indebtedness, except as permitted under this Agreement. The Borrower shall not make any payment or incur any obligation that is not provided for in the Budget (within the variances from budgeted amounts permitted by Section 7.24), other than with the prior written consent of the Agent.

**7.15 Dispositions.** Except for Permitted Dispositions, the Borrower shall not voluntarily or involuntarily transfer, sell, lease, license, lend or in any other manner convey any equitable, beneficial or legal interest in any portion of its assets.

**7.16 Fundamental Changes.** The Borrower shall not (a) merge or consolidate with or into any other organization, (b) acquire all or substantially all of the equity interests or property of

another Person, or (c) liquidate, wind-up its affairs or dissolve itself, whether in a single transaction or in a series of related transactions.

**7.17 Transactions with Affiliates.** The Borrower shall not, directly or indirectly, enter into or permit to exist any material transaction with any Affiliate, other than the transactions or agreements set for on Schedule 7.17.

**7.18 Deposit Accounts, Securities Accounts and Investment Accounts.** Schedule 5.2 lists all of the Deposit Accounts, securities accounts and other investment accounts owned or maintained by the Borrower. The Borrower shall not maintain any (a) Deposit Accounts or (b) securities accounts or investments accounts except to which the Agent has an Account Control Agreement. No additional Deposit Accounts, securities accounts or investment accounts shall be opened and maintained by the Borrower, unless the Borrower causes to be executed and delivered, substantially concurrently with such opening, an Account Control Agreement in favor of the Agent for each such Deposit Account, securities account and/or investment account opened and maintained by the Borrower.

**7.19 Subsidiaries.** The Borrower shall not form or acquire any Subsidiary.

**7.20 Amendments.** Without the Agent's prior consent, the Borrower shall not, directly or indirectly, amend, modify, or change any of the terms or provisions of any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness.

**7.21 Hazardous Materials.** The Borrower shall not permit the use, handling, generation, storage, treatment, Release or disposal of Hazardous Materials at any property owned or leased by it, except in compliance with Environmental Laws.

**7.22 DIP Orders; Administrative Priority; Lien Priority; Payment of Claims.**

The Borrower shall not:

- (a) at any time, seek, consent to or suffer to exist any reversal, modification, amendment, stay or vacatur of any of the DIP Orders, except for modifications and amendments agreed to by the Agent;
- (b) at any time, suffer to exist a priority for any administrative expense or unsecured claim against the Borrower (now existing or hereafter arising of any kind or nature whatsoever), including any administrative expense of the kind specified in, or arising or ordered under, Sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114 of the Bankruptcy Code equal or superior to the priority of the Agent and the Lenders in respect of any Obligations, except as provided in Section 3.2 and except for payments permitted to be made under this Agreement consistent with the Budget;



- (c) at any time, suffer to exist any Lien on the Collateral having a priority equal or superior to the Liens in favor of the Agent for its benefit and the benefit of the Lenders in respect of the Collateral, except for Permitted Priority Liens;
- (d) at any time, seek to reject or terminate, or permit the rejection or termination of, any license agreement, real property lease, or other material contract without the consent of the Agent; provided, however, that the Borrower may take such action if such contract relates to personal property, goods or services that are provided to or for the primary benefit of Columbus; or
- (e) prior to the date on which all the Obligations have been paid in full in cash, pay any administrative expense claims except (i) Carve-Out Expenses, (ii) Obligations due and payable hereunder, and (iii) other administrative expense and professional claims approved by order of the Bankruptcy Court, but only to the extent consistent with the Budget.

**7.23 Borrowing Requests.** The Borrower shall not request any Term Loan if, after giving effect to such requested Term Loan and the use of the proceeds thereof (so long as such proceeds are used within 7 days after the receipt thereof), the aggregate amount of unrestricted Cash (excluding outstanding checks) and Cash Equivalents held by the Borrower exceeds \$250,000.

**7.24 Budget Variances.** The Borrower shall not (unless the Agent shall otherwise consent in writing):

- (a) permit the variance between actual disbursements for any line item in any given week to be greater than 10% of the disbursements projected for such line item in that week in the Budget plus the amount set forth in (c), below;
- (b) permit the variance between actual aggregate disbursements for any line item during any Measurement Period to be greater than 10% of the aggregate disbursements projected for such line item (excluding fees and expenses of the Borrower's Professionals which shall not be subject to any permitted upward variance) in the Budget for such Measurement Period; and
- (c) any unused amounts contained in a line item for a given week (without giving effect to the 10% variance set forth in clause (a), above) may be expended for the same line item in the succeeding four weekly periods;

provided, that, in each case, no amounts set forth in any line item may be expended for a purpose other than the purpose described in the line item; provided further that disbursements to the Agent Professionals and the professionals of any Lender shall not be subject to any variance reporting. Furthermore, the Borrower shall not fund any disbursement or other obligation of Columbus with the proceeds of any Term Loan.

**7.25 Critical Vendors and Other Payments.** The Borrower shall not make (a) any pre-petition "critical vendor" payments or other payments on account of any creditor's pre-petition unsecured claims and (b) payments to any vendors who may be entitled to assert various lien

claims against the Borrower, its property or other assets, on account of any such vendor's pre-petition claims, if the Borrower failed to pay for pre-petition goods and services, except, in each case, (i) as otherwise permitted by "first day orders" or in amounts and on terms and conditions that are approved by order of the Bankruptcy Court and (ii) are permitted by the Budget.

**SECTION 8. [RESERVED].**

**SECTION 9. EVENTS OF DEFAULT**

**9.1 Events of Default.** The occurrence of any one or more of the following events shall be an immediate "Event of Default":

- (a) Payments. The Borrower fails to pay any Loan or other amount due under this Agreement or any of the other Loan Documents on the due date thereof; or
- (b) Covenants; Provisions; Loan Documents. The Borrower breaches or defaults in the performance of (i) any covenant under Section 7 or (ii) any other covenants (other than those listed in Section 9.1(b)(i)), any other provision or Obligation under this Agreement or under any of the other Loan Documents and such breach or default under this clause (ii) is not cured within the later of (A) three (3) Business Days after the occurrence of such breach or default or (B) provided that timely notice of such breach or default has been provided by the Borrower to the Agent in accordance with Section 7.1(f), five (5) Business Days after such notice has been provided; or
- (c) Representations. Any representation or warranty made by the Borrower in any Loan Document shall have been false or misleading in any material respect when made; or
- (d) Loan Documents. Any provision of any Loan Document shall at any time for any reason (other than pursuant to the express terms thereof) cease to be valid and binding on or enforceable against the Borrower, or the validity, perfection, priority or enforceability thereof shall be contested by any Person (other than the Agent or any Lender thereto), or a proceeding shall be commenced by any Person or any Governmental Authority having jurisdiction over any of them, seeking to establish the invalidity or unenforceability thereof, or the Borrower shall deny in writing that it has any liability or obligation purported to be created under any Loan Document; or
- (e) Attachments; Judgments. Any material portion of the Borrower's assets is attached or seized, or a levy is filed against any such assets, or a judgment or judgments is/are entered for the payment of money, individually or in the aggregate, of at least \$100,000; or
- (f) Collateral. Any material damage to, or loss, theft or destruction of, any material portion of the Collateral, whether or not insured; or
- (g) Change in Control. A Change in Control shall have occurred; or
- (h) [reserved]; or

- (i) Chapter 11 Case. The occurrence of any of the following in any Chapter 11 Case:
- (i) the Interim DIP Order shall not have been entered by the Bankruptcy Court within three (3) Business Days after the Petition Date;
  - (ii) the Final DIP Order shall not have been entered by the Bankruptcy Court by the third (3<sup>rd</sup>) Business Day after the hearing on the Bid Procedures Motion;
  - (iii) the Interim DIP Order or the Final DIP Order, as the case may be, shall have been revoked, reversed, vacated, stayed, modified, extended, supplemented or amended without the express prior written consent of the Agent and the Required Lenders;
  - (iv) an order with respect to the Chapter 11 Case shall be entered by the Bankruptcy Court appointing (A) a trustee under Section 1104 of the Bankruptcy Code or (B) a responsible officer or an examiner with enlarged powers relating to the Borrower's operations (beyond those set forth in Sections 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106 of the Bankruptcy Code;
  - (v) an order with respect to any Chapter 11 Case shall be entered by the Bankruptcy Court without the express prior written consent of the Agent, (A) to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to the Borrower *pari passu* or superior to the priority of (1) the Agent and the Lenders in respect of the Obligations or (2) the Prepetition Secured Agents and the Prepetition Secured Lenders in respect of the Adequate Protection Replacement Liens, or (B) to grant or permit the grant of a Lien on the Collateral other than a Permitted Lien;
  - (vi) an order with respect to any Chapter 11 Case shall be entered by the Bankruptcy Court converting such Chapter 11 Case to a case under Chapter 7 of the Bankruptcy Code;
  - (vii) an order shall be entered by the Bankruptcy Court dismissing any Chapter 11 Case which does not contain a provision for termination of the Total Term Loan Commitments and payment in full in cash of all Obligations hereunder and under the other Loan Documents on dismissal;
  - (viii) [reserved];
  - (ix) the Borrower shall take any action, including the filing of an application, motion or other pleading, directly or indirectly, supporting or advancing any of the events or actions set forth under clauses (i) through (vii) above;
  - (x) an order shall be entered by the Bankruptcy Court granting relief from the automatic stay to any creditor of the Borrower with respect to any claim (other than any claim for personal injury that is covered by liability insurance and other than any claim relating to personal property, goods, or services that are provided

to or for the primary benefit of Columbus) against the Borrower in an amount equal to or exceeding \$250,000 in the aggregate;

- (xi) if any material property or assets of Borrower is sold without the express written consent of the Agent;
- (xii) without the prior written consent of the Agent and the Required Lenders, the Borrower shall take any action, including the filing of an application, motion or other pleading, requesting or seeking authority for the Borrower (A) to obtain additional financing under Sections 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement; (B) to grant any Lien other than Permitted Liens upon or affecting any Collateral; (C) to sue or grant any Lien on (other than Permitted Liens), cash collateral of the Agent and the Lenders under Section 363(c) of the Bankruptcy Code; (D) to take any other action or actions materially adverse to the Agent and/or any Lender or their rights and remedies hereunder; or (E) the entry of any order by the Bankruptcy Court in any Chapter 11 Case granting relief as described in subclauses (A) through (D) of this clause;
- (xiii) (A) the Borrower, or any representative of the Borrower, shall attempt to (1) invalidate, reduce or otherwise impair the Liens or security interests of the Agent and/or any Lender's claims or rights against the Borrower or (2) subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (B) any Collateral becoming subject to surcharge or to marshaling, (C) any Lien or security interest created by this Agreement, the DIP Orders or any other Loan Document shall, for any reason, cease to be a valid first priority Lien, subject only to Permitted Priority Liens or (D) any action is commenced by any Person which contests the validity, perfection, enforceability or priority of any of the Liens and security interests of the Agent and/or the Lenders created by this Agreement, any of the DIP Orders or any other Loan Document;
- (xiv) if the Borrower commences any action against any Prepetition Secured Agent or any Prepetition Secured Lender, or their respective agents, advisors or employees, challenging the validity, perfection, priority, extent or enforceability of any Prepetition Secured Obligations or claims that arose in connection with the Prepetition Secured Loan Documents, or seeking to subordinate or avoid any Lien or claim thereunder;
- (xv) the determination of the Borrower, whether by vote of the Board of Directors or otherwise, to liquidate all or substantially all of the Borrower's assets, or employ an agent or other third party (other than Guggenheim) to conduct any sales of all or substantially all of the Borrower's assets, or the filing of a motion or other application in any Chapter 11 Case, seeking authority to do any of the foregoing, in each case without the prior written consent of the Agent;
- (xvi) the failure to comply with or achieve any Milestone (subject to any grace period set forth in Annex I);

- (xvii) immediately upon the consummation of the KiOR Sale the Obligations are not paid in full;
- (xviii) the Borrower makes any disbursement or payment not in accordance with, or set forth in, the Budget;
- (xix) an order shall be entered by the Bankruptcy Court amending, supplementing or otherwise modifying, or the filing by the Borrower of an application, motion, pleading or notice seeking the amendment, supplement or other modification of or appeal against, in each case, the DIP Orders or any of the "first day" orders in respect of cash management or critical vendors or suppliers, in each instance, without the consent of the Agent;
- (xx) except with respect to payments as permitted by any order of the Bankruptcy Court approving a "first day" motion (and included in the Budget), an order shall be entered by the Bankruptcy Court permitting the payment of, or granting adequate protection with respect to, prepetition Indebtedness or other obligations, whether secured or not (other than the Prepetition Secured Obligations) or the filing of any motion seeking the same by the Borrower, in each case, without the consent of the Agent;
- (xxi) this Agreement, the DIP Orders or any other Loan Document, shall for any reason fail or cease to create a valid and perfected and, except to the extent permitted by the terms hereof or thereof, first priority Lien in favor of the Agent for the benefit of the Agent and Lenders on any Collateral purported to be covered thereby; or
- (xxii) any other "Termination Event" under and as defined in the Interim DIP Order or the Final DIP Order, as the case may be, shall have occurred;

then, and in any such event, the Agent may, and shall at the request of the Required Lenders, (i) immediately cease making any Term Loan hereunder, (ii) terminate, reduce or restrict the Total Term Loan Commitments, whereupon the Total Term Loan Commitments shall immediately be so terminated, reduced or restricted, and/or (iii) absent the granting of relief in favor of the Borrower as set forth in the Interim DIP Order or the Final DIP Order, as the case may be, (A) declare all or any portion of the Loans then outstanding to be due and payable, whereupon all or such portion of the aggregate principal of all Loans, all accrued and unpaid interest thereon, all fees and all other amounts payable under this Agreement and the other Loan Documents shall become due and payable immediately, without presentment, demand, protest or further notice or formalities, of any kind, all of which are hereby expressly waived by the Borrower, (B) terminate this Agreement and any other Loan Document as to any future liability or obligation of the Agent or any Lender, but without affecting any of the Obligations or the Liens securing the Obligations and (C) exercise any and all of its other rights and remedies under applicable law, hereunder and under the other Loan Documents (including under the Bankruptcy Code and the Uniform Commercial Code).

## 9.2 Allocation.

- (a) Subject to Permitted Priority Liens and the Carve-Out Expenses, the repayment of any of the Obligations or the proceeds of any sale (including the KiOR Sale), disposition or other realization upon all or any part of the Collateral shall be applied by the Agent and the Lenders in the following order of priorities:

First, to the Agent in an amount sufficient to pay in full the Agent's costs and professionals' and advisors' fees and expenses relating to the Obligations as described in Section 10.11;

Second, to the Lenders in an amount sufficient to pay in full the Lenders' costs and professionals' and advisors' fees and expenses relating to the Obligations as described in Section 10.11;

Third, to the Lenders (on a Pro Rata basis) in an amount equal to the then unpaid amount of the Obligations constituting interest on the Term Loans;

Fourth, to the Lenders (on a Pro Rata basis) in an amount equal to the then unpaid amount of the Obligations constituting principal on the Term Loans;

Fifth, to the Lenders in an amount equal to any other unpaid Obligations; and

Finally, after the full and final payment in cash of all of the Obligations, as the Bankruptcy Court or as a court of competent jurisdiction may direct.

- (b) The Agent and each Lender shall be deemed to have acted reasonably in the custody, preservation and disposition of any of the Collateral if it complies with the obligations of a secured party under the UCC.

#### SECTION 10.MISCELLANEOUS.

**10.1 Severability.** Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Agreement shall be prohibited by or invalid under such law, such provision shall be ineffective only to the extent and duration of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement.

#### **10.2 Notice.**

- (a) Notices Generally. All notices and other communications provided for hereunder shall be in writing and shall be mailed (certified mail, postage prepaid and return receipt requested), faxed or delivered by hand, Federal Express or other reputable overnight courier, or sent by electronic mail, at the following applicable address:

If to the Borrower

13001 Bay Park Road  
Pasadena, Texas 77507  
Attn: Chief Executive Officer

Attn: General Counsel  
Fax: (281) 694-8799

with a copy to:

King & Spalding, LLP  
1100 Louisiana, Suite 4000  
Houston, Texas 77002  
Attn: Ed Ripley, Esq. and Mark Wege, Esq.  
Fax: (713) 751-3290  
Email: [eripley@kslaw.com](mailto:eripley@kslaw.com) and [mwege@kslaw.com](mailto:mwege@kslaw.com)

If to the Agent

1760 The Alameda, Suite 300  
San Jose, CA 95126 Attn: Vinod Khosla  
Attn: Vinod Khosla  
Facsimile: (408) 289-8276

with a copy to:

Klee, Tuchin, Bogdanoff & Stern LLP  
1999 Avenue of the Stars  
Thirty-Ninth Floor  
Los Angeles, CA 90067-6049  
Attn: Thomas Patterson, Esq. and Maria Sountas-Argiropoulos, Esq.  
Fax: (310) 407-9090  
Email: [tpatterson@ktbslaw.com](mailto:tpatterson@ktbslaw.com) and [msargiropoulos@ktbslaw.com](mailto:msargiropoulos@ktbslaw.com)

or, as to each party, at such other address as shall be designated by such party in a written notice to the other parties complying as to delivery with the terms of this Section. All such notices and other communications shall be effective, (i) if mailed (certified mail, postage prepaid and return receipt requested), when received or three (3) days after deposited in the mails, whichever occurs first, (ii) if faxed or sent by electronic mail, when transmitted and confirmation received, or (iii) if delivered by hand, Federal Express or other reputable overnight courier, upon delivery, except that notices to the Agent pursuant to Section 2 shall not be effective until received by the Agent. Nothing in this Agreement or in any other Loan Document shall be construed to limit or affect the obligation of the Borrower or any other Person to serve upon the Agent and the Lenders in the manner prescribed by the Bankruptcy Code any pleading or notice required to be given to the Agent and the Lenders pursuant to the Bankruptcy Code.

(b) Electronic Communications.

- (i) The Agent and the Borrower may each agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be

limited to particular notices or communications. Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including email and Internet or intranet websites) pursuant to procedures approved by the Agent, provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 if such Lender, as applicable, has notified the Agent that it is incapable of receiving notices by electronic communication.

- (ii) Unless the Agent otherwise prescribes, (A) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement), and (B) notices or communications posted to an Internet or intranet website shall be deemed received upon the deemed receipt by the intended recipient, at its e-mail address as described in the foregoing clause (A), of notification that such notice or communication is available and identifying the website address therefor; provided that, for both clauses (A) and (B) above, if such notice, email or other communication is not sent during the normal business hours of the recipient, such notice or communication shall be deemed to have been sent at the opening of business on the next business day for the recipient.

**10.3 Entire Agreement; Amendments.** This Agreement and the other Loan Documents constitute the entire agreement and understanding of the parties hereto in respect of the subject matter hereof and thereof, and supersede and replace in their entirety any prior proposals, term sheets, letters, negotiations or other documents or agreements, whether written or oral, with respect to the subject matter hereof or thereof. No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document, and no consent with respect to any departure by the Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by the Agent at the written request of the Required Lenders) and the Borrower that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, modification, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and the Borrower, do any of the following: (a) increase the amount of any Term Loan Commitment or extend the Maturity Date, (b) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document, (c) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except in connection with the waiver of applicability of Section 2.3 (which waiver shall be effective with the written consent of the Required Lenders)), (d) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders, (e) amend, modify, or eliminate the definition of "Required Lenders" or "Pro Rata", (f) contractually subordinate any of the Agent's Liens, (g) other than in connection with a merger, liquidation, dissolution, release or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release the Borrower from any obligation for the payment of money hereunder or consent to the assignment or transfer by the Borrower of any of its rights



or duties under this Agreement or the other Loan Documents, (h) amend, modify, or eliminate any of the provisions of Section 2.7 or Section 9.2, or (i) amend, modify, or eliminate any of the provisions of Section 3 (except to add Collateral). In addition to the forgoing, no amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of any Loan Document that relates to the rights, duties or discretion of the Agent, without the written consent of the Agent, the Borrower, and the Required Lenders.

**10.4 No Strict Construction.** The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

**10.5 No Waiver.** The powers conferred upon the Agent and each Lender by this Agreement are solely to protect their respective rights hereunder and under the other Loan Documents and their interests in the Collateral and shall not impose any duty upon the Agent or any Lender to exercise any such powers. No omission or delay by the Agent or any Lender at any time to enforce any right or remedy reserved to it, or to require performance of any of the terms, covenants or provisions hereof by the Borrower at any time designated, shall be a waiver of any such right or remedy to which the Agent or any Lender is entitled, nor shall it in any way affect the right of the Agent or any Lender to enforce such provisions thereafter.

**10.6 Survival.** All agreements, representations and warranties contained in this Agreement and the other Loan Documents or in any document delivered pursuant hereto or thereto shall be for the benefit of the Agent and each Lender. Section 6.3, Section 8, Section 10.11, and any provisions that by their express terms are to survive the execution and delivery of this Agreement and the expiration or other termination of this Agreement shall survive such termination or expiration.

**10.7 Successors and Assigns.** The provisions of this Agreement and the other Loan Documents shall inure to the benefit of and be binding on the Borrower and its permitted assigns (if any). The Borrower shall not assign its obligations under this Agreement or any of the other Loan Documents without the Agent's and Lenders' express prior written consent, and any such attempted assignment shall be void and of no effect. Any Lender may assign, transfer, or endorse its rights hereunder and under the other Loan Documents in accordance with Section 10.13 hereof.

**10.8 Governing Law.** This Agreement and the other Loan Documents shall be governed by, and construed and enforced in accordance with, the laws of the State of New York, applicable to contracts made and to be performed in the State of New York, except as governed by the Bankruptcy Code.

**10.9 Consent to Jurisdiction, Service of Process and Venue.** ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT MUST BE BROUGHT IN THE BANKRUPTCY COURT, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT THE BORROWER HEREBY IRREVOCABLY ACCEPTS IN RESPECT OF ITS PROPERTY, GENERALLY AND

UNCONDITIONALLY, THE JURISDICTION OF THE BANKRUPTCY COURT AND THE POWER OF THE BANKRUPTCY JUDGE TO ENTER ORDERS AND JUDGMENTS. THE BORROWER HEREBY CONSENTS TO THE SERVICE OF PROCESS OUT OF THE BANKRUPTCY COURT AND IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID, TO THE BORROWER AT ITS ADDRESS FOR NOTICES AS SET FORTH IN SECTION 10.2.

**10.10 Mutual Waiver of Jury Trial.** THE BORROWER, THE AGENT AND THE LENDERS EACH HEREBY WAIVES ANY RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM CONCERNING ANY RIGHTS UNDER THIS AGREEMENT OR THE OTHER LOAN DOCUMENTS, OR UNDER ANY AMENDMENT, WAIVER, CONSENT, INSTRUMENT, DOCUMENT OR OTHER AGREEMENT DELIVERED OR WHICH IN THE FUTURE MAY BE DELIVERED IN CONNECTION THEREWITH, OR ARISING FROM OR RELATING TO ANY FINANCING RELATIONSHIP EXISTING IN CONNECTION WITH THIS AGREEMENT, AND AGREES THAT ANY SUCH ACTION, PROCEEDINGS OR COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY. THE BORROWER CERTIFIES THAT NO OFFICER, REPRESENTATIVE, AGENT OR ATTORNEY OF ANY AGENT OR ANY LENDER HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT ANY AGENT OR ANY LENDER WOULD NOT, IN THE EVENT OF ANY ACTION, PROCEEDING OR COUNTERCLAIM, SEEK TO ENFORCE THE FOREGOING WAIVERS. THE BORROWER PARTY HEREBY ACKNOWLEDGES THAT THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE AGENT AND THE LENDERS ENTERING INTO THIS AGREEMENT.

**10.11 Professional Fees.** The Borrower promises to pay the Agent's and the Lenders' fees and expenses necessary to finalize the loan documentation, including but not limited to reasonable attorneys' and other professionals' fees and expenses (including all Agent Professionals), UCC searches, filing costs, and other reasonable miscellaneous expenses. In addition, the Borrower promises to pay any and all reasonable attorneys' and other professionals' fees and expenses (including Lender Expenses) incurred by the Agent and each Lender after the date of this Agreement in connection with or related to: (a) the Loans; (b) the administration, collection, or enforcement of the Loans; (c) the amendment or modification of the Loan Documents; (d) any waiver, consent, release, or termination under the Loan Documents; (e) the protection, preservation, sale, lease, liquidation, or disposition of any Collateral or the exercise of remedies with respect to any Collateral; (f) any legal, litigation, administrative, arbitration, or out of court proceeding in connection with or related to the Borrower or any Collateral, and any appeal or review thereof; and (g) the Chapter 11 Case or any other action related to the Borrower, any Collateral, the Loan Documents, including representation of the Agent or any Lender in any adversary proceeding or contested matter in connection therewith, commenced or continued by or on behalf of the Borrower or its estate, and any appeal or review thereof.

**10.12 Public Disclosure.** The Borrower agrees that neither it nor any of its Affiliates will now or in the future issue any press release or other public disclosure, excluding filings with the Bankruptcy Court, using the name of the Agent, any Lender or any of their respective Affiliates

or referring to this Agreement or any other Loan Document without the prior written consent of the Agent or such Lender, except to the extent that the Borrower or such Affiliate is required to do so under applicable law (in which event, the Borrower or such Affiliate will consult with the Agent or such Lender before issuing such press release or other public disclosure). The Borrower hereby authorizes the Agent and each Lender, after consultation with the Borrower, to advertise the closing of the transactions contemplated by this Agreement, and to make appropriate announcements of the financial arrangements entered into among the parties hereto, as the Agent or such Lender shall deem appropriate.

**10.13 Assignment of Rights.** The Borrower acknowledges and understands that each Lender may, with the consent of the Agent, sell, transfer or assign all or part of its interest hereunder, under any Loan, under any Term Loan Commitment of such Lender and under the other Loan Documents, to any person or entity (an “Assignee”). After such assignment the term “Lenders” as used in the Loan Documents shall mean and include such Assignee, and such Assignee shall be vested with all rights, powers and remedies of a Lender hereunder with respect to the interest so assigned; but with respect to any such interest not so transferred, the assigning Lender shall retain all rights, powers and remedies hereby given. No such assignment by a Lender shall relieve the Borrower of any of its obligations hereunder. Each Assignee shall, to the extent it is entitled to an exemption from or reduction of withholding Tax with respect to payments made under the Loans or the Loan Documents, deliver to the Borrower, at the time or times reasonably requested by the Borrower, such properly completed and executed documentation reasonably requested by the Borrower, as will permit such payments to be made without withholding or at a reduced rate of withholding.

**10.14 Reinstatement; Certain Payments.** If any claim is ever made upon the Agent or any Lender for repayment or recovery of any amount or amounts received by the Agent or such Lender in payment or on account of any of the Obligations, the Agent or such Lender shall give prompt notice of such claim to each other Lender, the Agent, if applicable, and the Borrower, and if the Agent or such Lender repays all or part of such amount by reason of (i) any judgment, decree or order of any court or administrative body having jurisdiction over the Agent or such Lender or any of its property, or (ii) any good faith settlement or compromise of any such claim effected by the Agent or such Lender with any such claimant, then and in such event the Borrower agrees that (A) any such judgment, decree, order, settlement or compromise shall be binding upon it notwithstanding the cancellation of any Indebtedness hereunder or under the other Loan Documents or the termination of this Agreement or the other Loan Documents, and (B) it shall be and remain liable to the Agent or such Lender hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by the Agent or such Lender. The provisions of this Section shall survive the repayment of the Obligations and release of the Liens granted under the Loan Documents.

**10.15 Counterparts.** This Agreement and any amendments, waivers, consents or supplements hereto may be executed in any number of counterparts, and by different parties hereto in separate counterparts, each of which when so delivered shall be deemed an original, but all of which counterparts shall constitute but one and the same instrument.

**10.16 No Third Party Beneficiaries.** No provisions of the Loan Documents are intended, nor will be interpreted, to provide or create any third-party beneficiary rights or any other rights of

any kind in any person other than the Agent, the Lenders and the Borrower unless specifically provided otherwise herein, and, except as otherwise so provided, all provisions of the Loan Documents will be personal and solely between the Agent, the Lenders and the Borrower.

**10.17 No Assumption of Liability.** The Liens on Collateral granted hereunder are given as security only and shall not subject the Agent or any Lender to, or in any way modify, any obligation or liability of the Borrower relating to any Collateral, as applicable.

**10.18 Relationship with Lenders.** The obligations of each Lender hereunder are several, and no Lender shall be responsible for the obligations of any other Lender. Amounts payable hereunder to each Lender shall be a separate and independent debt. It shall not be necessary for the Agent or any other Lender to be joined as an additional party in any proceeding for such purposes. Nothing in this Agreement and no action of the Agent or Lenders pursuant to the Loan Documents or otherwise shall be deemed to constitute the Agent and any Lender to be a partnership, association, joint venture or any other kind of entity, nor to constitute control of the Borrower.

**10.19 Parties Including Trustee; Bankruptcy Court Proceedings.** Subject to the DIP Orders, this Agreement, the other Loan Documents, and all Liens created hereby or pursuant hereto or to any other Loan Document shall be binding upon the Borrower and any trustee or other successor in interest of the Borrower in the Chapter 11 Case or any subsequent case commenced under Chapter 7 of the Bankruptcy Code or any other bankruptcy or insolvency laws, and shall not be subject to Section 365 of the Bankruptcy Code. Subject to the DIP Orders, this Agreement and the other Loan Documents shall be binding upon, and inure to the benefit of, the successors of the Agent and Lenders and their respective assigns, transferees and endorsees. Subject to the DIP Orders, the Liens created by this Agreement and the other Loan Documents shall be and remain valid and perfected in the event of the substantive consolidation or conversion of the Chapter 11 Case or any other bankruptcy case of the Borrower to a case under Chapter 7 of the Bankruptcy Code, or in the event of dismissal of the Chapter 11 Case or the release of any Collateral from the jurisdiction of the Bankruptcy Court for any reason, without the necessity that the Agent or the Lenders file financing statements or otherwise perfect their security interests or Liens under applicable law.

## SECTION 11. THE AGENT.

**11.1 Appointment and Authority.** Each Lender appoints and designates PI LLC as the Agent under all Loan Documents. The Agent may, and each Lender authorizes the Agent to, enter into all Loan Documents to which the Agent is intended to be a party. Each Lender agrees that any action taken by the Agent or Required Lenders in accordance with the provisions of the Loan Documents, and the exercise by the Agent or Required Lenders of any rights or remedies set forth therein, together with all other powers reasonably incidental thereto, shall be authorized by and binding upon all Lenders. Without limiting the generality of the foregoing, and notwithstanding anything to the contrary in this Agreement or the other Loan Documents, the Agent shall have the sole and exclusive authority to (a) execute and deliver as the Agent each Loan Document and accept delivery of each Loan Document from the Borrower or any other Person; (b) act as collateral agent for Lenders for purposes of perfecting and administering Liens under the Loan Documents, and for all other purposes stated therein; (c) deal with Collateral; (d)

exercise such other powers delegated to the Agent by the terms hereof or the other Loan Documents (including the power to give or to refuse to give notices, waivers, consents, approvals and instructions and the power to make or to refuse to make determinations and calculations, in each case, in the Agent's sole and absolute discretion) together with such powers as are reasonably incidental thereto to carry out the purposes hereof and thereof and (e) take any Enforcement Action or otherwise exercise any rights or remedies with respect to any Collateral under the Loan Documents, applicable law or otherwise. The duties of the Agent shall be ministerial and administrative in nature, and the Agent shall not have a fiduciary relationship with any Lender or other Person by reason of any Loan Document or any transaction relating thereto.

**11.2 Duties.** The Agent shall not have any duties except those expressly set forth in the Loan Documents. The conferral upon the Agent of any right shall not imply a duty to exercise such right, unless instructed to do so by Lenders in accordance with this Agreement.

**11.3 Agent Professionals.** The Agent may perform its duties through agents and employees. The Agent may consult with and employ the Agent Professionals, and shall be entitled to act upon, and shall be fully protected in any action taken in good faith reliance upon, any advice given by an the Agent Professional. The Agent shall not be responsible for the negligence or misconduct of any agents, employees or the Agent Professionals selected by it with reasonable care.

**11.4 Instructions of Required Lenders.** The rights and remedies conferred upon the Agent under the Loan Documents may be exercised without the necessity of joinder of any other party, unless required by applicable law. The Agent may request instructions from Required Lenders or other Lenders with respect to any act (including the failure to act) in connection with any Loan Documents, and may seek assurances to its satisfaction from Lenders of their indemnification obligations against all Indemnified Claims that could be incurred by the Agent in connection with any act. The Agent shall be entitled to refrain from any act until it has received such instructions or assurances, and the Agent shall not incur liability to any Person by reason of so refraining. Instructions of Required Lenders shall be binding upon the Agent and all Lenders, and no Lender shall have any right of action whatsoever against the Agent as a result of the Agent acting or refraining from acting in accordance with the instructions of Required Lenders. Notwithstanding the foregoing, instructions by and consent of specific parties shall be required to the extent provided in Section 10.3. In no event shall the Agent be required to take any action that, in its opinion, is contrary to applicable law or any Loan Documents or could subject any Agent Indemnitee to personal liability.

**11.5 Lien Releases; Care of Collateral.**

(a) The Lenders authorize the Agent to release any Lien with respect to any Collateral (i) upon full and final cash payment of all Obligations with respect to the Collateral; (ii) that is the subject of an asset disposition to a Person other than the Borrower which the Borrower certifies in writing to the Agent is a Permitted Disposition; (iii) that does not constitute a material part of the Collateral; or (iv) with the written consent of all Lenders. The Agent and the Lenders agree that the Agent shall execute and deliver all documents reasonably requested by the Borrower to effect or otherwise evidence such release described in clauses (i), (ii) or (iv)

above (and, if requested by the Agent in connection with such execution and delivery, the Borrower shall certify to the Agent that any applicable sale or disposition is being made in compliance with the terms of this Agreement (and the Agent may rely conclusively on any such certificate, without further inquiry)). Any such release shall not in any manner discharge, affect or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of the Borrower in respect of) all interests retained by the Borrower, including the proceeds of any sale, all of which shall continue to constitute part of the Collateral, as applicable.

(b) The Agent shall have no obligation to assure that any Collateral exists or is owned by the Borrower, or is cared for, protected or insured, nor to assure that the Agent's Liens have been properly created, perfected or enforced, or are entitled to any particular priority, nor to exercise any duty of care with respect to any Collateral.

**11.6 Possession of Collateral.** The Agent and Lenders appoint each other Lender as agent (for the benefit of the Lenders) for the purpose of perfecting Liens in any Collateral held or controlled by such Lender, to the extent such Liens are perfected by possession or control. If any Lender obtains possession or control of any Collateral, it shall notify the Agent thereof and, promptly upon the Agent's request, deliver such Collateral to the Agent or otherwise deal with it in accordance with the Agent's instructions.

**11.7 Reliance By the Agent.** The Agent shall be entitled to rely, and shall be fully protected in relying, upon any certification, notice or other communication (including those by telephone, telex, telegram, telecopy or e-mail) believed by it to be genuine and correct and to have been signed, sent or made by the proper Person, and upon the advice and statements of the Agent Professionals. The Agent shall have a reasonable and practicable amount of time to act upon any instruction, notice or other communication under any Loan Document, and shall not be liable for any delay in acting.

**11.8 Action Upon Default.** The Agent shall not be deemed to have knowledge of any Event of Default unless it has received written notice from the Borrower or Required Lenders specifying the occurrence and nature thereof. Each Lender agrees that, except with the written consent of the Agent and Required Lenders, it will not take any Enforcement Action, or exercise any right that it might otherwise have under applicable law to credit bid at foreclosure sales or other similar dispositions of Collateral or to assert any rights relating to any Collateral.

**11.9 Ratable Sharing.** If any Lender shall obtain any payment or reduction of any Obligation, whether through set-off or otherwise, in excess of its share of such Obligation, determined on a Pro Rata basis or in accordance with Section 9.2, as applicable, such Lender shall forthwith purchase from the Agent and the other Lenders such participations in the affected Obligation as are necessary to cause the purchasing Lender to share the excess payment or reduction on a Pro Rata basis or in accordance with Section 9.2, as applicable. If any of such payment or reduction is thereafter recovered from the purchasing Lender, the purchase shall be rescinded and the purchase price restored to the extent of such recovery, but without interest. Notwithstanding the foregoing, any payment of Indemnified Taxes pursuant to Section 2.6 shall not be considered an excess payment under this Section 11.9 and does not have to be shared Pro Rata.

**11.10 Indemnification.** EACH LENDER SHALL INDEMNIFY AND HOLD HARMLESS AGENT INDEMNITEES, TO THE EXTENT NOT REIMBURSED BY THE BORROWER, ON A PRO RATA BASIS, AGAINST ALL INDEMNIFIED CLAIMS THAT MAY BE INCURRED BY OR ASSERTED AGAINST ANY SUCH AGENT INDEMNITEE, PROVIDED THAT ANY INDEMNIFIED CLAIM AGAINST AN AGENT INDEMNITEE RELATES TO OR ARISES FROM ITS ACTING AS OR FOR AGENT (IN THE CAPACITY OF AGENT). In the Agent's discretion, it may reserve for any Claims made against an Agent Indemnitee, and may satisfy any judgment, order or settlement relating thereto, from proceeds of Collateral prior to making any distribution of Collateral proceeds to Lenders. If the Agent is sued by any receiver, bankruptcy trustee, debtor-in-possession or other Person for any alleged preference or fraudulent transfer, then any monies paid by the Agent in settlement or satisfaction of such proceeding, together with all interest, costs and expenses (including attorneys' fees) incurred in the defense of same, shall be promptly reimbursed to the Agent by each Lender to the extent of its Pro Rata share.

**11.11 Limitation on Responsibilities of the Agent.** The Agent shall not be liable to any Lender for any action taken or omitted to be taken under the Loan Documents, except for losses directly and solely caused by the Agent's gross negligence or willful misconduct. The Agent does not assume any responsibility for any failure or delay in performance or any breach by the Borrower or any Lender of any obligations under the Loan Documents. The Agent does not make any express or implied representation, warranty or guarantee to the Lenders with respect to any Obligations, Collateral, Loan Documents or the Borrower. No Agent Indemnitee shall be responsible to the Lenders for any recitals, statements, information, representations or warranties contained in any Loan Documents; the execution, validity, genuineness, effectiveness or enforceability of any Loan Documents; the genuineness, enforceability, collectibility, value, sufficiency, location or existence of any Collateral, or the validity, extent, perfection or priority of any Lien therein; the validity, enforceability or collectibility of any Obligations; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of the Borrower. No the Agent Indemnitee shall have any obligation to any Lender to ascertain or inquire into the existence of any Event of Default, the observance by the Borrower of any terms of the Loan Documents, or the satisfaction of any conditions precedent contained in any Loan Documents.

**11.12 Resignation; Successor the Agent.** Subject to the appointment and acceptance of a successor Agent as provided below, the Agent may resign at any time by giving at least 10 days written notice thereof to the Lenders and the Borrower. Upon receipt of such notice, Required Lenders shall have the right to appoint a successor Agent which shall be a Lender or an affiliate of a Lender. If no successor Agent is appointed prior to the effective date of the resignation of the Agent, then the Agent may appoint a successor Agent from among the Lenders or, if no Lender accepts such role, the Agent may appoint Required Lenders as successor Agent. Upon acceptance by a successor Agent of an appointment to serve as the Agent hereunder, or upon appointment of Required Lenders as successor Agent, such successor Agent shall thereupon succeed to and become vested with all the powers and duties of the retiring Agent without further act, and the retiring Agent shall be discharged from its duties and obligations hereunder but shall continue to have the benefits of the indemnification set forth in Section 6.3 and Section 11.10. Notwithstanding the Agent's resignation, the provisions of this Section 11 shall continue in effect

for its benefit with respect to any actions taken or omitted to be taken by it while the Agent. Any successor to PI LLC shall continue to be the Agent hereunder without further act on the part of the parties hereto, unless such successor resigns as provided above.

**11.13 Separate Collateral Agent.** If the Agent believes that it may be limited in the exercise of any rights or remedies under the Loan Documents due to any applicable law, the Agent may appoint an additional Person who is not so limited, as a separate collateral agent or co-collateral agent. If the Agent so appoints a collateral agent or co-collateral agent, each right and remedy intended to be available to the Agent under the Loan Documents shall also be vested in such separate agent. The Lenders shall execute and deliver such documents as the Agent deems appropriate to vest any rights or remedies in such agent. If any collateral agent or co-collateral agent shall die or dissolve, become incapable of acting, resign or be removed, then all the rights and remedies of such agent, to the extent permitted by applicable law, shall vest in and be exercised by the Agent until appointment of a new agent.

**11.14 Due Diligence and Non-Reliance.** Each Lender acknowledges and agrees that it has, independently and without reliance upon the Agent or any other Lender, and based upon such documents, information and analyses as it has deemed appropriate, made its own credit analysis of the Borrower and its own decision to enter into this Agreement and to fund Term Loans hereunder. Each Lender has made such inquiries as it feels necessary concerning the Loan Documents, the Collateral and the Borrower. Each Lender acknowledges and agrees that the other Lenders have made no representations or warranties concerning the Borrower, any Collateral or the legality, validity, sufficiency or enforceability of any Loan Documents or Obligations. Each Lender will, independently and without reliance upon any other Lender, and based upon such financial statements, documents and information as it deems appropriate at the time, continue to make and rely upon its own credit decisions in making the Term Loans, and in taking or refraining from any action under any Loan Documents. Except for notices, reports and other information expressly requested by a Lender, the Agent shall have no duty or responsibility to provide any Lender with any notices, reports or certificates furnished to the Agent by the Borrower or any credit or other information concerning the affairs, financial condition, business or properties of the Borrower (or any of its affiliates) which may come into possession of the Agent or its affiliates.

**11.15 Recovery of Payments.** If the Agent pays any amount to a Lender in the expectation that a related payment will be received by the Agent from the Borrower and such related payment is not received, then the Agent may recover such amount from each Lender that received it. If the Agent determines at any time that an amount received under any Loan Document must be returned to the Borrower or paid to any other Person pursuant to applicable law or otherwise, then, notwithstanding any other term of any Loan Document, the Agent shall not be required to distribute such amount to any Lender. If any amounts received and applied by the Agent to any Obligations are later required to be returned by the Agent pursuant to applicable law, each Lender shall pay to the Agent, **on demand**, such Lender's Pro Rata share of the amounts required to be returned. The preceding sentence shall not apply to any payment of Indemnified Taxes pursuant to Section 2.6 or any other amount that is specific to a particular Lender; any such amount, which the Agent is required to return, shall be repaid to the Agent solely by the Lender that received the payment.



**11.16 Agent in its Individual Capacity.** As a Lender, PI LLC (and any successor Agent that is a Lender) shall have the same rights and remedies under the other Loan Documents as any other Lender, and the terms "Lenders," "Required Lenders" or any similar term shall include PI LLC (and any such successor Agent that is a Lender) in its capacity as a Lender. In their individual capacities, the Agent and its Affiliates may receive information regarding the Borrower and their Affiliates (including information subject to confidentiality obligations), and each Lender agrees that PI LLC and its Affiliates shall be under no obligation to provide such information to any Lender, if acquired in such individual capacity.

**11.17 No Third Party Beneficiaries.** This Section 11 is an agreement solely among Lenders and the Agent, and shall survive full and final payment in cash of the Obligations. This Section 11 (other than Section 11.4(a) and Section 11.11 (as it relates to Section 11.11, solely with respect to the Borrower's consent rights contained therein)) does not confer any rights or benefits upon the Borrower or any other Person. As between the Borrower and the Agent, any action that the Agent may take under any Loan Documents or with respect to any Obligations shall be conclusively presumed to have been authorized and directed by the Lenders.

(SIGNATURES TO FOLLOW)

IN WITNESS WHEREOF, the Borrower, the Agent and the Lenders have duly executed and delivered this Senior Secured and Superpriority Financing Agreement as of the day and year first above written.

**KIOR, INC.,**  
a Delaware corporation

By: Christopher A. Arizer  
Name: Christopher A. Arizer  
Title: President & Interim CFO

**AGENT:**

**PASADENA INVESTMENTS, LLC**  
in its capacity as the Agent

By:   
Name: Vinod Khosla  
Title: Managing Member

**LENDER:**

**PASADENA INVESTMENTS, LLC,  
as a Lender**

By:   
Name: Vinod Khosla  
Title: Managing Member

**TABLE OF SCHEDULES AND EXHIBITS**

|                 |   |
|-----------------|---|
| Schedule 1.1(A) | Total Term Loan Commitments   |
| Schedule 5.2    | Real property; Deposit Accounts, Securities Account and Investment Accounts; Commercial Tort Claims |
| Schedule 5.3    | Consents, Etc.  |
| Schedule 5.4    | Litigation  |
| Schedule 5.7    | Laws  |
| Schedule 5.9    | Tax Matters   |
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| Schedule 5.11   | Intellectual Property   |
| Schedule 5.12   | Borrower Products   |
| Schedule 5.13   | Capitalization  |
| Schedule 7.11   | Existing Permitted Indebtedness   |
| Schedule 7.12   | Existing Permitted Liens  |
| Schedule 7.13   | Existing Permitted Investments  |
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| Exhibit A:      | Form of Interim DIP Order   |
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| Annex I         | Milestones  |

## SCHEDULE 1.1(A)

## TOTAL TERM LOAN COMMITMENTS

## Total Term Loan Commitments on Interim Facility Effective Date

| Lender                    | Term Loan Commitment |
|---------------------------|----------------------|
| Pasadena Investments, LLC | \$2,500,000          |
| <b>Total</b>              | <b>\$2,500,000</b>   |

## Total Term Loan Commitments on Final Facility Effective Date

| Lender                    | Term Loan Commitment            |
|---------------------------|---------------------------------|
| Pasadena Investments, LLC | \$15,000,000                    |
| <b>Total</b>              | <b>\$15,000,000<sup>1</sup></b> |

<sup>1</sup> For the avoidance of doubt, the Total Term Loan Commitment amount on the Final Facility Effective Date includes and is not in addition to the Total Term Loan Commitment amount in effect on the Interim Facility Effective Date and the amount of each Lender's Term Loan Commitment amount on the Final Facility Effective Date includes and is not in addition to the such Lender's Term Loan Commitment amount in effect on the Interim Facility Effective Date

**SCHEDULE 5.2**  
**REAL PROPERTY; DEPOSIT ACCOUNTS, SECURITIES ACCOUNT AND**  
**INVESTMENT ACCOUNTS; COMMERCIAL TORT CLAIMS**

**[TO COME.]**

**SCHEDULE 5.3  
CONSENTS, ETC.**

**[TO COME.]**



**SCHEDULE 5.4  
LITIGATION**

**[TO COME.]**

**SCHEDULE 5.7  
LAWS**

**[TO COME.]**

**SCHEDULE 5.9  
TAX MATTERS**

**[TO COME.]**

**SCHEDULE 5.10  
INTELLECTUAL PROPERTY CLAIMS**

**[TO COME.]**

**SCHEDULE 5.11  
INTELLECTUAL PROPERTY**

**[TO COME.]**

**SCHEDULE 5.12  
BORROWER PRODUCTS**

**[TO COME.]**

**SCHEDULE 5.13  
CAPITALIZATION**

**[TO COME.]**

**SCHEDULE 7.10  
EXISTING PERMITTED INDEBTEDNESS**

**[TO COME.]**



**SCHEDULE 7.11  
EXISTING PERMITTED LIENS**

**[TO COME.]**

**SCHEDULE 7.12  
EXISTING PERMITTED INVESTMENTS**

**[TO COME.]**

**SCHEDULE 7.17  
TRANSACTIONS WITH AFFILIATES**

**[TO COME.]**

**EXHIBIT A**  
**FORM OF INTERIM DIP ORDER**

**EXHIBIT B**

**FORM OF NOTICE OF BORROWING**

Date: \_\_\_\_\_, 201\_\_

[KFT Trust, Vinod Khosla, Trustee, as Agent]  
 under the below-referenced DIP Financing Agreement  
 c/o Khosla Ventures  
 2128 Sand Hill Road  
 Menlo Park, CA 94025

Ladies and Gentlemen:

The undersigned, refers to that certain Senior Secured and Superpriority Financing Agreement, dated as of November 4, 2014 (as amended, restated, supplemented or otherwise modified from time to time, the “**DIP Financing Agreement**”), by and among KiOR, Inc. a Delaware corporation“( the “**Borrower**”), the lenders from time to time party thereto (each a “**Lender**” and collectively, the “**Lenders**”), and [KFT Trust, Vinod Khosla, Trustee], as agent for the Lenders (the “**Agent**”), and hereby gives you notice pursuant to Section 2.1(c) of the DIP Financing Agreement that the undersigned, on behalf of the Borrower, hereby requests a Term Loan under the DIP Financing Agreement (the “**Proposed Loan**”), and in that connection sets forth below the information relating to such Proposed Loan as required by Section 2.1(c) of the DIP Financing Agreement. All capitalized terms used but not defined herein have the same meanings herein as set forth in the DIP Financing Agreement.

- (i) The aggregate principal amount of the Proposed Loan is \$[\_\_\_\_\_].
- (ii) The borrowing date of the Proposed Loan is \_\_\_\_\_, 201\_\_.<sup>1</sup>
- (iii) The following disbursements are to be funded with the Proposed Loan within 7 days of such borrowing date, in accordance with the Budget:

|                                |                  |
|--------------------------------|------------------|
| [_____]                        | \$[_____]        |
| [_____]                        | \$[_____]        |
| [_____]                        | \$[_____]        |
| <b>Aggregate Proposed Loan</b> | <b>\$[_____]</b> |

<sup>1</sup> This date must be a Business Day and cannot be earlier than 7 days after the last borrowing date, unless an earlier date is consented to by the Agent.

- (iv) The proceeds of the Proposed Loan should be made available to the undersigned by wire transferring such proceeds in accordance with the payment instructions set forth on Annex I hereto.
  
- (v) The undersigned hereby certifies on behalf of the Borrower that (a) the representations and warranties set forth in Section 5 of the DIP Financing Agreement are true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) on and as of the Term Loan Date as though made on and as of such date, except to the extent that any such representation or warranty expressly relates solely to an earlier date (in which case such representation or warranty is true and correct in all material respects on and as of such earlier date); and (b) No Default or Event of Default has occurred and is continuing.

Very truly yours,

**KIOR, INC.**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ANNEX I  
PAYMENT INSTRUCTIONS



## ANNEX I

## Milestones

| Milestone   | Deadline  |
|---|---|
| Filing of Bid Procedures Motion and proposed form of Bid Procedures Order | Petition Date   |
| Entry of Interim DIP Order  | Within 3 business days after Petition Date  |
| Hearing on Bid Procedures Motion  | December 1, 2014, provided that failure to meet such deadline shall constitute a Default and shall mature into an Event of Default if such Milestone is not met by December 5, 2014   |
| Entry of Bid Procedures Order   | Within 3 business days after hearing on Bid Procedures Motion   |
| Entry of Final DIP Order  | Within 3 business days after hearing on Bid Procedures Motion   |
| Bid submission deadline   | December 15, 2014   |
| Auction (if necessary)  | December 17, 2014   |
| Sale Hearing  | December 22, 2014, provided that failure to meet such deadline shall constitute a Default and shall mature into an Event of Default if such Milestone is not met by December 30, 2014 |
| Closing of Qualifying Cash Sale   | January 15, 2015  |
| Entry of Confirmation Order   | February 12, 2015   |
| Effective Date of Chapter 11 Plan   | February 27, 2015   |

EXHIBIT 3

**DIP ORDER**

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

In re:

KiOR, Inc.,<sup>1</sup>

Debtor.

Chapter 11

Case No. 14-[\_\_\_\_\_]

Related Docket No. [\_\_]

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR TO OBTAIN POSTPETITION FINANCING PURSUANT TO SECTION 364 OF THE BANKRUPTCY CODE; (II) AUTHORIZING THE USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE; (III) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES PURSUANT TO SECTIONS 361, 362, 363, AND 364 OF THE BANKRUPTCY CODE; (IV) GRANTING LIENS AND SUPERPRIORITY CLAIMS; (V) MODIFYING THE AUTOMATIC STAY; AND (VI) SCHEDULING A FINAL HEARING**

Upon the motion dated November 9, 2014 (the "DIP Motion") of the debtor and debtor in possession (the "Debtor") in the above-referenced chapter 11 case (the "Case") seeking entry of an interim order (this "Interim Order") pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e), 507, and 552 of title 11 of the United States Code (as amended, the "Bankruptcy Code"), Rules 2002, 4001, 6004, and 9014 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules"), and Rule 4001-2 of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), that, among other things:

(i) authorizes the Debtor to obtain senior secured priming and superpriority postpetition financing, which if approved on a final basis will consist of incremental term loans in an aggregate principal amount not to exceed \$15,000,000 at any time outstanding (the "DIP Facility") pursuant to the terms of (x) this Interim Order, (y) that certain *Senior Secured and*

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<sup>1</sup> The Debtor and the last four digits of its taxpayer identification number are: KiOR, Inc. (2233). The Debtor's mailing address is 13001 Bay Park Road, Pasadena, Texas 77507.

*Superpriority Financing Agreement*, dated as of November 9, 2014 (as the same may be amended, restated, supplemented, or otherwise modified from time to time in accordance with its terms and the terms of this Interim Order, the “DIP Credit Agreement”),<sup>2</sup> by and among the Debtor, Pasadena Investments, LLC, as administrative agent for the DIP Lenders (in such capacity, the “DIP Agent”), and the other entities party to the DIP Credit Agreement as “Lenders” under, and as defined in, the DIP Credit Agreement (the “DIP Lenders,” and together with the DIP Agent and any other party to which DIP Obligations (as defined below) are owed, the “DIP Secured Parties”), in substantially the form attached to the DIP Motion, and (z) any and all other Loan Documents (as defined in the DIP Credit Agreement, and together with the DIP Credit Agreement, the “DIP Loan Documents”), to: (A) fund, among other things, ongoing working capital, general corporate expenditures, and other financing needs of the Debtor, (B) fund certain payments required to provide adequate protection to the Prepetition Secured Parties (as defined below) as described below, (C) pay certain transaction fees and other costs and expenses of administration of the Case, and (D) pay fees and expenses (including, without limitation, reasonable attorneys’ fees and expenses) owed to the DIP Agent and the DIP Lenders under the DIP Loan Documents and this Interim Order;

(ii) approves the terms of the DIP Credit Agreement and the other DIP Loan Documents, authorizes the Debtor to execute and deliver, perform under, and be bound by the DIP Credit Agreement and the other DIP Loan Documents, and authorizes the Debtor to perform such other and further acts as may be required in connection with the DIP Loan Documents and this Interim Order;

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<sup>2</sup> All capitalized terms used but not otherwise defined in this Interim Order shall have the respective meanings given to such terms in the DIP Credit Agreement. A copy of the DIP Credit Agreement is attached hereto as **Exhibit B**.

(iii) grants (x) to the DIP Agent, for the benefit of itself and the other DIP Secured Parties, secured, binding, continuing, enforceable, fully perfected, and unavoidable first priority senior priming security interests in, and Liens (as defined in the DIP Credit Agreement) on, all of the DIP Collateral (as defined below) pursuant to sections 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, which Liens shall be senior to the Primed Liens (as defined below) and shall be junior solely to any valid, enforceable, and non-avoidable liens that are (A) in existence on the Petition Date, (B) either perfected as of the Petition Date or perfected subsequent to the Petition Date solely to the extent permitted by section 546(b) of the Bankruptcy Code, and (C) senior in priority to the Prepetition Liens (as defined below) after giving effect to any intercreditor or subordination agreement (all such liens, collectively, the “Prepetition Prior Liens”); and (y) to the DIP Secured Parties pursuant to section 364(c)(1) of the Bankruptcy Code superpriority administrative claims having recourse to all prepetition and postpetition property of the Debtor’s estate, now owned or hereafter acquired, including, without limitation, the Debtor’s rights under section 506(c) of the Bankruptcy Code and the proceeds thereof (subject to entry of a Final Order);

(iv) authorizes the Debtor to use “cash collateral,” as such term is defined in section 363 of the Bankruptcy Code (the “Cash Collateral”), including, without limitation, Cash Collateral in which the Prepetition Secured Parties (as defined below) and/or the DIP Secured Parties have a Lien or other interest, in each case whether existing on the Petition Date, arising pursuant to this Interim Order, or otherwise, and grants and provides the Prepetition Secured Parties (as defined below) the Prepetition Secured Parties’ Adequate Protection (as defined below) as set forth herein;

(v) modifies the automatic stay imposed by section 362(a) of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Loan Documents and this Interim Order;

(vi) authorizes the Debtor at any time prior to the earliest to occur of 11:59 p.m. prevailing Eastern time on December 1, 2014 (the "Interim Period Outside Date") and the entry of the Final Order (as defined herein) to borrow under the DIP Facility and use Cash Collateral in an aggregate outstanding amount for all such borrowings not to exceed \$2,500,000;

(vii) schedules a final hearing on the DIP Motion to be held on or prior to the Interim Period Outside Date (the "Final Hearing") to consider entry of a final order which grants all of the relief requested in the DIP Motion on a final basis and which final order shall be in form and substance (including, without limitation, with respect to any subsequent modifications to the form or substance made in response to objections of other creditors or the Court) acceptable to the DIP Agent (the "Final Order"); and

(viii) waives any applicable stay (including, without limitation, under Bankruptcy Rule 6004) and provides for immediate effectiveness of this Interim Order.

Having considered the DIP Motion, the DIP Credit Agreement, the *Declaration of Christopher A. Artzer in Support of Chapter 11 Petition and First Day Motions* (the "Artzer Declaration"), the Declaration of Alex C. Fisch of Guggenheim Securities, LLC (the "Fisch Declaration") and the evidence submitted or proffered at the hearing on this Interim Order (the "Interim Hearing"); and in accordance with Bankruptcy Rules 2002, 4001(b), 4001(c), 4001(d), and 9014 and all applicable Local Rules, notice of the DIP Motion and the Interim Hearing having been provided pursuant to Bankruptcy Rule 4001(b)(1)(C); an Interim Hearing having been held and concluded on November [12], 2014; and it appearing that approval of the interim

relief requested in the DIP Motion is necessary to avoid immediate and irreparable harm to the Debtor pending the Final Hearing and otherwise is fair and reasonable and in the best interests of the Debtor, its creditors, its estate, and all parties in interest, and is essential for the continued operation of the Debtor's business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor:

**THE COURT MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:<sup>3</sup>**

**A. Petition Date.** On November 9, 2014 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (this "Court"). The Debtor has continued in the management and operation of its business and properties as debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code. No statutory committee of unsecured creditors (to the extent such a committee is appointed, the "Committee"), trustee, or examiner has been appointed in the Case.

**B. Jurisdiction and Venue.** This Court has core jurisdiction over the Case, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue for the Case and proceedings on the DIP Motion is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory or other predicates for the relief sought herein are sections 105, 361, 362, 363, 364, 507, and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004, and 9014, and the Local Rules.

**C. Notice.** The Interim Hearing is being held pursuant to the authorization of Bankruptcy Rule 4001. Notice of the Interim Hearing and the emergency relief requested in the

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<sup>3</sup> Findings of fact shall be construed as conclusions of law, and conclusions of law shall be construed as findings of fact, as appropriate, pursuant to Bankruptcy Rule 7052.

DIP Motion has been provided by the Debtor, whether by facsimile, electronic mail, overnight courier, or hand delivery, to certain parties in interest, including: (i) the Office of the United States Trustee for the District of Delaware (the “United States Trustee”), (ii) those entities or individuals included on the Debtor’s list of 20 largest unsecured creditors, (iii) each of the Prepetition Secured Agents (as defined below), (iv) counsel to each of the Prepetition Secured Agents, (v) the DIP Agent, (vi) counsel to the DIP Agent, (vii) each of the financial institutions listed in the *Motion for Order (A) Authorizing Maintenance of Pre-Petition Bank Accounts and Cash Management System and Continued Use of Existing Business Forms, Books, and Records, and (B) Approving Investment Accounts and Procedures*, and (viii) all known parties asserting a lien against the DIP Collateral (as defined below), as reflected on Schedule 7.11 of the DIP Credit Agreement.

**D. Debtor’s Stipulations Regarding the Prepetition Secured Credit Facility.**

Without prejudice to the rights of parties in interest that are specifically set forth in Paragraph 6 of this Interim Order, the Debtor admits, stipulates, acknowledges, and agrees (Paragraphs D and E hereof shall be referred to collectively as the “Debtor’s Stipulations”) as follows:

(i) First Lien Prepetition Secured Debt. Pursuant to that certain Protective Advance Loan and Security Agreement, dated as of July 17, 2014 (as amended, restated, or otherwise modified from time to time prior to the Petition Date, the “Prepetition First Lien Loan Agreement” and collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the “Loan Documents” as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition First Lien Loan Documents”), by and among the Debtor, the lenders party thereto (collectively, the “Prepetition First Lien Lenders”), and the KFT Trust, Vinod Khosla, Trustee



(the "KFT Trust"), as administrative agent for the Prepetition First Lien Lenders (in such capacity, the "Prepetition First Lien Secured Agent" and, together with the Prepetition First Lien Lenders and any other party to which Prepetition First Lien Obligations (as defined below) are owed, the "Prepetition First Lien Secured Parties"), the Prepetition First Lien Secured Parties agreed to extend loans and other financial accommodations to the Debtor pursuant to the Prepetition First Lien Loan Agreement. All obligations of the Debtor arising under the Prepetition First Lien Loan Agreement (including, without limitation, the "Secured Obligations" as defined therein) or the other Prepetition First Lien Loan Documents shall collectively be referred to herein as the "Prepetition First Lien Obligations."

(ii) 2013 Second Lien Prepetition Secured Debt. Pursuant to that certain Senior Secured Convertible Note Purchase Agreement, dated as of October 18, 2013 (as amended, restated, or otherwise modified from time to time prior to the Petition Date, the "2013 Second Lien Purchase Agreement" and collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the "Transaction Documents" as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the "2013 Second Lien Note Documents"), by and among the Debtor, the note purchasers party thereto (collectively, the "2013 Second Lien Lenders"), and Khosla Ventures III, LP ("KV III"), as administrative agent for the 2013 Second Lien Lenders (in such capacity, the "2013 Second Lien Agent" and, together with the 2013 Second Lien Lenders and any other party to which 2013 Second Lien Obligations (as defined below) are owed, the "2013 Second Lien Secured Parties"), the 2013 Second Lien Secured Parties agreed to purchase notes and extend other financial accommodations pursuant to the 2013 Second Lien Purchase Agreement. All obligations of the Debtor arising under the 2013 Second Lien Purchase Agreement

(including, without limitation, the “Secured Obligations” as defined therein) or the other 2013 Second Lien Note Documents shall collectively be referred to herein as the “2013 Second Lien Obligations.”

(iii) 2014 Second Lien Prepetition Secured Debt. Pursuant to that certain Senior Secured Promissory Note and Warrant Purchase Agreement, dated as of March 31, 2014 (as amended, restated, or otherwise modified from time to time prior to the Petition Date, the “2014 Second Lien Purchase Agreement” and collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the “Transaction Documents” as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “2014 Second Lien Note Documents”) (collectively, the Prepetition First Lien Loan Documents, the 2013 Second Lien Note Documents, and the 2014 Second Lien Note Documents are referred to as the “Prepetition Loan Documents”), by and among the Debtor, the note purchasers party thereto (collectively, the “2014 Second Lien Lenders” and together with the Prepetition First Lien Lenders and 2013 Second Lien Lenders, the “Prepetition Secured Lenders”), and the KFT Trust, as administrative agent for the 2014 Second Lien Lenders (in such capacity, the “2014 Second Lien Agent” and, together with the 2014 Second Lien Lenders and any other party to which 2014 Second Lien Obligations (as defined below) are owed, the “2014 Second Lien Secured Parties”) (collectively, the Prepetition First Lien Secured Parties, the 2013 Second Lien Secured Parties, and the 2014 Second Lien Secured Parties are referred to as the “Prepetition Secured Parties”), the 2014 Second Lien Secured Parties agreed to purchase notes and extend other financial accommodations pursuant to the 2014 Second Lien Purchase Agreement. All obligations of the Debtor arising under the 2014 Second Lien Purchase Agreement (including, without limitation, the “Secured Obligations” as

defined therein) or the other 2014 Second Lien Note Documents shall collectively be referred to herein as the “2014 Second Lien Obligations” (together with the 2013 Second Lien Obligations, the “Prepetition Second Lien Obligations” and collectively with the Prepetition First Lien Obligations and the 2013 Second Lien Obligations, the “Prepetition Secured Obligations”).

(iv) Third Lien Prepetition Debt. Pursuant to that certain Loan and Security Agreement, dated as of January 26, 2012 (as amended, restated, or otherwise modified from time to time prior to the Petition Date, the “Prepetition Third Lien Loan Agreement” and collectively with any other agreements and documents executed or delivered in connection therewith, including, without limitation, the “Loan Documents” as defined therein, each as may be amended, restated, supplemented, or otherwise modified from time to time, the “Prepetition Third Lien Loan Documents”), by and among the Debtor, the lenders party thereto (collectively, the “Prepetition Third Lien Lenders”), and 1538731 Alberta Ltd, as administrative agent for the Prepetition Third Lien Lenders (in such capacity, the “Prepetition Third Lien Agent” and, together with the Prepetition Third Lien Lenders and any other party to which Prepetition Third Lien Obligations (as defined below) are owed, the “Prepetition Third Lien Parties”), the Prepetition Third Lien Parties agreed to extend loans and other financial accommodations pursuant to the Prepetition Third Lien Loan Agreement. All obligations of the Debtor arising under the Prepetition Third Lien Loan Agreement (including, without limitation, the “Secured Obligations” as defined therein) or the other Prepetition Third Lien Loan Documents shall collectively be referred to herein as the “Prepetition Third Lien Obligations.”

(v) Prepetition Liens and Prepetition Collateral. Pursuant to certain Prepetition Loan Documents (as such documents were amended, restated, supplemented, or otherwise modified from time to time prior to the Petition Date, the “Prepetition Collateral Documents”), by and

among the Debtor and one or more of the Prepetition First Lien Secured Agent, the 2013 Second Lien Agent, and the 2014 Second Lien Agent (collectively, the "Prepetition Secured Agents"), the Debtor granted to the applicable Prepetition Secured Agent, for the benefit of itself and the applicable Prepetition Secured Lenders, to secure the applicable Prepetition Secured Obligations, a first priority security interest (with respect to the Prepetition First Lien Obligations) or second priority security interest (with respect to the Prepetition Second Lien Obligations) in and continuing lien (the "Prepetition Liens") on substantially all of the Debtor's assets and properties (which, for the avoidance of doubt, includes Cash Collateral) and all proceeds, products, accessions, rents, and profits thereof, in each case whether then owned or existing or thereafter acquired or arising. All "Collateral" as defined in the Prepetition First Lien Loan Agreement granted or pledged pursuant to any Prepetition Collateral Document or any other Prepetition Loan Document shall collectively be referred to herein as the "Prepetition Collateral." As of the Petition Date, (I) the Prepetition Liens (a) are legal, valid, binding, enforceable, and perfected liens, (b) were granted to, or for the benefit of, the Prepetition Secured Parties for fair consideration and reasonably equivalent value, (c) are not subject to avoidance, disallowance, impairment, recharacterization, or subordination pursuant to the Bankruptcy Code or any applicable non-bankruptcy law (except for the priming contemplated herein), and (d) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below), (C) the Adequate Protection Replacement Liens (as defined below), and (D) the Prepetition Prior Liens; and (II) (x) the Prepetition Secured Obligations constitute legal, valid, and binding obligations of the Debtor, enforceable in accordance with the terms of the applicable Prepetition Loan Documents (other than in respect of the stay of enforcement arising from section 362 of the Bankruptcy Code), (y) no setoffs, recoupments, offsets, objections, defenses,

or counterclaims to any of the Prepetition Secured Obligations exist, and (z) no portion of the Prepetition Secured Obligations or any payments made to any or all of the Prepetition Secured Parties are subject to avoidance, disallowance, impairment, recharacterization, recovery, disgorgement, subordination, attack, setoff, offset, recoupment, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or any applicable non-bankruptcy law.

(vi) Amounts Owed under Prepetition Loan Documents. As of the Petition Date, the Debtor owed the Prepetition Secured Parties, pursuant to the Prepetition Loan Documents, without defense, counterclaim, reduction, or offset of any kind, in respect of loans made by the Prepetition Secured Parties, (a) protective advances in the amount of not less than \$16,273,491.41 in principal pursuant to the Prepetition First Lien Loan Documents, (b) notes in the principal amount of not less than \$95,700,000 pursuant to the 2013 Second Lien Loan Documents, and (c) notes in the principal amount of not less than \$10,400,000 pursuant to the 2014 Second Lien Loan Documents, in each case *plus* all accrued and hereafter accruing and unpaid interest thereon and any additional fees, expenses (including, without limitation, any reasonable attorneys’, accountants’, appraisers’, and financial advisors’ fees and expenses that are chargeable or reimbursable under the Prepetition Loan Documents), and other amounts now or hereafter due under the Prepetition Loan Documents.

(vii) Release of Claims. Subject to the reservation of rights set forth in Paragraph 6 of this Interim Order, the Debtor and its bankruptcy estate shall be deemed to have forever waived, discharged, and released each of the Prepetition Secured Parties and their respective affiliates and each of their respective members, managers, equity holders, agents, attorneys, financial advisors, consultants, officers, directors, and employees (all of the foregoing, collectively, the

“Prepetition Secured Party Releasees”) of any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses, setoff, recoupment, other offset rights, or other asserted rights of disgorgement or recovery against any and all of the Prepetition Secured Party Releasees, whether arising at law or in equity, relating to and/or otherwise in connection with the Prepetition Secured Obligations, the Prepetition Liens, or the debtor-creditor relationship between any of the Prepetition Secured Parties, on the one hand, and the Debtor, on the other hand, including, without limitation, (I) any avoidance, disallowance, recharacterization, subordination, or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable federal law, state law, or municipal law and (II) any right, basis, or action to challenge or object to the amount, validity, or enforceability of the Prepetition Secured Obligations or any transfers made on account of the Prepetition Secured Obligations, or the validity, enforceability, priority, or non-avoidability of the Prepetition Liens securing the Prepetition Secured Obligations.

**E. Findings Regarding the DIP Facility.**

(i) Request for Postpetition Financing. The Debtor has requested from the DIP Agent and the DIP Lenders, and the DIP Agent and the DIP Lenders are willing to extend, certain loans, advances, and other financial accommodations on the terms and conditions set forth in this Interim Order and the DIP Loan Documents.

(ii) Need for Postpetition Financing. The Debtor does not have sufficient available sources of working capital, including Cash Collateral, to operate its business in the ordinary course of its business without the financing requested under the DIP Motion. Rather, the Debtor has an immediate need to obtain the DIP Facility and use Cash Collateral to, among other things, permit the orderly continuation of the operation of its business, to maintain business relationships

with vendors, suppliers, and customers, to make payroll, to make capital expenditures, to satisfy other working capital and operation needs, to complete the Debtor's marketing and sale process, and to otherwise preserve the value of the Debtor's estate. The Debtor's access to sufficient working capital and liquidity through the use of Cash Collateral and borrowing under the DIP Facility is vital to a successful sale and/or to otherwise preserve the enterprise value of the Debtor's estate. Immediate and irreparable harm will be caused to the Debtor and its estate if immediate financing is not obtained and permission to use Cash Collateral is not granted, in each case in accordance with the terms of this Interim Order and the DIP Loan Documents.

(iii) No Credit Available on More Favorable Terms. As set forth in the DIP Motion and in the Fisch Declaration in support thereof, the Debtor has determined, at the time hereof, that no acceptable financing on more favorable terms from sources other than the DIP Secured Parties under the DIP Loan Documents and this Interim Order is available. The Debtor is unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor is also unable to obtain secured credit on terms acceptable to the Debtor allowable only under sections 364(c)(1), 364(c)(2), or 364(c)(3) of the Bankruptcy Code. The Debtor has been unable to procure the necessary financing on terms more favorable than the financing offered by the DIP Agent and the DIP Lenders pursuant to the DIP Credit Agreement. Accordingly, the Debtor is unable to obtain secured credit under section 364(d)(1) of the Bankruptcy Code without (a) granting to the DIP Secured Parties the rights, remedies, privileges, benefits, and protections provided herein and in the DIP Loan Documents, including, without limitation, the DIP Liens and the DIP Superpriority Claims (each as defined below), (b) allowing the DIP Secured Parties to provide the loans and other financial accommodations under the DIP Facility on the terms set forth herein and in the DIP Loan Documents (all of the

foregoing described in clauses (a) and (b) above, including, without limitation, the DIP Liens and the DIP Superpriority Claims, collectively, the “DIP Protections”), and (c) providing the Prepetition Secured Parties the adequate protection more fully described in Paragraph 4 of this Interim Order.

**F. Interim Financing.** During the Interim Period (as defined below), the DIP Agent, the other DIP Secured Parties, and, as applicable, the Prepetition Secured Parties, are willing to provide financing to the Debtor and/or consent to the use of Cash Collateral by the Debtor, as applicable, subject to (i) the entry of this Interim Order, (ii) the terms and conditions of the DIP Loan Documents, and (iii) findings by the Court that such interim postpetition financing and use of Cash Collateral is essential to the Debtor’s estate, that the terms of such interim financing and use of Cash Collateral were negotiated in good faith and at arms’ length, and that the DIP Liens, the DIP Superpriority Claims, and the other protections granted pursuant to this Interim Order and the DIP Loan Documents with respect to such interim financing and use of Cash Collateral will not be affected by any subsequent reversal, modification, vacatur, or amendment of this Interim Order or any other order, as provided in section 364(e) of the Bankruptcy Code or this Interim Order. Without limiting the foregoing, any advances made to the Debtor and Cash Collateral use by the Debtor under the DIP Loan Documents and this Interim Order shall be entitled to the protections provided by section 364(e) of the Bankruptcy Code. The DIP Agent, the other DIP Secured Parties, and the respective Prepetition Secured Parties have each acted in good faith in, as applicable, negotiating, consenting to (or otherwise not opposing), and agreeing to provide the postpetition financing arrangements and/or use of Cash Collateral on an interim basis as contemplated by this Interim Order and the DIP Loan Documents, and the reliance by the DIP Agent, the other DIP Secured Parties, and the respective



Prepetition Secured Parties on the assurances referred to above is in good faith.

**G. Adequate Protection for Prepetition Secured Parties.** Each of the Prepetition Secured Agents has negotiated in good faith regarding the Debtor's use of the Prepetition Collateral (including, without limitation, the Cash Collateral) to fund the administration of the Debtor's estate and continued operation of its business. The Prepetition Secured Agents have agreed to permit the Debtor to use the Cash Collateral and other Prepetition Collateral during the Interim Period, subject to the terms and conditions set forth herein, including, without limitation, the protections afforded a party acting in "good faith" under section 364(e) of the Bankruptcy Code. In addition, the DIP Facility contemplated hereby provides for a priming of the Prepetition Liens pursuant to section 364(d) of the Bankruptcy Code. The Prepetition Secured Parties are entitled to the adequate protection as set forth herein pursuant to sections 361, 362, 363, and 364 of the Bankruptcy Code. Furthermore, in light of the subordination of their Liens and superpriority administrative claims to the Carve-Out and the DIP Liens and the use of Cash Collateral and Prepetition Collateral as set forth herein, the Prepetition Secured Parties are entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, subject to the entry of the Final Order, the "equities of the case" exception shall not apply. Based on the DIP Motion and on the record presented to the Court at the Interim Hearing, the terms of the proposed adequate protection arrangements, use of the Cash Collateral, and the DIP Facility contemplated hereby are fair and reasonable, reflect the Debtor's prudent exercise of business judgment consistent with its fiduciary duties, and constitute reasonably equivalent value and fair consideration for the consent of the respective Prepetition Secured Parties.

**H. Business Judgment and Good Faith Pursuant to Section 364(e).**

(i) The DIP Secured Parties have indicated a willingness to provide postpetition secured financing via the DIP Facility to the Debtor in accordance with the DIP Loan Documents and this Interim Order.

(ii) The terms and conditions of the DIP Facility as set forth in the DIP Loan Documents and this Interim Order, and the fees, expenses, and other charges paid and to be paid thereunder or in connection therewith, are fair, reasonable, and the best available under the circumstances, and the Debtor's agreement to the terms and conditions of the DIP Loan Documents and to the payment of such fees reflects the Debtor's exercise of prudent business judgment consistent with its fiduciary duties. Such terms and conditions are supported by reasonably equivalent value and fair consideration.

(iii) The DIP Facility and the DIP Loan Documents were negotiated in good faith and at arms' length among the Debtor and the DIP Secured Parties with the assistance and counsel of their respective advisors, and all of the DIP Obligations shall be deemed to have been extended by the DIP Secured Parties and their affiliates for valid business purposes and uses and in good faith, as that term is used in section 364(e) of the Bankruptcy Code, and in express reliance upon the protections offered by section 364(e) of the Bankruptcy Code or this Interim Order, and the DIP Liens, the DIP Superpriority Claims (as defined below), and the other DIP Protections shall be entitled to the full protection of section 364(e) of the Bankruptcy Code and this Interim Order in the event this Interim Order or any other order or any provision hereof or thereof is vacated, reversed, amended, or modified, on appeal or otherwise.

**I. Relief Essential; Best Interests.** For the reasons stated above, the Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2),

4001(c)(2), and the Local Rules. Absent granting the relief set forth in this Interim Order, the Debtor's estate, its business and properties, and its ability to successfully sell its assets or otherwise preserve the enterprise value of the Debtor's estate will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of Cash Collateral in accordance with this Interim Order and the DIP Loan Documents is therefore in the best interests of the Debtor's estate and consistent with its fiduciary duties. Accordingly, sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(c)(2).

**NOW, THEREFORE**, based on the DIP Motion and the record before this Court with respect to the DIP Motion, and with the consent of the Debtor, each of the Prepetition Secured Agents (on behalf of the Prepetition Secured Parties), and the DIP Agent (on behalf of the DIP Secured Parties) to the form and entry of this Interim Order, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED**, that:

1. **Motion Granted**. The DIP Motion is hereby granted in accordance with the terms and conditions set forth in this Interim Order and the DIP Loan Documents. Any objections to the DIP Motion with respect to the entry of this Interim Order that have not been withdrawn, waived, or settled, and all reservations of rights included therein, are hereby denied and overruled.

2. **DIP Loan Documents and DIP Protections**.

(a) **Approval of DIP Loan Documents**. The Debtor is expressly and immediately authorized to establish the DIP Facility, to execute, deliver, and perform under the DIP Loan Documents and this Interim Order, to incur the DIP Obligations (as defined below) in

accordance with, and subject to, the terms of this Interim Order and the DIP Loan Documents, and to execute, deliver, and perform under all other instruments, certificates, agreements, and documents as may be required or necessary for the performance by the Debtor under the DIP Loan Documents and the creation and perfection of the DIP Liens described in, and provided for by, this Interim Order and the DIP Loan Documents. The Debtor is hereby authorized to and shall perform all acts and pay the principal, interest, commissions, fees, expenses, and other amounts described in the DIP Loan Documents as such become due pursuant to the DIP Loan Documents and this Interim Order, including, without limitation and whenever incurred, all closing fees, administrative fees, commitment fees, and reasonable attorneys', financial advisors', and accountants' fees, and disbursements arising under the DIP Loan Documents and this Interim Order, which amounts shall not be subject to further approval of this Court and shall be non-refundable and shall not otherwise be subject to Challenge (as defined below) pursuant to Paragraph 6 of this Interim Order or otherwise. Upon their execution and delivery, the DIP Loan Documents shall represent valid and binding obligations of the Debtor enforceable in accordance with their terms. The Board of Directors of the Debtor has authorized entry into the DIP Loan Documents.

(b) DIP Obligations. For purposes of this Interim Order, the term "DIP Obligations" shall mean all amounts and other obligations and liabilities owing by the Debtor under the DIP Credit Agreement and other DIP Loan Documents (including, without limitation, all "Obligations" as defined in the DIP Credit Agreement) and shall include, without limitation, the principal of, interest on, fees, costs, expenses, and other charges owing in respect of, such amounts (including, without limitation, any reasonable attorneys', accountants', financial advisors', and other fees, costs, and expenses that are chargeable or reimbursable under the DIP

Loan Documents and/or this Interim Order), and any obligations in respect of indemnity claims, whether contingent or otherwise.

(c) Authorization to Incur DIP Obligations. To enable the Debtor to continue to operate its business during the period from the entry of this Interim Order through and including the earliest to occur of (i) the entry of the Final Order, (ii) the Interim Period Outside Date, and (iii) the Cash Collateral Termination Date (as defined below), in each case unless extended by written agreement of the DIP Agent and each of the Prepetition Secured Agents (the period from the entry of this Interim Order through and including such earliest date, the “Interim Period”), and subject to the terms and conditions of this Interim Order and the DIP Loan Documents, including, without limitation, the Budget Covenants as defined and contained in Paragraph 2(e) of this Interim Order, the Debtor is hereby authorized to use Cash Collateral and borrow under the DIP Facility in an aggregate outstanding amount for all such borrowings and Cash Collateral usage not to exceed \$2,500,000; following the entry of the Final Order, the Debtor’s authority to incur further DIP Obligations, if any, and use further Cash Collateral will be governed by the terms of such Final Order and the DIP Loan Documents. To the extent a Final Order is entered, the Debtor shall, subject to the terms of the DIP Loan Documents and the Final Order, be entitled to borrow all amounts under the DIP Loan Documents to fund the Debtor’s working capital and other general corporate needs and pay such other amounts required or allowed to be paid pursuant to the DIP Loan Documents, the Final Order, and any other orders of this Court.

(d) Budget. Attached hereto as Exhibit A is an 18-week rolling cash flow forecast (such forecast, together with any forecast for a period beyond the end of such forecast that is subsequently approved by the DIP Agent and each of the Prepetition Secured Agents, as well as a listing of accrual fees and expenses budgeted for the Debtor’s Professionals (as defined below)

the “Approved Budget”), which reflects on a line-item basis (i) the Debtor’s weekly projected cash receipts, (ii) all weekly projected disbursements, such as ordinary course operating expenses, bankruptcy-related expenses under the Case, capital expenditures, asset sales, estimated fees and expenses of the DIP Agent and the DIP Lenders (including, without limitation, counsel and financial advisors therefor) and the Prepetition First Lien Secured Agent (including, without limitation, counsel and financial advisors therefor), and any other fees and expenses relating to the DIP Facility), (iii) the sum of weekly unused availability under the DIP Facility plus unrestricted cash on hand, (iv) the weekly outstanding principal balance of the loans made under the DIP Facility, and (v) the monthly accrual estimates of the Debtor’s Professionals. Commencing on November 19, 2014, by 2:00 p.m. (Eastern time) on every Wednesday thereafter (*i.e.*, every week), the Debtor shall prepare and deliver simultaneously to the DIP Agent and each of the Prepetition Secured Agents (i) a variance report/reconciliation report certified by the Chief Executive Officer or Chief Financial Officer of the Debtor, in form acceptable to the DIP Agent and each of the Prepetition Secured Agents, setting forth Approved Budget and reconciling the sources, uses, and disbursements of cash, (x) for the week ending on the immediately preceding Sunday and (y) the Measurement Period (as defined in the DIP Credit Agreement) most recently ended; and (ii) a certificate from the Chief Executive Officer or Chief Financial Officer of the Debtor showing the calculation of the financial covenants specified in Paragraph 2(e) of this Interim Order and Section 7.24 of the DIP Credit Agreement.

(e) Budget Covenants. The Debtor shall incur DIP Obligations and expend Cash Collateral and other DIP Collateral proceeds only in accordance with the specific purposes, and at the specific time periods, set forth in the Approved Budget, subject to the following permitted variances, which shall be tested on and as of the Sunday of each week:

- (i) the variance between actual disbursements for any line item in any given week shall not be greater than ten percent (10%) of the disbursements projected for such line item in that week in the Approved Budget plus the amount set forth in clause (iii), below;
- (ii) the variance between actual aggregate disbursements for any line item during any Measurement Period (as defined in the DIP Credit Agreement) shall not be greater than ten percent (10%) of the aggregate disbursements projected for such line item (excluding fees and expenses of the Debtor's Professionals, which shall not be subject to any permitted upward variance) in the Approved Budget for such Measurement Period (as defined in the DIP Credit Agreement); and
- (iii) any unused amounts contained in a line item for a given week (without giving effect to the ten percent (10%) variance set forth in clause (i), above) may be expended for the same line item in the succeeding four weekly periods.

The Debtor and the DIP Agent may modify the foregoing limitations by written agreement. The foregoing budget-related covenants are collectively referred to herein as the "Budget Covenants." Notwithstanding anything to the contrary in this Interim Order, the reasonable professional fees, costs, and expenses of the DIP Agent's and DIP Lenders' advisors and each of the Prepetition First Lien Secured Agent's and Prepetition First Lien Lenders' advisors, respectively, shall be due, payable, and paid in accordance with the terms of this Interim Order notwithstanding any budgeted amounts for such fees, costs, and expenses set forth in the Approved Budget, provided that disbursements on account of such amounts shall not be included when determining the Debtor's compliance with the Budget Covenants or be subject to any variance reporting.

(f) Termination Events. The occurrence of any of the following events, unless waived in writing by the DIP Agent and each of the Prepetition Secured Agents, each in its respective sole and absolute discretion, shall constitute a termination event under this Interim Order and the DIP Loan Documents (each, a “Termination Event”):

- (i) any (a) stay, amendment, reversal, vacatur, or modification of this Interim Order without the express prior written consent of the DIP Agent, in its sole and absolute discretion, or (b) stay, amendment, reversal, vacatur, or modification of any provision of this Interim Order directly and adversely affecting the rights of the Prepetition Secured Parties without the express prior written consent of each of the Prepetition Secured Agents, each in its respective sole and absolute discretion;
- (ii) the failure to obtain entry of a Final Order on or before the Interim Period Outside Date;
- (iii) dismissal of the Case or conversion of the Case to a chapter 7 case, or appointment of a chapter 11 trustee, examiner with enlarged powers, or other responsible person in the Case;
- (iv) the entry of an order of the Court granting relief from the automatic stay to the holder of any claim against the Debtor equal to or exceeding \$250,000; *provided, however*, that no Termination Event will result if such claim relates to personal property, goods, or services that are provided to or for the primary benefit of non-debtor KiOR Columbus, LLC;
- (v) any other superpriority administrative expense claim or lien senior to or *pari passu* with the DIP Obligations, the DIP Liens, the Adequate Protection



Superpriority Claims (as defined below), or the Adequate Protection Replacement Liens (as defined below) shall be granted, approved, imposed, or otherwise created;

(vi) any order shall be entered dismissing the Case but not providing for the DIP Obligations to be Paid in Full as of such dismissal;

(vii) any material contract is rejected or otherwise terminated (other than in accordance with its terms as a result of a specified or scheduled termination date) or any material property of the Debtor or its estate is sold, in each instance, without the express prior written consent of the DIP Agent, *provided, however*, that no Termination Event will result if such contract relates to personal property, goods, or services that are provided to or for the primary benefit of non-debtor KiOR Columbus, LLC;

(viii) the Debtor seeks to obtain additional financing under section 364(c) or 364(d) of the Bankruptcy Code or to grant any lien other than liens permitted under the DIP Credit Agreement without the prior written consent of the DIP Agent;

(ix) the Debtor files or any representative of the Debtor's estate seeks leave to file or files an action challenging the validity, perfection, priority, extent, or enforceability of the DIP Loan Documents or the liens and claims granted thereunder;

(x) the Debtor commences any action against any of the Prepetition Secured Agents or the Prepetition Secured Lenders with respect to the Prepetition Secured Obligations including, without limitation, any action to avoid, modify, dispute,

challenge, or subordinate any of the Prepetition Secured Obligations or any Prepetition Liens, or entry of an order in any action by any other party granting such relief;

(xi) any DIP Collateral is subject to surcharge or marshaling;

(xii) the Debtor shall take any action, including, without limitation, the filing of any motion, application, or other request, directly or indirectly supporting or advancing the occurrence of any of the events described in the preceding clauses

(i) through (xi);

(xiii) the Debtor makes any disbursements not contemplated by the Approved Budget;

(xiv) the occurrence of any other Event of Default (as defined in the DIP Credit Agreement), or the occurrence of any Default following the passage of any applicable notice or cure period set forth in the DIP Credit Agreement regardless of any acts or omissions of the DIP Secured Parties that would otherwise have resulted in such Default not becoming an Event of Default by virtue of such passage of any applicable notice or cure period;

(xv) the failure by the Debtor to timely perform any of the terms, provisions, conditions, covenants, or other obligations under this Interim Order;

(xvi) the failure of the Debtor to obtain the prior written consent of the DIP Agent to the Debtor's (a) entering into or seeking authority from the Court to enter into any stalking horse bid or similar agreement to purchase all or a material portion of the Debtor's assets, and/or (b) agreeing to provide any proposed stalking horse bidder with a break-up fee, expense reimbursement, or any other

bid protections;

(xvii) the failure of the Debtor to timely comply with any of the following transaction process milestones set forth in Annex I to the DIP Credit Agreement (collectively, the "Transaction Process Deadlines") or the failure of the Debtor to incorporate such milestones into a bid procedures motion and order that designates one or more of the DIP Agent, Prepetition Secured Agents, an entity formed by the DIP Agent or one of the Prepetition Secured Agents, and/or certain of the Prepetition Secured Lenders, as applicable, as the "stalking horse" bidder for a transaction involving substantially all of the Debtor's assets (the "Bid Procedures Motion" and the "Bid Procedures Order," respectively).

(g) Interest, Fees, Costs, and Expenses. The DIP Obligations shall bear interest at the rates, and be due and payable (and paid), as set forth in, and in accordance with the terms and conditions of, this Interim Order and the DIP Loan Documents, in each case without further notice, motion, or application to, order of, or hearing before, this Court. The Debtor shall pay, and the DIP Lenders shall concurrently fund, all fees, costs, expenses (including, without limitation, reasonable out-of-pocket legal and other professional fees and expenses of the DIP Agent and the DIP Lenders), and other charges payable under the terms of the DIP Loan Documents whether or not budgeted in the Approved Budget, whenever incurred, and without further notice (except as provided in Paragraph 18(a) of this Interim Order), motion, or application to, order of, or hearing before, this Court, and such fees, costs, expenses, and other charges shall be non-refundable and, except as provided in Paragraph 18(a) of this Interim Order, subject only to the Debtor's reasonable right to review same.

(h) Use of DIP Facility Proceeds and Proceeds of DIP Collateral. The Debtor shall use the proceeds of all DIP Collateral (as defined below) solely in accordance with this Interim Order and the applicable provisions of the DIP Loan Documents. Without limiting the foregoing, the Debtor shall not be permitted to make any payments (from the DIP Collateral, the proceeds of loans under the DIP Facility, or otherwise) on account of any prepetition debt or obligation prior to the effective date of a chapter 11 plan with respect to the Debtor, except (a) with respect to the Prepetition Secured Obligations as set forth in this Interim Order and a Final Order; (b) as provided in the orders granting the relief requested in the various motions filed by the Debtor on or about the Petition Date, which orders shall be subject to this Interim Order and to the amounts authorized in the Approved Budget, along with the DIP Agent's reasonable right to review and comment on the form of such orders; (c) as provided in other motions, orders, and requests for relief, each in form and substance acceptable to the DIP Agent prior to such motion, order, or request for such relief being filed; or (d) as otherwise expressly provided in the DIP Credit Agreement.

(i) Conditions Precedent. The DIP Secured Parties and Prepetition Secured Parties each have no obligation to extend credit under the DIP Facility or permit use of any DIP Collateral proceeds, including Cash Collateral, as applicable, during the Interim Period unless and until all conditions precedent to the extension of credit and/or use of DIP Collateral or proceeds thereof under the DIP Loan Documents and this Interim Order have been satisfied in full or waived by the requisite DIP Secured Parties and each of the Prepetition Secured Agents in accordance with the DIP Loan Documents and this Interim Order.

(j) DIP Liens. To secure the prompt payment and performance of any and all obligations of the Debtor to the DIP Agent and the DIP Lenders of whatever kind, nature or

description, absolute or contingent, now existing or hereafter arising, the following security interests and liens, which shall immediately and without any further action by any Person, be valid, binding, permanent, perfected, continuing, enforceable, and non-avoidable upon the entry of this Interim Order and effective as of the Petition Date, are hereby granted by the Debtor to the DIP Agent, for its own benefit and the benefit of the DIP Secured Parties and without the necessity of execution by the Debtor or the filing or recordation of mortgages, security agreements, lockbox agreements, financing statements, or otherwise, on all tangible and intangible assets and property of the Debtor, now existing or hereinafter acquired, including, without limitation, all cash and cash equivalents (whether maintained with the DIP Agent or otherwise), and any investment in such cash or cash equivalents, money, inventory, goods, accounts receivable, other rights to payment, intercompany loans and other investments, investment property, contracts, contract rights, securities (whether or not marketable), properties, plants, equipment, machinery, general intangibles, payment intangibles, accounts, bank accounts, deposit accounts, documents, instruments, chattel paper, documents of title, letters of credit, letter of credit rights, supporting obligations, leases and other interests in leaseholds (*provided, however*, that to the extent that any lease prohibits the granting of a lien thereon, or otherwise prohibits hypothecation of the leasehold interest, then in such event the DIP Agent shall be granted a lien only on the economic value of, proceeds of sale or other disposition of, and any other proceeds and products of such leasehold interests), real property, fixtures, patents, copyrights, trademarks, trade names, other intellectual property, intellectual property licenses, permits, franchise rights, capital stock and other equity interests of subsidiaries, tax and other refunds, insurance or other proceeds, commercial tort claims, causes of action, any actions that could be brought by the Debtor or other representative of its estate under any section within

chapter 5 of the Bankruptcy Code (“Avoidance Actions”) and proceeds relating thereto, rights under section 506(c) of the Bankruptcy Code, all other Collateral (as defined in the DIP Loan Documents), and all other property or “property of the estate” (as defined in section 541 of the Bankruptcy Code) of any kind or nature, real or personal, or mixed, now existing or hereafter acquired or created, and all rents, products, substitutions, accessions, profits, replacements, and cash and non-cash proceeds of all of the foregoing, wherever located (all of the foregoing collateral collectively referred to as the “DIP Collateral,” and all such Liens granted to the DIP Agent for the benefit of all the DIP Secured Parties pursuant to this Interim Order and the DIP Loan Documents, the “DIP Liens”):

- (i) pursuant to section 364(c)(2) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable first priority Lien on all unencumbered DIP Collateral;
- (ii) pursuant to section 364(c)(3) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable junior Lien on all DIP Collateral that is subject to the Prepetition Prior Liens, provided that such Lien shall be junior solely to and solely to the extent of any Prepetition Prior Liens; and
- (iii) pursuant to section 364(d)(1) of the Bankruptcy Code, a perfected, binding, continuing, enforceable, and non-avoidable first priority, senior priming lien on all DIP Collateral (including, without limitation, Cash Collateral) that is senior to the Adequate Protection Replacement Liens (as defined below) and senior and priming to (x) the Prepetition Liens and (y) any Liens that are junior to the Prepetition Liens and the Adequate Protection Replacement Liens, after

giving effect to any intercreditor or subordination agreements (the liens referenced in clauses (x) and (y), collectively, the “Primed Liens”); *provided, however,* that the liens described in this clause (iii) in this Interim Order shall be junior solely to the Carve-Out and the Prepetition Prior Liens.

Notwithstanding the foregoing or anything to the contrary contained in the DIP Loan Documents, the attachment of the DIP Liens on Avoidance Actions (other than Avoidance Actions arising under section 549 of the Bankruptcy Code) and on rights under section 506(c) of the Bankruptcy Code shall be subject to the entry of the Final Order.

(k) DIP Lien Priority. Notwithstanding anything to the contrary contained in this Interim Order or the DIP Loan Documents, for the avoidance of doubt, the DIP Liens granted to the DIP Agent for the benefit of the DIP Secured Parties shall in each and every case be first priority senior security interests and liens that (i) are subject only to the Prepetition Prior Liens, and the Carve-Out, and (ii) except as provided in sub-clause (i) of this Paragraph 2(k), are senior to all prepetition and postpetition liens or other interests of every kind, nature, and description of any other person or entity, whether created consensually, by an order of a court, or otherwise (including, without limitation, the Primed Liens and the Adequate Protection Replacement Liens). The DIP Liens and the DIP Superpriority Claims (as defined below) (A) shall not be subject to sections 506, 510, 542, 549, 550, or 551 of the Bankruptcy Code or otherwise or the “equities of the case” exception of section 552 of the Bankruptcy Code (in the case of section 506(c) of the Bankruptcy Code and the “equities of the case” exception of section 552 of the Bankruptcy Code, subject to the entry of the Final Order), (B) shall be senior in priority and right of payment to (x) any lien that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or

affiliate liens or claims of the Debtor, and (C) shall be valid and enforceable against any trustee or any other estate representative appointed or elected in the Case, upon the conversion of the Case to a case under chapter 7 of the Bankruptcy Code, or in any other proceedings related to any of the foregoing (each, a "Successor Case"), and/or upon the dismissal of the Case.

(l) Enforceable Obligations. The DIP Loan Documents shall constitute and evidence the valid and binding DIP Obligations of the Debtor, which DIP Obligations shall be enforceable against the Debtor, its estate and any successors thereto (including, without limitation, any trustee or other estate representative in any Successor Case), and its creditors, in accordance with their terms. No obligation, payment, transfer, or grant of security under the DIP Credit Agreement, the other DIP Loan Documents, or this Interim Order shall be stayed, restrained, voidable, avoidable, disallowable, or recoverable under the Bankruptcy Code or under any applicable law (including, without limitation, under sections 502(d), 542, 544, 547, 548, 549, or 550 of the Bankruptcy Code or under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, or similar statute or common law), or subject to any avoidance, disallowance, impairment, reduction, setoff, offset, recoupment, recharacterization, disgorgement, subordination (whether equitable, contractual, or otherwise), counterclaim, cross-claim, defense, surcharge, or any other challenge under the Bankruptcy Code or any applicable law or regulation by any person or entity.

(m) Superpriority Administrative Claim Status. In addition to the DIP Liens granted herein, effective immediately upon entry of this Interim Order, all of the DIP Obligations shall constitute allowed superpriority administrative claims pursuant to section 364(c)(1) of the Bankruptcy Code, which shall have priority, subject only to the payment of the Carve-Out, over any and all administrative expense claims, adequate protection, and other diminution claims



(including, without limitation, the Adequate Protection Superpriority Claims (as defined below)), unsecured claims, and all other claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses or other claims of the kinds specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c) (subject to the entry of the Final Order), 507(a), 507(b), 546, 726, 1113, and 1114 or any other provision of the Bankruptcy Code, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy, or attachment (the “DIP Superpriority Claims”). The DIP Superpriority Claims shall, for purposes of section 1129(a)(9)(A) of the Bankruptcy Code, be considered administrative expenses allowed under section 503(b) of the Bankruptcy Code, and shall be payable from and have recourse to all prepetition and postpetition property of the Debtor and all proceeds thereof. Other than as expressly provided in the DIP Credit Agreement and this Interim Order with respect to the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, or 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in these proceedings, or in any Successor Case, and no priority claims are, or will be, senior to, prior to, or on a parity with the DIP Superpriority Claims or the DIP Obligations, or with any other claims of the DIP Secured Parties arising hereunder.

**3. Authorization to Use Cash Collateral and Proceeds of the DIP Facility.**

Subject to the terms and conditions of this Interim Order and the DIP Loan Documents, including, without limitation, the Approved Budget, which shall at all times be subject to the satisfaction of the DIP Agent, (a) the Debtor is authorized to use proceeds of credit extended under the DIP Facility from and after the Closing Date, and (b) the Debtor is authorized to use Cash Collateral; *provided, however*, that the Debtor shall be prohibited from at any time using

proceeds of DIP Collateral (including Cash Collateral) or advances under the DIP Facility, in each case, except in accordance with the terms and conditions of this Interim Order and the DIP Loan Documents. To fund the Debtor's working capital and other general corporate needs pending the Final Hearing, in accordance with the terms of this Interim Order, the DIP Loan Documents, and the Approved Budget, the Debtor may request advances and other financial accommodations under the DIP Facility. The DIP Agent may terminate the Debtor's right to use proceeds of extensions of credit under the DIP Facility, DIP Collateral, Prepetition Collateral, and Cash Collateral without further notice, motion, or application to, order of, or hearing before, the Court, except as provided in Paragraph 13 of this Interim Order, immediately upon notice to such effect by the DIP Agent to the Debtor after the occurrence and during the continuance of any Termination Event. Upon the occurrence and during the continuance of a Termination Event (subject to Paragraph 13 of this Interim Order), any Prepetition Secured Agent (on behalf of the applicable Prepetition Secured Parties) may terminate the consensual Cash Collateral use arrangement contained herein without further notice, motion, or application to, order of, or hearing before, the Court; *provided, however*, that the rights of the DIP Agent, the DIP Lenders, the Prepetition Secured Agents, and the Prepetition Secured Lenders under this Interim Order or otherwise shall not be affected by the waiver of any Termination Event by any other party. The earliest date upon which the consensual Cash Collateral use arrangement described in this Interim Order is terminated pursuant to this Paragraph 3 shall be referred to herein as the "Cash Collateral Termination Date."

4. **Adequate Protection for Prepetition Secured Parties.** In consideration for the Debtor's use of Cash Collateral and other Prepetition Collateral and the priming of the

Prepetition Liens, the Prepetition Secured Parties shall receive the following forms of adequate protection (collectively referred to as the “Prepetition Secured Parties’ Adequate Protection”):

(a) Adequate Protection Replacement Liens. To the extent there is a decrease in value of the interests of the Prepetition Secured Parties in the Prepetition Collateral (including Cash Collateral) from and after the Petition Date resulting from the use, sale, or lease by the Debtor of the applicable Prepetition Collateral (including Cash Collateral), the granting of the DIP Superpriority Claims, the granting of the DIP Liens, the subordination of the Prepetition Liens thereto and to the Carve-Out, the imposition or enforcement of the automatic stay of section 362(a) of the Bankruptcy Code, or otherwise (“Decrease in Prepetition Collateral Value”), the Prepetition Secured Agents, for the benefit of the applicable Prepetition Secured Parties, are hereby granted, subject to the terms and conditions set forth below, pursuant to sections 361, 363(e), and 364 of the Bankruptcy Code, replacement security interests and liens on all of the DIP Collateral (such adequate protection replacement security interests and liens, the “Adequate Protection Replacement Liens”), which Adequate Protection Replacement Liens shall be subject and subordinate only to the DIP Liens, the Prepetition Prior Liens, and the Carve-Out, and shall be senior in priority to the Prepetition Liens; *provided, however*, that the attachment of the Adequate Protection Replacement Liens on Avoidance Actions (other than Avoidance Actions arising under section 549 of the Bankruptcy Code) and proceeds relating thereto, as well as the waiver of any rights of the Debtor or its estate under section 506(c) of the Bankruptcy Code, shall be subject to the entry of the Final Order. The Adequate Protection Replacement Liens and the Adequate Protection Superpriority Claims (as defined below) (A) shall not be subject to sections 510, 542, 549, 550, or 551 of the Bankruptcy Code or, subject to entry of the Final Order, section 506(c) of the Bankruptcy Code or the “equities of the case”

exception of section 552 of the Bankruptcy Code, (B) shall be senior in priority and right of payment to (x) any lien that is avoided and preserved for the benefit of the Debtor and its estate under section 551 of the Bankruptcy Code or otherwise or (y) any intercompany or affiliate liens or claims of the Debtor, and (C) shall be continuing, binding, valid, perfected, unavoidable, and enforceable against any trustee or any other estate representative appointed or elected in the Case or any Successor Case, and/or upon the dismissal of the Case.

(b) Adequate Protection Superpriority Claims. To the extent of any Decrease in Prepetition Collateral Value, the Prepetition Secured Parties are hereby further granted allowed superpriority administrative claims in the Case and any Successor Case (such adequate protection superpriority claims, the "Adequate Protection Superpriority Claims"), pursuant to section 507(b) of the Bankruptcy Code, with priority over all administrative expense claims and unsecured claims against the Debtor or its estate, now existing or hereafter arising, of any kind or nature whatsoever, including, without limitation, administrative expenses of the kind specified in or ordered pursuant to sections 105, 326, 328, 330, 331, 503(a), 503(b), 506(c), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114 and any other provision of the Bankruptcy Code, junior only to the DIP Superpriority Claims and the Carve-Out to the extent provided herein, and payable from and having recourse to all of the DIP Collateral; *provided, however*, that the Prepetition Secured Parties shall not receive or retain any payments, property, or other amounts in respect of the Adequate Protection Superpriority Claims unless and until all DIP Obligations have been Paid in Full (as defined below). For purposes of this Interim Order, the terms "Paid in Full," "Pay in Full," and "Payment in Full" shall mean, with respect to any referenced DIP Obligations, (i) the indefeasible payment in full in cash of such obligations and (ii) the termination of all credit commitments under the DIP Loan Documents.

(c) Further Adequate Protection. As further adequate protection, the Debtor (A) has committed, as set forth in this Interim Order, to adhere to the Transaction Process Deadlines, as may be modified with consent of the DIP Agent, and (B) shall simultaneously provide copies of any reports sent to the DIP Agent as may be required under this Interim Order or the DIP Credit Agreement to each of the Prepetition Secured Agents (both before and after Payment in Full of the DIP Obligations).

(d) Certain Payments. As further adequate protection, and without limiting any rights of any of the Prepetition Secured Agents and the other Prepetition Secured Parties under section 506(b) of the Bankruptcy Code, all of which rights are hereby preserved, and in consideration, and as a requirement, for obtaining the consent of the Prepetition First Lien Secured Parties to the entry of this Interim Order and the Debtor's consensual use of Cash Collateral as provided herein, the Debtor shall (i) promptly following receipt of a written summary invoice, pay or reimburse currently the Prepetition First Lien Secured Agent and Prepetition First Lien Lenders for any and all of their accrued and past-due reasonable fees, costs, expenses, and charges (including, without limitation, the fees, costs, and expenses of counsel and financial advisors for the Prepetition First Lien Secured Agent and Prepetition First Lien Lenders) to the extent, and at the times, payable under the Prepetition Loan Documents and whether accrued before or after the Petition Date, and (ii) pay currently all reasonable out-of-pocket fees, costs, and expenses of the Prepetition First Lien Secured Agent and Prepetition First Lien Lenders (including, without limitation, the fees, costs, and expenses of counsel and financial advisors for the Prepetition First Lien Secured Agent and Prepetition First Lien Lenders), including, without limitation, those incurred in connection with the sale of all or substantially all of the Debtor's assets or any chapter 11 plan, whether incurred before or after the Petition Date, in the case of each of sub-

clauses (i) and (ii) above, all whether or not budgeted in the Approved Budget, whenever incurred, and without further notice (except as provided in Paragraph 18(a) of this Interim Order), motion, or application to, order of, or hearing before, this Court. The foregoing payments must be indefeasibly paid in full in cash and satisfied on or before the effective date of any chapter 11 plan; *provided, however*, that in the event this Court determines that the Prepetition First Lien Secured Parties are not entitled to such payments on account of their secured claims or as adequate protection for the diminution in the value of the Prepetition First Lien Secured Parties' interests in the Prepetition Collateral, any such payments shall be applied as a payment made to the principal amount of the Prepetition First Lien Secured Obligations.

(e) Consent to Priming and Adequate Protection. Each of the Prepetition Secured Agents, on behalf of the other Prepetition Secured Parties, is authorized to consent to the Prepetition Secured Parties' Adequate Protection and the priming provided for herein under the Prepetition Loan Documents and has consented to the Prepetition Secured Parties' Adequate Protection and the priming provided for herein; *provided, however*, that such consent of the Prepetition Secured Agents to the priming of the Prepetition Liens and the use of Cash Collateral provided for herein is expressly conditioned on the entry of this Interim Order, and such consent shall not be deemed to extend to any other Cash Collateral usage or other replacement financing or debtor in possession financing other than the DIP Facility provided under the DIP Loan Documents; and *provided, further*, that such consent shall be of no force and effect in the event this Interim Order is not entered or is entered and subsequently reversed, modified, stayed, or amended (unless such reversal, modification, stay, or amendment is acceptable to each of the Prepetition Secured Agents) or the DIP Loan Documents and DIP Facility as set forth herein are not approved; and *provided, further*, that in the event of the occurrence of the Maturity Date (as

defined in the DIP Credit Agreement), nothing herein shall alter the burden of proof set forth in the applicable provisions of the Bankruptcy Code at any hearing concerning the continued use of Prepetition Collateral (including Cash Collateral) by the Debtor.

(f) Right to Credit Bid. Subject to entry of the Final Order, the DIP Agent (on behalf of the DIP Secured Parties) and each of the Prepetition Secured Agents (on behalf of the applicable Prepetition Secured Parties) or their respective assignees, designees, or successors, shall automatically be deemed a “qualified bidder” with respect to any disposition of DIP Collateral and shall have the right to “credit bid” up to the full amount of the DIP Obligations and the applicable Prepetition Secured Obligations (including, without limitation, the DIP Superpriority Claims and the Adequate Protection Superpriority Claims to the extent such claims have any value) during any sale or other disposition of all or any portion of the DIP Collateral, including, without limitation, sales occurring pursuant to section 363 of the Bankruptcy Code.

(g) Section 507(b) Reservation. Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, the Court finds that the adequate protection provided herein is reasonable to protect the interests of the respective Prepetition Secured Parties. Nothing in this Interim Order shall impair or modify the application of section 507(b) of the Bankruptcy Code, or preclude the granting of additional forms of adequate protection, in the event that the adequate protection provided herein to the Prepetition Secured Parties is insufficient to compensate for any Decrease in Prepetition Collateral Value during the Case or any Successor Case; *provided, however*, that any such additional section 507(b) claims shall be subject to the same relative priority as such party’s Adequate Protection Superpriority Claims, as provided in this Interim Order.

5. Automatic Postpetition Lien Perfection. This Interim Order shall be sufficient

and conclusive evidence of the validity, enforceability, perfection, priority, and non-avoidability of the DIP Liens and the Adequate Protection Replacement Liens without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, control agreement, or other instrument or document which may otherwise be required under the law of any jurisdiction or (b) taking any other act or action to validate or perfect the DIP Liens and the Adequate Protection Replacement Liens or to entitle the DIP Liens and the Adequate Protection Replacement Liens to the priorities granted herein. Notwithstanding the foregoing, the DIP Agent and each of the Prepetition Secured Agents (in the latter case, solely with respect to the Adequate Protection Replacement Liens) may, each in its respective sole and absolute discretion, enter into and file, as applicable, financing statements, mortgages, security agreements, notices of liens, and other similar documents, and is hereby granted relief from the automatic stay of section 362 of the Bankruptcy Code in order to do so, and all such financing statements, mortgages, security agreements, notices, and other agreements or documents shall be deemed to have been filed or recorded at the time of and on the Petition Date. The Debtor shall execute and deliver to the DIP Agent or to the applicable Prepetition Secured Agent all such financing statements, mortgages, notices, and other documents as such parties may reasonably request to evidence and confirm the contemplated validity, perfection, and priority of, the DIP Liens and the Adequate Protection Replacement Liens, as applicable, granted pursuant hereto. Without limiting the foregoing, each of the DIP Agent and the applicable Prepetition Secured Agent, each in its respective sole and absolute discretion, may file a photocopy of this Interim Order as a financing statement with any recording officer designated to file financing statements or with any registry of deeds or similar office in any jurisdiction in which the Debtor has real or personal property, and in such event, the subject filing or recording officer shall be authorized and directed to file or record such copy of



this Interim Order. Subject to the entry of the Final Order, any provision of any lease, loan document, easement, use agreement, proffer, covenant, license, contract, organizational document, or other instrument or agreement that requires the payment of any fees or obligations to any non-governmental entity in order for the Debtor to pledge, grant, mortgage, sell, assign, or otherwise transfer any fee or leasehold interest or the proceeds thereof or other DIP Collateral, is and shall be deemed to be inconsistent with the provisions of the Bankruptcy Code, and shall have no force or effect with respect to the Liens on such leasehold interests or other applicable DIP Collateral or the proceeds of any assignment and/or sale thereof by the Debtor, in favor of the DIP Secured Parties in accordance with the terms of the DIP Loan Documents and this Interim Order or in favor of the Prepetition Secured Parties in accordance with this Interim Order. To the extent that a Prepetition Secured Agent is the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, financing statement, or account control agreements, listed as loss payee under any of the Debtor's insurance policies, or is the secured party under any of the Prepetition Loan Documents, the DIP Agent shall also be deemed to be the secured party under such account control agreements, loss payee under the Debtor's insurance policies, and the secured party under each such Prepetition Secured Loan Document, shall have all rights and powers attendant to that position (including, without limitation, rights of enforcement), and shall act in that capacity and distribute any proceeds recovered or received first, for the benefit of the DIP Secured Parties in accordance with the DIP Loan Documents, and second, subsequent to Payment in Full of all DIP Obligations, for the benefit of the Prepetition Secured Parties. To the extent necessary, the applicable Prepetition Secured Agent shall serve as agent for the DIP Agent for purposes of perfecting its respective liens on all DIP Collateral that is of a type such that perfection of a lien therein under otherwise applicable nonbankruptcy law

may be accomplished only by possession or control by a secured party.

6. **Reservation of Certain Third Party Rights and Bar of Challenges and Claims.** The Debtor's Stipulations shall be binding on the Debtor and its estate in all circumstances upon entry of this Interim Order. The Debtor's Stipulations shall be binding on each other party in interest, including the Committee, unless *first*, (x) if a Committee is formed, the Committee within sixty (60) calendar days of its formation, or (y) solely if no Committee is formed, any other party in interest (that obtains standing) within seventy-five (75) calendar days following the date of entry of this Interim Order,<sup>4</sup> commences (A) a contested matter, adversary proceeding, or other action or "claim" (as defined in the Bankruptcy Code) challenging or otherwise objecting to the admissions, stipulations, findings, or releases included in the Debtor's Stipulations, or (B) a contested matter, adversary proceeding, or other action against any or all of the Prepetition Secured Parties in connection with or related to the validity or extent of Prepetition Secured Obligations or the Prepetition Liens, or the actions or inactions of any of the Prepetition Secured Parties arising out of or related to the Prepetition Secured Obligations or the Prepetition Liens (clauses (i) and (ii) collectively, the "Challenges" and, each individually, a "Challenge"), and *second*, such challenging party obtains a final, non-appealable order in favor of such party sustaining any such Challenge in any such timely-filed contested matter, adversary proceeding, or other action. If a chapter 7 trustee or a chapter 11 trustee is appointed during the Challenge Period, then the Challenge Period Termination Date with respect to such trustee only, shall be the later of (i) the last day of the Challenge Period and (ii) the date that is sixty (60)

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<sup>4</sup> The time period established by the earlier of clauses (x) and (y), as the same may be extended in accordance with this Paragraph 6, shall be referred to as the "Challenge Period"; and the date that is the next calendar day after the termination of the Challenge Period in the event that either (i) no Challenge (as defined below) is properly raised during the Challenge Period or (ii) with respect only to those parties who properly file a Challenge (as defined below), such Challenge is fully and finally adjudicated, shall be referred to as the "Challenge Period Termination Date."

calendar days after the date on which such trustee is appointed. Except as otherwise expressly provided in this Paragraph 6, upon the Challenge Period Termination Date and for all purposes in the Case and any Successor Case, (i) all payments made to or for the benefit of the Prepetition Secured Parties pursuant to, or otherwise authorized by, this Interim Order or otherwise (whether made prior to, on, or after the Petition Date) shall be indefeasible and not be subject to avoidance, disallowance, impairment, recharacterization, recovery, disgorgement, subordination, attack, setoff, offset, recoupment, counterclaim, defense, or “claim” (as defined in the Bankruptcy Code) of any kind, (ii) any and all such Challenges by any party in interest shall be deemed to be forever released, waived, and barred; (iii) the Prepetition Secured Obligations shall be deemed to be fully allowed secured claims within the meaning of section 506 of the Bankruptcy Code, and (iv) the Debtor’s Stipulations, including, without limitation, the release provisions therein, shall be binding on all parties in interest. Notwithstanding the foregoing, to the extent any Challenge is timely asserted, the Debtor’s Stipulations and the other provisions in clauses (i) through (iv) in the immediately preceding sentence shall nonetheless remain binding and preclusive on any Committee and on any other party in interest from and after the Challenge Period Termination Date, except to the extent that such Debtor’s Stipulations or the other provisions in clauses (i) through (iv) of the immediately preceding sentence were expressly challenged in such Challenge. Subject to entry of the Final Order, the Challenge Period may be extended only with the prior written consent of each of the Prepetition Secured Agents, each in its respective sole and absolute discretion. Notwithstanding any provision to the contrary herein, (i) nothing in this Interim Order shall be construed to grant standing on any Committee or any other party in interest to bring any Challenge on behalf of the Debtor’s estate and (ii) each of the Prepetition Secured Parties’ and the Debtor’s rights to challenge the standing of any party in

interest to commence any such action is reserved. The failure of any Committee or any other party in interest to obtain an order of this Court granting standing to bring any Challenge on behalf of the Debtor's estate shall not be a defense to failing to commence a Challenge prior to the Challenge Period Termination Date as required under this Paragraph 6.

7. **Carve-Out.** Subject to the terms and conditions contained in this Paragraph 7, each of the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Replacement Liens, and the Adequate Protection Superpriority Claims shall be subject and subordinate to payment of the Carve-Out (as defined below).

- (a) **Carve-Out.** For purposes of this Interim Order, "Carve-Out" means, severally:
- (i) payment of fees to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a)(6), in such amounts as are determined by agreement with the Office of the United States Trustee or by final order of the Court;
  - (ii) fees payable to the Clerk of this Court;
  - (iii) the lesser of (1) the amount of the unpaid and outstanding reasonable fees, costs, and expenses actually incurred by attorneys, accountants, and other professionals (collectively, "Professionals") retained, with the approval of the Bankruptcy Court, by the Debtor (including ordinary course Professionals) and (2) the budgeted (on an accrued basis, not on a cash basis, regardless of whether or not such fees, costs and expenses are subject to hold back) and unpaid amount of the fees, costs, and expenses of each of the Debtor's Professionals (including ordinary course Professionals), as set forth in the applicable line item in the Approved Budget (the amount set forth in clauses (1) and (2), as applicable, along with the obligations referenced in subsection v. below the "Debtor Professional

Fees”), in each case, for the period from and after the Petition Date and prior to the earlier of the Termination Declaration Date (as defined below) or the Cash Collateral Termination Declaration Date (as defined below) (such earlier date, the “Carve-Out Trigger Date”); provided, that such Debtor Professional Fees are ultimately allowed by a final order of the Court pursuant to section 330 of the Bankruptcy Code (whether such Debtor Professional Fees are allowed before or after the Carve-Out Trigger Date);

(iv) the lesser of (1) the amount of the unpaid and outstanding reasonable fees, costs, and expenses actually incurred any Professionals retained, with the approval of the Bankruptcy Court, by any Committee and (2) the budgeted and unpaid amount of the fees, costs, and expenses of the Committee’s Professionals, as set forth in the applicable line item in the Approved Budget (the amount set forth in clauses (1) and (2), as applicable, the “Committee Professional Fees”), in each case, for the period from and after the Petition Date and prior to the Carve-Out Trigger Date; provided, that such Committee Professional Fees are ultimately allowed by a final order of the Bankruptcy Court pursuant to section 330 of the Bankruptcy Code (whether such Committee Professional Fees are allowed before or after the Carve-Out Trigger Date);

(v) the amount of any fee, besides the Monthly Fee (as defined therein) in the Agreement dated June 16, 2014, between KiOR, Inc. and Guggenheim Securities, LLC, defining the terms of Guggenheim’s engagement as investment advisor, as such obligations become due and payable (the “Guggenheim Obligations”), but only to the extent that such fee results from a sale or transaction relating to the

Debtor (for the avoidance of doubt, any fee resulting from a sale or transaction entered into by non-debtor KiOR Columbus, LLC that does not include the Purchased Assets (as defined in the Bid Procedures Order) shall not be included within the Carve-Out);

(vi) the amount of the unpaid and outstanding reasonable Debtor Professional Fees that are incurred by the Debtor during any period on and after a Carve-Out Trigger Date (the "Carve-Out Expense Reduction Period") in an aggregate amount not to exceed \$100,000; and

(vii) the amount of the unpaid and outstanding reasonable Committee Professional Fees that are incurred during the Carve-Out Expense Reduction Period in an aggregate amount not to exceed \$25,000 (items (v) and (vi), collectively, the "Professional Expense Carve-Out Cap").

(b) No Direct Obligation to Pay Professional Fees; No Waiver of Right to Object to Fees. The DIP Agent, the other DIP Secured Parties, the Prepetition Secured Agents, and the other Prepetition Secured Parties shall not be responsible for the direct payment or reimbursement of any fees or disbursements of any of the Debtor's Professionals or the Committee's Professionals incurred in connection with the Case or any Successor Case under any chapter of the Bankruptcy Code; *provided, however*, that, subject to the terms and conditions of the DIP Credit Agreement, the DIP Lenders shall provide adequate funds to satisfy the obligations outlined in the Carve-Out. Nothing in this Interim Order or otherwise shall be construed (i) to obligate any Prepetition Secured Agent or any other Prepetition Secured Parties in any way to pay compensation to, or to reimburse expenses of, any of the Debtor's Professionals or the Committee's Professionals, or to guarantee that the Debtor or its estate has

sufficient funds to pay such compensation or reimbursement or (ii) to increase the Carve-Out if actual allowed fees and expenses of any of the Debtor's Professionals or the Committee's Professionals are higher in fact than the amounts set forth in the Approved Budget or the Professional Expense Carve-Out Cap. Notwithstanding any provision in this Paragraph 7 to the contrary, no portion of the Carve-Out, Cash Collateral, Prepetition Collateral, DIP Collateral, or proceeds of the DIP Facility shall be utilized for the payment of professional fees and disbursements to the extent restricted under Paragraph 14 of this Interim Order. Nothing in this Interim Order shall be construed as consent to the allowance of any professional fees or expenses of any of the Debtor, any Committee, any other official or unofficial committee in the Case or any Successor Case, or of any other person or entity, or shall affect the right of any DIP Secured Party or any Prepetition Secured Party to object to the allowance and payment of any such fees and expenses.

**8. Waiver of Section 506(c) Claims.** Subject to the entry of the Final Order, no costs or expenses of administration which have or may be incurred in the Case or any Successor Case at any time shall be charged against or recovered from or against any of the Prepetition Secured Agents, the Prepetition Secured Lenders, their respective claims or interests, and/or the Prepetition Collateral pursuant to section 506(c) of the Bankruptcy Code or otherwise without the prior written consent of the applicable Prepetition Secured Agent in its sole and absolute discretion, and no such consent shall be implied from any other action, inaction, or acquiescence by the applicable Prepetition Secured Agent or any Prepetition Secured Lender.

**9. Other Protection of Secured Parties' Rights.**

(a) Unless the DIP Agent shall have provided its prior written consent or all DIP Obligations have been Paid in Full, there shall not be entered in the Case, or in any

Successor Case, any order which authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the DIP Liens, the DIP Superpriority Claims, and the other DIP Protections granted pursuant to this Interim Order to the DIP Secured Parties; or (ii) the use of Cash Collateral for any purpose other than to Pay in Full the DIP Obligations or as otherwise permitted in the DIP Loan Documents and this Interim Order. Unless each of the Prepetition Secured Agents shall have provided prior written consent or all Prepetition Secured Obligations have been paid in full in cash, there shall not be entered in the Case, or in any Successor Case, any order which authorizes any of the following: (i) the obtaining of credit or the incurring of indebtedness that is secured by a security, mortgage, or collateral interest or other Lien on all or any portion of the DIP Collateral and/or that is entitled to administrative priority status, in each case which is superior to or *pari passu* with the Prepetition Liens, or the Adequate Protection Replacement Liens, the Adequate Protection Superpriority Claims, and the other Prepetition Secured Parties' Adequate Protection granted pursuant to this Interim Order; or (ii) the use of Cash Collateral for any purpose other than to pay the Prepetition Secured Obligations or as otherwise permitted in this Interim Order.

(b) The Debtor (and/or its legal and financial advisors in the case of clauses (ii) through (iv) below) will, whether or not Payment in Full of the DIP Obligations has occurred, (i) maintain books, records, and accounts to the extent and as required by the DIP Loan Documents, (ii) reasonably cooperate, consult with, and provide to the DIP Agent and the Prepetition Secured Agents all such information and documents as required or allowed under the DIP Loan Documents, the Prepetition Loan Documents, or the provisions of this Interim Order,



(iii) permit representatives of the DIP Agent and each of the Prepetition Secured Agents such rights to visit and inspect any of the Debtor's properties, to examine and make abstracts or copies from any of its books and records, to conduct a collateral audit and analysis of its inventory and accounts, to perform any appraisals of the DIP Collateral, to tour the Debtor's business premises and other properties, and to discuss, and provide advice with respect to, its affairs, finances, properties, business operations, and accounts with its officers, employees, and independent public accountants as and to the extent required by the DIP Loan Documents or the Prepetition Loan Documents, and (iv) permit the DIP Agent, each of the Prepetition Secured Agents, and their respective representatives to consult with the Debtor's management and advisors on matters concerning the general status of the Debtor's business, financial condition, and operations.

**10. Proceeds of Subsequent Financing.** Without limiting the provisions and protections of Paragraph 9 of this Interim Order, if at any time prior to the Payment in Full of all the DIP Obligations (including, without limitation, subsequent to the confirmation of any chapter 11 plan with respect to the Debtor), the Debtor's estate, any trustee, any examiner with enlarged powers, or any responsible officer subsequently appointed shall obtain credit or incur debt pursuant to sections 364(b), 364(c), 364(d), or any other provision of the Bankruptcy Code in violation of the DIP Loan Documents, then all of the cash proceeds derived from such credit or debt and all Cash Collateral shall immediately be turned over to the DIP Agent until Payment in Full of the DIP Obligations and then, subject to Challenge pursuant to Paragraph 6 of this Interim Order, to the Prepetition Secured Agents for application to the Prepetition Secured Obligations.

**11. Cash Collection.** The Debtor shall maintain its existing cash management system to the extent set forth in the DIP Loan Documents unless the DIP Agent, in its sole and absolute

discretion, consents in writing to any proposed modification to such cash management system, or as otherwise ordered by the Court. From and after the date of the entry of this Interim Order, all collections and proceeds of any DIP Collateral or Prepetition Collateral or services provided by the Debtor and all Cash Collateral which shall at any time come into the possession, custody, or control of the Debtor, or to which the Debtor is now or shall become entitled at any time, shall be promptly deposited in the same bank accounts into which the collections and proceeds of the Prepetition Collateral were deposited under the Prepetition Loan Documents (or in such other accounts as are designated by the DIP Agent from time to time). The DIP Agent and, after Payment in Full of the DIP Obligations, each of the Prepetition Secured Agents, shall be deemed, without any further action of any kind, to have "control" over all of the Debtor's bank accounts within the meaning of Sections 8-106, 9-104, 9-105, 9-106, 9-107, and 9-314 of the New York Commercial Code.

**12. Disposition of DIP Collateral.** Unless the DIP Obligations are Paid in Full upon the closing of a sale or similar transaction, whether under a chapter 11 plan or otherwise, the Debtor shall not sell, transfer, lease, encumber, or otherwise dispose of any portion of the DIP Collateral (or enter into any binding agreement to do so) without the prior written consent of the DIP Agent (and no such consent shall be implied from any other action, inaction, or acquiescence by any DIP Secured Party or any order of this Court), except as permitted in the DIP Loan Documents and this Interim Order. Without limiting any power of this Court, the Debtor shall not, without the prior written consent of the DIP Agent, in its sole and absolute discretion, (a) enter into any agreement to return any goods to any creditor for application against any prepetition indebtedness under any applicable provision of section 546 of the Bankruptcy Code, or (b) consent to any creditor taking any setoff against any of its prepetition indebtedness

based upon any such return pursuant to section 553(b)(1) of the Bankruptcy Code or otherwise. In the event that the Debtor sells or otherwise disposes of any of the DIP Collateral other than in the ordinary course of business, the Debtor is authorized and directed to have all cash and other proceeds of any such sale, less amounts, if any, authorized to be deducted therefrom under the Carve-Out or the Approved Budget, paid (i) until all DIP Obligations are Paid in Full, directly to the DIP Agent for application to the DIP Obligations, and (ii) after the DIP Obligations have been Paid in Full but subject to entry of the Final Order, directly to the Prepetition Secured Agents for application to the Prepetition Secured Obligations; *provided, however*, that such payment or application shall be without prejudice to (x) any timely Challenge asserted before or after such payment or application of proceeds and (y) any rights under section 506(b) of the Bankruptcy Code with respect to whether the Prepetition Secured Obligations are oversecured or undersecured. Unless the DIP Obligations have been Paid in Full, no other party may foreclose or otherwise seek to enforce any junior lien or claim in any DIP Collateral (other than the Carve-Out).

**13. Rights and Remedies Upon Termination Event.**

(a) Any automatic stay otherwise applicable to the DIP Secured Parties is hereby modified, without requiring prior notice to or authorization of this Court, to the extent necessary to permit the DIP Secured Parties to exercise the following remedies upon the occurrence and during the continuance of any Termination Event: (i) immediately cease making advances under the DIP Facility; (ii) immediately declare a termination, reduction, or restriction on the ability of the Debtor to use any Cash Collateral (except as permitted in Paragraph 13(b) of this Interim Order), including Cash Collateral derived solely from the proceeds of DIP Collateral (any such declaration to be made to the Debtor, the Prepetition Secured Agents, the respective lead counsel

to any Committee, and the United States Trustee shall be referred to herein as a "Termination Declaration" and the date which is the earliest to occur of any such Termination Declaration being herein referred to as the "Termination Declaration Date"; and (iii) absent the granting of relief in favor of the Debtor as set forth in Paragraph 13(b) of this Interim Order, (X) declare the principal amount then outstanding of, and the accrued interest on, the DIP Obligations and all other amounts payable by the Debtor under the DIP Loan Documents to be forthwith due and payable, whereupon such amounts shall be immediately due and payable without presentment, demand, protest, or other formalities of any kind, all of which are hereby expressly waived by the Debtor; (Y) terminate the DIP Facility and any DIP Loan Document as to any future liability or obligation of the DIP Secured Parties, but without affecting any of the DIP Obligations or the DIP Liens securing the DIP Obligations; and/or (Z) take any act or action permitted to be taken by the DIP Loan Documents during the continuance of any Termination Event.

(b) Five (5) calendar days following a Termination Declaration Date, the DIP Agent shall have relief from the automatic stay and may foreclose on all or any portion of the DIP Collateral, collect accounts receivable, and apply the proceeds thereof to the DIP Obligations, occupy the Debtor's premises to sell or otherwise dispose of the DIP Collateral, or otherwise exercise remedies against the DIP Collateral permitted by applicable nonbankruptcy law. Solely during the 5-day period after a Termination Declaration Date, the Debtor, the DIP Agent, each of the Prepetition Secured Agents, and any Committee shall be entitled to an emergency hearing before the Court to address the existence of a Termination Event. Unless during such period the Court determines that a Termination Event has not occurred or, if a Termination Event has occurred but is permitted to be cured, that such Termination Event was cured timely, the automatic stay, as to the DIP Secured Parties, shall automatically terminate at the end of such 5-

day period, without further notice or order. During such 5-day period, the Debtor may not request further advances on the DIP Facility and may not use Cash Collateral or any amounts previously advanced under the DIP Credit Facility except to pay payroll and other expenses critical to keep the business of the Debtor operating in accordance with the Approved Budget.

(c) Upon the occurrence and during the continuance of a Termination Event, any Prepetition Secured Agent may declare a termination, reduction, or restriction on the ability of the Debtor to use any Cash Collateral by providing notice of such Termination Event to the Debtor, the DIP Agent, the counsel to any Committee, and the United States Trustee (a "Cash Collateral Termination Declaration," and the date on which such notice is given shall be referred to as the "Cash Collateral Termination Declaration Date"). Subject to Paragraph 13(d) of this Interim Order, on the Cash Collateral Termination Declaration Date, the Debtor's right to use Cash Collateral shall automatically cease.

(d) Solely within five (5) calendar days following a Cash Collateral Termination Declaration Date, the Debtor and any Committee shall be entitled to seek an emergency hearing before the Court (to be held on the first available date on the Court's calendar) to request use of Cash Collateral without the consent of the Prepetition Secured Parties in accordance with the Bankruptcy Code. Unless and until the Court determines that the Debtor may use Cash Collateral at such emergency hearing, the Debtor may not use Cash Collateral or any amounts under the DIP Facility except to pay payroll and other expenses critical to keep the business of the Debtor operating in accordance with the Approved Budget.

(e) All proceeds realized in connection with the exercise of the rights and remedies of the DIP Secured Parties or the Prepetition Secured Parties shall be turned over to the DIP Agent for application to the DIP Obligations under, and in accordance with, the provisions of the DIP

Loan Documents until Payment in Full of the DIP Obligations; *provided, however*, that in the event of the liquidation or other disposition (whether as a going concern or otherwise) of all or substantially all of the property of the Debtor's estate after the occurrence and during the continuance of a Termination Event, the Carve-Out shall be funded into a segregated account exclusively (i) first, from proceeds of any unencumbered assets of the Debtor, and (ii) then from Cash Collateral received by the DIP Agent subsequent to the date of termination of the DIP Obligations and prior to the distribution of any such Cash Collateral to any other parties in interest.

(f) Subject to entry of the Final Order, and notwithstanding anything contained herein to the contrary, and without limiting any other rights or remedies of the DIP Agent or the other DIP Secured Parties contained in this Interim Order or the DIP Loan Documents, or otherwise available at law or in equity, and subject to the terms of the DIP Loan Documents, upon five (5) calendar days' written notice, to the Debtor and any landlord, lienholder, licensor, or other third party owner of any leased or licensed premises or intellectual property, that a Termination Event has occurred and is continuing, the DIP Agent (i) may, unless otherwise provided in any separate agreement by and between the applicable landlord or licensor and the DIP Agent (the terms of which shall be reasonably acceptable to the parties thereto), enter upon any leased or licensed premises of the Debtor for the purpose of exercising any remedy with respect to any DIP Collateral located thereon and (ii) shall be entitled to all of the Debtor's rights and privileges as lessee or licensee under the applicable license and to use any and all trademarks, trade names, copyrights, licenses, patents, or any other similar assets of the Debtor, which are owned by or subject to a Lien of any third party and which are used by the Debtor in its business, in either the case of subparagraph (i) or (ii) of this Paragraph 13(f) without

interference from lienholders or licensors thereunder, subject to such lienholders' or licensors' rights under applicable law. Nothing in this Interim Order shall require the Debtor, the DIP Agent, or the other DIP Secured Parties to assume any lease, license, or other contract under section 365(a) of the Bankruptcy Code as a precondition to the rights afforded to the DIP Agent and the other DIP Secured Parties in this Paragraph 13(f).

(g) The automatic stay imposed under section 362(a) of the Bankruptcy Code is hereby modified pursuant to the terms of this Interim Order and the DIP Loan Documents as necessary to (i) permit the Debtor to grant the Adequate Protection Replacement Liens and the DIP Liens and to incur all liabilities and obligations to the Prepetition Secured Parties and the DIP Secured Parties under the DIP Loan Documents, the DIP Facility, and this Interim Order; (ii) authorize the DIP Secured Parties and the Prepetition Secured Parties to retain and apply payments hereunder; (iii) permit the DIP Agent, acting on behalf of itself and the DIP Lenders, to perform any act authorized or permitted under or by virtue of this Interim Order or the DIP Loan Documents; (iv) permit the Prepetition Secured Agents, acting on behalf of themselves and the applicable Prepetition Secured Lenders, to perform any act authorized or permitted under or by virtue of this Interim Order; and (v) otherwise to the extent necessary to implement and effectuate the provisions of this Interim Order.

**14. Restriction on Use of Proceeds.** Notwithstanding anything in this Interim Order to the contrary, no loans and/or proceeds from the DIP Facility, DIP Collateral, Cash Collateral (including, without limitation, any prepetition retainer held by any professionals for the below-referenced parties), Prepetition Collateral, or any portion of the Carve-Out may be used by (a) the Debtor, any Committee, any trustee or other estate representative appointed in the Case or any Successor Case, or any other person, party, or entity to (or to pay any professional fees and

disbursements incurred in connection therewith) investigate or prosecute any Challenge or any other litigation in connection with the value of the Prepetition Collateral or the DIP Collateral; and (b) any of the Debtor, any Committee, and any trustee or other estate representative appointed in the Case or any Successor Case, or any other person, party, or entity to (or to pay any professional fees and disbursements incurred in connection therewith): (i) request authorization to obtain postpetition loans or other financial accommodations pursuant to section 364(c) or (d) of the Bankruptcy Code, or otherwise, other than from the DIP Secured Parties; (ii) investigate (except as set forth below), assert, join, commence, support, or prosecute any action for any claim, counter-claim, action, proceeding, application, motion, objection, defense, or other contested matter seeking any order, judgment, determination, or similar relief against, or adverse to the interests of, in any capacity, any or all of the DIP Secured Parties, the Prepetition Secured Parties, or their respective affiliates, successors, or assigns or any of their respective officers, directors, employees, agents, attorneys, affiliates, assigns, or successors, with respect to any transaction, occurrence, omission, action, or other matter (including formal discovery proceedings in anticipation thereof), including, without limitation, (A) any Challenges and any Avoidance Actions or other actions arising under chapter 5 of the Bankruptcy Code; (B) any action with respect to the validity, enforceability, priority, and extent of the DIP Obligations and/or the Prepetition Secured Obligations, or the validity, extent, and priority of the DIP Liens, the Prepetition Liens, or the Adequate Protection Replacement Liens (including, with respect to the Prepetition Secured Parties only, the value of the DIP Collateral); (C) any action seeking to invalidate, set aside, avoid, or subordinate, in whole or in part, the DIP Liens, the other DIP Protections, the Prepetition Liens, the Adequate Protection Replacement Liens, or the other Prepetition Secured Parties' Adequate Protection; (D) except to contest in good faith the



occurrence or continuance of any Termination Event as permitted in Paragraph 13 of this Interim Order, any action seeking, or having the effect of, preventing, hindering, or otherwise delaying any or all of the DIP Secured Parties' (and, after the Payment in Full of the DIP Obligations, the Prepetition Secured Parties') assertion, enforcement, or realization on the Cash Collateral or the DIP Collateral in accordance with the DIP Loan Documents or the Prepetition Loan Documents, as applicable, or this Interim Order; and/or (E) any act or action seeking to modify any of the rights, remedies, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition Secured Parties hereunder or under the DIP Loan Documents or the Prepetition Loan Documents, as applicable, or any payments made thereunder or respect thereto; *provided, however*, that, subject to the entry of the Final Order, up to \$30,000 in the aggregate of the Carve-Out, any DIP Collateral, any Prepetition Collateral, any Cash Collateral, or proceeds of the DIP Facility may be used by the Committee (to the extent such committee is appointed) to investigate (but not to prosecute) the validity, perfection, priority, extent, or enforceability of the Prepetition Secured Obligations or the Prepetition Liens so long as such investigation occurs within the Challenge Period; (iii) pay any fees or similar amounts to any person (other than the Prepetition Secured Parties) who has proposed or may propose to purchase interests in the Debtor without the prior written consent of the DIP Agent; or (iv) use or seek to use Cash Collateral or sell or otherwise dispose of DIP Collateral, unless otherwise permitted hereby, without the prior written consent of the DIP Agent or the Prepetition Secured Agents, as applicable.

15. **Proofs of Claim.** Upon entry of the Final Order, the Prepetition Secured Agents and the other Prepetition Secured Parties will not be required to file proofs of claim in the Case or any Successor Case for any claim described in this Interim Order. The Debtor's Stipulations

shall be deemed to constitute timely filed proofs of claim for all the Prepetition Secured Parties in respect of all Prepetition Secured Obligations. Notwithstanding any order entered by the Court in relation to the establishment of a bar date in the Case or any Successor Case to the contrary, each of the Prepetition Secured Agents for the benefit of themselves and the applicable Prepetition Secured Lenders are hereby authorized and entitled, in their respective sole and absolute discretion, but not required, to file (and amend and/or supplement, as each of them sees fit) a proof of claim and/or aggregate proofs of claim in the Case or any Successor Case for any claim described herein.

**16. Preservation of Rights Granted Under the Interim Order.**

(a) No Non-Consensual Modification or Extension of Interim Order. Subject to any exercise of rights under Paragraph 13 of this Interim Order, the Debtor irrevocably waives any right to seek any amendment, modification, or extension of this Interim Order (including, without limitation, through any chapter 11 plan) without the prior written consent of the DIP Agent, and no such consent shall be implied by any other action, inaction, or acquiescence of the DIP Secured Parties. In the event any or all of the provisions of this Interim Order are hereafter modified, amended, or vacated by a subsequent order of this Court or any other court, such modification, amendment, or vacatur shall not affect the validity, perfection, priority, allowability, enforceability, or non-avoidability of any advances, payments, or use of cash whether previously or hereunder, or lien, claim, or priority authorized or created hereby. Based on the findings set forth in this Interim Order and in accordance with section 364(e) of the Bankruptcy Code, which is applicable to the DIP Facility contemplated by this Interim Order, in the event any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated, or stayed by a subsequent order of this Court or any other court, the DIP Secured Parties

and the Prepetition Secured Parties shall be entitled to the protections provided in section 364(e) of the Bankruptcy Code, and no such reversal, modification, vacatur, or stay shall affect (i) the validity, perfection, priority, allowability, enforceability, or non-avoidability of any DIP Protections and the Prepetition Secured Parties' Adequate Protection granted or incurred prior to the actual receipt of written notice by the DIP Agent or a Prepetition Secured Agent, as the case may be, of the effective date of such reversal, modification, vacatur, or stay or (ii) the validity, perfection, priority, enforceability, or non-avoidability of any lien, interest, or priority authorized or created hereby or pursuant to the DIP Loan Documents with respect to any DIP Obligations and the Prepetition Secured Parties' Adequate Protection. Notwithstanding any such reversal, modification, vacatur, or stay, any use of Cash Collateral or any DIP Obligations or Prepetition Secured Parties' Adequate Protection incurred or granted by the Debtor prior to the actual receipt of written notice by the DIP Agent or a Prepetition Secured Agent, as applicable, of the effective date of such reversal, modification, vacatur, or stay shall be governed in all respects by the original provisions of this Interim Order, and the DIP Secured Parties and the Prepetition Secured Parties shall be entitled to all of the DIP Protections and Prepetition Secured Parties' Adequate Protection, as the case may be, and all other rights, remedies, liens, priorities, privileges, protections, and benefits granted in section 364(e) of the Bankruptcy Code, this Interim Order, and pursuant to the DIP Loan Documents with respect to all uses of Cash Collateral and all DIP Obligations and Prepetition Secured Parties' Adequate Protection.

(b) Dismissal. If any order dismissing the Case under section 1112 of the Bankruptcy Code or otherwise is at any time entered, this Court's order shall provide, in accordance with sections 105 and 349 of the Bankruptcy Code and to the fullest extent permitted by law, that (i) the DIP Protections, the Prepetition Secured Parties' Adequate Protection, and all other

protections afforded by this Interim Order, shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations have been Paid in Full and all Prepetition Secured Obligations have been paid in full in cash (and that all DIP Protections, the Prepetition Secured Parties' Adequate Protection, and all other protections afforded by this Interim Order, shall, notwithstanding such dismissal, remain binding on all parties in interest), and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing such DIP Protections and the Prepetition Secured Parties' Adequate Protection.

(c) Survival of Interim Order. The provisions of this Interim Order and the DIP Loan Documents, any actions taken pursuant hereto or thereto, and all of the DIP Protections, the Prepetition Secured Parties' Adequate Protection, and all other rights, remedies, interests, liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and the Prepetition Secured Parties shall survive, and shall not be altered, modified, impaired, or discharged by, the entry of any order confirming any chapter 11 plan in the Case, converting the Case to a case under chapter 7, dismissing the Case, withdrawing the reference of the Case or any Successor Case, providing for abstention from handling or retaining of jurisdiction of the Case in this Court, or by any other act or omission. The terms and provisions of this Interim Order, including, without limitation, all of the DIP Protections, the Prepetition Secured Parties' Adequate Protection, and all other rights, remedies, interests, liens, priorities, privileges, protections, and benefits granted to any or all of the DIP Secured Parties and/or the Prepetition Secured Parties, shall continue in full force and effect notwithstanding the entry of any such order, and such DIP Protections and Prepetition Secured Parties' Adequate Protection and all other rights, remedies, interests, liens, priorities, privileges, protections, and benefits granted to

any and all of the DIP Secured Parties and the Prepetition Secured Parties shall continue in these proceedings and in any Successor Case and after dismissal thereof, and shall maintain their respective priorities as provided by this Interim Order.

17. **Insurance Policies.** Upon entry of this Interim Order, the DIP Agent, the DIP Lenders, each of the Prepetition Secured Agents, and the Prepetition Secured Lenders shall be, and shall be deemed to be, without any further action or notice, named as additional insureds and loss payees on each insurance policy maintained by the Debtor which in any way relates to the DIP Collateral. The Debtor is authorized to, and upon the written request of the DIP Agent or any of the Prepetition Secured Agents shall, take all acts necessary to have the DIP Agent, on behalf of the DIP Lenders, or the applicable Prepetition Secured Agent, on behalf of the Prepetition Secured Lenders, added as an additional insured or loss payee, as applicable, on each such insurance policy maintained by the Debtor which in any way relates to the DIP Collateral.

18. **Other Rights and Obligations.**

(a) **Certain Payments.** Except as provided below, professionals for the DIP Secured Parties and the Prepetition First Lien Secured Parties (collectively, the "Lender Professionals") shall not be required to submit invoices to the Court, United States Trustee, any Committee, or any other party-in-interest absent further court order. Copies of summary invoices submitted to the Debtor by such Lender Professionals shall be provided to the United States Trustee, counsel for any Committee, and such other parties as the Court may direct. The summary invoices shall be sufficiently detailed to enable a determination as to the reasonableness of such fees and expenses; *provided, however*, that such summary invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of

such summary invoices shall not constitute any waiver of the attorney-client privilege or of any benefits of the attorney work product doctrine. If the Debtor, United States Trustee, or counsel for any Committee objects to the reasonableness of the fees and expenses of any of the Lender Professionals and cannot resolve such objection within five (5) calendar days after receipt of such invoices, then the Debtor, United States Trustee, or the Committee, as the case may be, shall file with the Court and serve on such Lender Professionals an objection no later than ten (10) calendar days after receipt of such invoices (the "Fee Objection") limited to the issue of the reasonableness of such fees and expenses. The Debtor shall timely pay in accordance with the terms and conditions of this Interim Order the undisputed fees and expenses reflected on any invoice to which a Fee Objection has been timely filed or as to which no Fee Objection is timely made. The Debtor shall indemnify the DIP Agent and the DIP Lenders (and other applicable parties) to the extent set forth in the DIP Loan Documents, including, without limitation, as provided in Section 6.3 of the DIP Credit Agreement. All unpaid fees and expenses of any of the Lender Professionals that have not been disallowed by this Court on the basis of an objection filed by the United States Trustee or the Committee (or any subsequent trustee of the Debtor's estate) in accordance with the terms hereof shall constitute DIP Obligations and shall be secured by the DIP Collateral as specified in this Interim Order.

(b) Binding Effect. Subject only to Paragraph 6 of this Interim Order, the provisions of this Interim Order, inclusive of all findings herein, and the DIP Loan Documents shall be binding on all parties in interest in the Case, including, without limitation, the Debtor, the DIP Secured Parties, the Prepetition Secured Parties, any Committee, and their respective estate, successors, and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of the Debtor, an examiner appointed pursuant to section 1104 of the

Bankruptcy Code, or any other fiduciary or responsible person hereafter appointed as a legal representative of the Debtor or with respect to the property of the estate of the Debtor), whether in the Case, in any Successor Case, or upon dismissal of any such Case or Successor Case; *provided, however*, that the DIP Secured Parties and the Prepetition Secured Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 or chapter 11 trustee or other responsible person appointed for the estate of the Debtor in any Case or Successor Case.

(c) No Waiver. Neither the failure of the Prepetition Secured Parties to seek relief or otherwise exercise their rights and remedies under this Interim Order, the Prepetition Loan Documents, or otherwise (or any delay in seeking or exercising same), nor the failure of the DIP Secured Parties to seek relief or otherwise exercise their respective rights and remedies under this Interim Order, the DIP Loan Documents, or otherwise (or any delay in seeking or exercising same), shall constitute a waiver of any of such parties' rights hereunder, thereunder, or otherwise. Nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims, or defenses available in law or equity to any Prepetition Secured Party or any DIP Secured Party, including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract, or repurchase agreement with the Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of the Debtor to contest such assertion). Except as prohibited by this Interim Order, the entry of this Interim Order is in addition to, without prejudice to, and does not constitute a waiver of, expressly or implicitly, or otherwise impair, any rights or abilities of the Prepetition Secured Parties or the DIP Secured Parties under the Bankruptcy Code or under non-bankruptcy law, including,

without limitation, the right to (i) request conversion of the Case to a case under chapter 7, dismissal of the Case, or the appointment of a trustee or examiner in the Case or any Successor Case or to oppose the use of Cash Collateral in any Successor Case; (ii) propose, subject to the provisions of section 1121 of the Bankruptcy Code, any chapter 11 plan with respect to the Debtor or seek to terminate the Debtor's exclusive right to propose a plan under the Bankruptcy Code; or (iii) except as expressly provided in this Interim Order, exercise any of the other rights, claims, or privileges (whether legal, equitable, or otherwise) of the DIP Secured Parties or the Prepetition Secured Parties, respectively. Except to the extent otherwise expressly provided in this Interim Order, neither the commencement of the Case nor the entry of this Interim Order shall limit or otherwise modify the rights and remedies of the Prepetition Secured Parties under the Prepetition Loan Documents or with respect to any non-debtor entities or their respective assets, whether such rights and remedies arise under the Prepetition Loan Documents, applicable law, or equity.

(d) No Third Party Rights. Except as explicitly provided for herein, this Interim Order does not create any rights for the benefit of any third party, creditor, equity holder, or any direct, indirect, or incidental beneficiary. Subject to the entry of the Final Order, in determining to make any loan (whether under the DIP Credit Agreement or otherwise) or to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Loan Documents, the DIP Secured Parties and the Prepetition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtor or to be acting as a "responsible person" or "owner or operator" with respect to the operation or management of the Debtor (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601 et seq., as



amended, or any similar federal, state, or local statute or regulation); or (ii) owe any fiduciary duty to the Debtor, its creditors, its shareholders, or its estate.

(e) No Marshaling. Neither the DIP Secured Parties nor the Prepetition Secured Parties shall be subject to the equitable doctrine of “marshaling” or any other similar doctrine with respect to any of the DIP Collateral or the Prepetition Collateral, as applicable, and all proceeds thereof shall be received and used in accordance with this Interim Order. The Prepetition Secured Agent and the Prepetition Secured Lenders shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and, upon entry of the Final Order, the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Secured Agents or the Prepetition Secured Lenders with respect to any proceeds, products, offspring, or profits of any of the Prepetition Collateral.

(f) Amendments. Subject to the terms and conditions of the DIP Credit Agreement and the other DIP Loan Documents, the Debtor is authorized and empowered, without further notice and hearing or approval of this Court, to amend, modify, supplement, or waive any provision of the DIP Loan Documents in accordance with the provisions thereof, in each case unless such amendment, modification, supplement, or waiver (i) increases the interest rate (other than as a result of the imposition of the default rate), (ii) increases the aggregate lending commitments of all of the DIP Lenders in respect of the DIP Facility, (iii) changes the Maturity Date (as defined in the DIP Credit Agreement), or (iv) adds or amends (in any respect unfavorable to the Debtor) any Event of Default; *provided, however*, that notice of any material modification or amendment of the DIP Loan Documents shall be provided to the United States Trustee and any Committee and its counsel, each of which shall have five (5) Business Days from the date of such notice within which to object in writing to such material modification or

amendment. If the Committee or the United States Trustee timely objects to any material modification or amendment to the DIP Loan Documents, such modification or amendment shall be permitted only pursuant to an order of this Court unless such objection is otherwise resolved among the parties. No waiver, modification, or amendment of any of the provisions hereof shall be effective unless set forth in writing, signed by or on behalf of the Debtor and the DIP Agent and, except as provided herein, approved by this Court. Notwithstanding the foregoing, no waiver, modification, or amendment of any of the provisions of this Interim Order or the DIP Loan Documents that would directly and adversely affect the rights or interests of the Prepetition Secured Parties shall be effective unless also consented to in writing by each of the Prepetition Secured Agents on behalf of the Prepetition Secured Parties.

(g) Inconsistency. In the event of any inconsistency between the terms and conditions of the DIP Loan Documents and of this Interim Order, the provisions of this Interim Order shall govern and control. In the event of any inconsistency between the terms and conditions of any other order entered by this Court regarding the use of Cash Collateral or expenditures by the Debtor and of this Interim Order, the provisions of this Interim Order shall govern and control.

(h) Enforceability. Subject only to Paragraph 6 of this Interim Order, this Interim Order shall constitute findings of fact and conclusions of law pursuant to the Bankruptcy Rule 7052 and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon execution hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062, or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry, and there shall be no stay of execution or effectiveness of this Interim Order.

(i) Reservation of Rights. Nothing in this Interim Order shall be deemed to constitute the consent of the DIP Secured Parties or the Prepetition Secured Parties, and each of the foregoing expressly reserve the right to object, to entry of any order of the Bankruptcy Court that provides for the sale of all or substantially all of the assets of the Debtor (or any other sale of assets of the Debtor outside the ordinary course of business) to any party unless, in connection and concurrently with any such event, the proceeds of such sale are or will be sufficient to Pay in Full the DIP Obligations, satisfy all of the Prepetition Secured Obligations and the Prepetition Secured Parties' Adequate Protection, and all of the foregoing are in fact paid in full in cash on the closing date of such sale.

(j) Headings. Paragraph headings used herein are for convenience only and are not to affect the construction of, or to be taken into consideration in, interpreting this Interim Order.

(k) General Cooperation From Debtor; Access to Information. Without limiting any of the Debtor's other obligations in this Interim Order or the DIP Loan Documents, the Debtor shall, and shall cause its senior officers, directors, counsel, and financial advisors to, reasonably cooperate with the DIP Agent and the Prepetition Secured Agents in furnishing documents and information as and when reasonably requested by such parties regarding the DIP Collateral or the Debtor's financial affairs, finances, financial condition, business, and operations.

**19. Final Hearing and Associated Deadlines.**

(a) The Final Hearing to consider entry of the Final Order and final approval of the DIP Facility is scheduled for \_\_\_\_\_, 2014, at \_\_\_\_:\_\_\_\_ a.m. (prevailing Eastern time) at the United States Bankruptcy Court for the District of Delaware. The proposed Final Order shall be substantially the same as this Interim Order except that those provisions in the Interim Order that are subject to the entry of the Final Order shall be included in the Final Order

without such qualification. If no objections to the relief sought in the Final Hearing are filed and served in accordance with this Interim Order, no Final Hearing may be held, and a separate Final Order may be presented by the Debtor and entered by this Court.

(b) On or before \_\_\_\_\_, 2014, the Debtor shall serve, by United States mail, first-class postage prepaid, (such service constituting adequate notice of the Final Hearing) (i) notice of the entry of this Interim Order and of the Final Hearing (the "Final Hearing Notice") and (ii) a copy of this Interim Order, on the parties having been given notice of the Interim Hearing and to any other party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. The Final Hearing Notice shall state that any party in interest objecting to the entry of the proposed Final Order must file written objections with the Clerk of the Bankruptcy Court no later than \_\_\_\_\_, 2014 at 4:00 p.m. (prevailing Eastern Time) (the "Objection Deadline"), which objections must also be served so that the same are actually received by each of the following on or before the Objection Deadline: (a) KiOR, Inc., 13001 Bay Park Road, Pasadena, Texas 77507 (Attn: Chief Executive Officer; Attn: General Counsel); (b) co-counsel to the Debtor, (i) King & Spalding, LLP, Attn: Mark W. Wege, 1100 Louisiana, Suite 4000, Houston, Texas 77002, and (ii) Richards, Layton & Finger, P.A., Attn: John H. Knight, 920 North King Street, Wilmington, Delaware 19801; (c) counsel to Khosla Ventures III, LP, Pachulski Stang Ziehl & Jones LLP, 150 California Street, 15th Floor, San Francisco, CA 94111 (Attn: Debra Grassgreen, Esq.), and Pachulski Stang Ziehl & Jones LLP, 919 N. Market Street, 17th Floor, Wilmington, Delaware 19801 (Attn: Peter Keane, Esq.); (d) co-counsel to Pasadena Investments, LLC, the KFT Trust, Vinod Khosla, Trustee, and VNK Management, LLC, Klee, Tuchin, Bogdanoff & Stern LLP, 1999 Avenue of the Stars, 39th Floor, Los Angeles, California

90067 (Attn: Thomas E. Patterson, Esq.), and Young Conaway Stargatt & Taylor, LLP, Rodney Square, 1000 North King Street, Wilmington, Delaware 19801 (Attn: Michael R. Nestor, Esq.); (e) counsel to any Committee; and (f) the Office of the United States Trustee for the District of Delaware, J. Caleb Boggs Federal Building, 844 King Street, Suite 2207, Wilmington, Delaware 19801.

20. **Retention of Jurisdiction.** This Court has and will retain jurisdiction and power to interpret and enforce this Interim Order according to its terms. This Court shall have exclusive jurisdiction with respect to any and all disputes or matters under, or arising out of or in connection with, this Interim Order, the DIP Facility, any of the DIP Loan Documents, the DIP Protections, or the Prepetition Secured Parties' Adequate Protection.

Dated: \_\_\_\_\_, 2014  
Wilmington, Delaware

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UNITED STATES BANKRUPTCY JUDGE

**EXHIBIT A**

**APPROVED BUDGET**

(see attached)

**EXHIBIT B**

**DIP CREDIT AGREEMENT**

(see attached)