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Proposed Attorneys for Human Condition Safety Inc.

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

In re:

HUMAN CONDITION SAFETY INC.,

Debtor.¹

Case No:

Chapter 11

**DEBTOR'S MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS PURSUANT
TO 11 U.S.C. §§ 105, 361, 362, 363, 364, AND 507, BANKRUPTCY RULES 2002, 4001,
AND 6004, AND LOCAL RULE 4001-2 (I) AUTHORIZING DEBTOR TO OBTAIN
POSTPETITION FINANCING, (II) AUTHORIZING USE OF CASH COLLATERAL,
(III) GRANTING LIENS AND PROVIDING SUPER-PRIORITY ADMINISTRATIVE
EXPENSE STATUS, (IV) GRANTING ADEQUATE PROTECTION, (V) SCHEDULING
A FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

Human Condition Safety Inc., a Delaware corporation with its principal assets and principal place of business located at 61 Broadway, Suite 2710, New York, New York 10006, as debtor and debtor-in-possession (the “*Debtor*” or “*Borrower*”) in the above-captioned Chapter 11 (the “*Chapter 11 Case*”), by and through its undersigned proposed attorneys, hereby submits this motion (the “*Motion*”) pursuant to sections 105, 361, 362, 363, 364, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “*Bankruptcy Code*”), Rules 2002, 4001, and 6004 of the Federal Rules of Bankruptcy Procedure (the “*Bankruptcy Rules*”), and Rule

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

4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “**Local Rules**”), for the entry of an order, substantially in the form attached as Exhibit “A” (the “**Interim DIP Order**”),² and a final order (the “**Final DIP Order**”) (i) authorizing the Debtor to obtain secured postpetition financing on a super-priority basis (the “**Postpetition Debt**”), subject only to certain Permitted Liens and the Carveout, on the terms and subject to the conditions set forth in the Senior Secured, Super-Priority Debtor-In-Possession Loan And Security Agreement (the “**Postpetition Loan Agreement**,” a copy of which is attached as Exhibit 2 to the accompanying Interim DIP Order, and together with all other documents, agreements, and instruments executed and/or delivered in connection therewith, the “**Postpetition Loan Documents**”), by and between the Debtor, as borrower, and AIG PC Global Services, Inc. (“**AIG**” and in such capacity, the “**Postpetition Lender**”), as lender; (ii) authorizing the Debtor to execute and enter into the Postpetition Loan Documents and to perform such other and further acts as may be required in connection with the Postpetition Loan Documents; (iii) granting super-priority administrative expense claims to the Postpetition Lender, subject only to the Carveout; (iv) authorizing the Debtor to use “cash collateral” as defined in section 363 of the Bankruptcy Code (“**Cash Collateral**”) in which the Prepetition First Priority Lender has an interest pursuant to any Prepetition First Priority Documents and granting adequate protection to the Prepetition First Priority Lender in connection therewith; (v) scheduling a final hearing (the “**Final Hearing**”) to consider entry of a Final DIP Order authorizing, among other things, the Debtors to obtain financing under the Postpetition Loan Documents; and (vi) granting other relief as set forth herein. In support of the Motion, the Debtor submits the Declaration of Gregory Wolyniec Pursuant to Local Rule 1007-2 in Support of Debtor’s Chapter 11 Petition and Requests for First

² Unless otherwise indicated, all capitalized terms used as defined terms herein have the meanings ascribed thereto in the accompanying Interim DIP Order or in Exhibit 1 to the accompanying Interim DIP Order.

Day Relief (the “*First Day Declaration*”), filed contemporaneously herewith, and respectfully states as follows:

PRELIMINARY STATEMENT

1. As more fully described in the First Day Declaration, the Debtor’s primary objective in filing this Chapter 11 Case is to continue its recently commenced operations under Chapter 11 protection, and with additional financing needed to do so, in order to demonstrate the success of Debtor’s business and revenue generation, which will fund a successful reorganization plan and/or attract the commitment of interested potential purchasers to maximize value under a sale of substantially all assets. To achieve this objective, the Debtor has obtained a commitment for debtor-in-possession financing in an aggregate principal amount not to exceed \$3,000,000 (as amended, modified and in effect from time to time, the “*DIP Financing*”, the “*DIP*” or the “*DIP Facility*”) for which it seeks the approval of this Court. The proposed DIP financing contemplates the Court permitting the Debtor to:

- (i) Obtain credit and incur debt on an interim basis for a period from the commencement of the case through and including the date of the Final Hearing up to the aggregate principal amount of \$425,000, secured by first priority liens and security interests pursuant to Sections 3364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code in and upon all of the assets of the Debtor and be entitled to super-priority claim status pursuant to Section 364(c)(1) of the Bankruptcy Code, as set forth in the accompanying proposed Interim DIP Order;
- (ii) Consistent with the Postpetition Loan Agreement, establish a DIP financing arrangement by and among the Debtor and the Postpetition Lender;
- (iii) Authorize the use of the proceeds of the DIP Facility in accordance with an agreed-upon Budget attached as Exhibit 3 to the accompanying Interim DIP Order;
- (iv) Provide the Postpetition Lender with first priority liens upon substantially all of the Debtor’s real and personal property;

- (v) Grant the Postpetition Lender a super-priority claim over any and all administrative expenses (subject to the Carveout);
- (vi) Modify the automatic stay to the extent necessary and as required by the Postpetition Loan Agreement; and
- (vii) Set a Final Hearing on this Motion.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the case and the Motion pursuant to 28 U.S.C. §§ 157 and 1334. Consideration of the Motion constitutes a core proceeding as defined in 28 U.S.C. § 157(b). The statutory predicates for the relief requested herein are Bankruptcy Code sections 105, 361, 362, 363, 364, and 507 and Bankruptcy Rules 2002, 4001, and 6004, as well as Local Rule 4001-2. Venue for this matter is proper in this district pursuant to 28 U.S.C. sections 1408 and 1409.

BACKGROUND³

3. On March 10, 2017 (the “*Petition Date*”), the Debtor filed with the Clerk of the Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor plans to continue to operate its business and manage its property pursuant to sections 1107(a) and 1108 of the Bankruptcy Code as a debtor-in-possession. No official committee of unsecured creditors has been appointed in this case.

4. The Debtor is a privately held startup technology company founded in 2014 to develop, market, sell and service innovative virtual reality and internet based technology products designed to improve workplace safety. But developing and bringing the Debtor’s groundbreaking new products to market proved to be much more time consuming and costly than anticipated.

³ Facts set forth herein are more fully set forth in the First Day Declaration, which is incorporated herein by reference.

5. Indeed, researching and developing the Debtor's highly complex and innovative technology products was plagued with unanticipated delays, as well as unanticipated and unsustainable costs and debt due, in part, to inefficiencies in the Debtor's operations. As a startup technology company with no revenue and relatively few tangible assets, Debtor had few options when it needed additional capital to continue funding operations to develop its products and it had to rely on unsecured working capital loans.

6. The inefficiencies plaguing Debtor's operations ultimately led to the departure of some of the Debtor's leadership and a restructuring of the Debtor's operations to enable it to bring its products to market and monetize them with greater speed and efficiency. Recently, the Debtor was able to finalize and begin marketing, selling and servicing its first products, which include virtual reality and internet based software programs with wearable sensors to remotely monitor and assess workers' safety conditions and to administer training helping workers learn to properly and safely perform their job duties. In sum, a client would pay a one-time fee for the Debtor to design and install such a program tailored to the individual client's needs and thereafter the client would pay monthly fees to use the program and for the Debtor to continue hosting and servicing it.

7. So far, the Debtor has enjoyed much success generating revenue from its recently launched efforts to market, sell and service its first products, and continuing to do so long term is forecasted to be highly profitable. However, the Debtor has not been able to make up for lost time and has not been able to generate enough revenue fast enough to fund its continued operations as its working capital loans mature.

8. Members of Debtor's leadership made extensive efforts to seek additional financing and to seek potential investors and/or purchasers for the Debtor. Although Debtor's

products have recently been well-received in the market place and are forecasted to have long term profitability, and although potential lenders, investors and purchasers have shown interest, Debtor has not been able to find a viable purchaser and has not been able to raise sufficient additional capital from investors or other sources to continue funding its operations. This is largely because the Debtor, as a 2 year old startup technology company, has relatively little tangible assets and because the Debtor (which only recently began marketing, selling and servicing its products) does not yet have a sufficient “long term” track record of success.

9. While continuing Debtor’s operations to market, sell and service its products is forecasted to be highly profitable, doing so requires additional capital which the Debtor has not been able to obtain. Failing to continue marketing, selling and servicing Debtor’s products, or any significant delay or lapse of time in doing so, will result in substantial and irreparable damage to the market value of the Debtor and its products. In order to prevent that outcome and to continue operating to preserve the Debtor’s value and its employees’ jobs, it recently became clear that Debtor cannot adequately address its liquidity needs outside of bankruptcy and that its only viable option is to proceed with the arrangement it negotiated with AIG to fund operations and to operate under Chapter 11 protection.

10. AIG is a shareholder holding approximately 18% of Debtor’s outstanding equity interests. AIG also holds a prepetition unsecured note issued by the Debtor in the original principal amount of \$108,466.46 in connection with AIG’s exercise of a put right with respect to certain of the Debtor’s common stock. As of the Petition Date, the full principal amount of that prepetition unsecured note, plus accrued and unpaid interest and any fees and other costs provided under that note, are owing to AIG.

11. AIG recently agreed to give Debtor a bridge loan to fund Debtor's operations until commencement of this Chapter 11 Case under a promissory note, dated as of February 16, 2017, in the original principal amount of \$375,000 secured by a first priority lien on substantially all Debtor's assets (the "**Bridge Note**" or the "**Prepetition First Priority Note**"). As the holder of that secured Bridge Note, AIG is, as of the Petition Date, the Debtor's only secured creditor.

12. AIG also agreed to provide the DIP Financing for which the Debtor now seeks approval which will provide funding for Debtor to continue operating in bankruptcy while implementing a dual-track process to maximize value for stakeholders and preserve employees' jobs by simultaneously pursuing (i) a reorganization plan, and (ii) a sale of substantially all Debtor's assets pursuant to section 363 of the Bankruptcy Code with the transition of its employees, operations, and files.

13. The terms of the Bridge Note and the DIP Financing, including the actions contemplated thereunder, were extensively negotiated at arms-length and approved in good-faith by a majority of the directors and shareholders of the Debtor who are independent and disinterested with respect to AIG. The DIP Financing includes a Budget designed to optimize the Debtor's chances of completing a successful reorganization plan or asset sale.

14. As of the Petition Date, the Debtor estimates that it has over \$500,000 in total assets, consisting mostly of its accounts receivable and the value of its intellectual property, and over \$1.3 million in total liabilities, consisting mostly of prepetition unsecured loans and Prepetition First Priority Note.

15. As of the Petition Date, Debtor has little to no remaining cash to continue funding its operations, its employee payroll is due and a significant amount of prepetition obligations are due and owing to its employees and critical vendors who are vital to Debtor's continued

operations. Thus, there is an extremely urgent and dire need for Debtor's requested interim relief to receive the DIP Financing and to use it to fund operations and to pay employees and critical vendors.

16. For a chance to succeed in its reorganization and sale efforts, it is necessary for the Debtor to continue its business operations at prepetition levels by paying its staff and vendors. To do so, it is imperative that the Debtor be able to borrow additional amounts from a post-petition lender. The Debtor requires a substantial infusion of cash to continue in business and without immediately receiving the DIP financing, the Debtor will be forced to cease operations immediately which will result in substantial and irreparable damage to the market value of the Debtor and its products.

17. Granting the relief sought herein will enable Debtor to continue operating and generating revenue, which will demonstrate the continued success of its business and revenue generation, which, in turn, will fund a successful reorganization or will attract the commitment of interested potential purchasers to maximize value under a sale of substantially all assets. The Debtor intends to utilize proceeds of the DIP Financing to satisfy continuing obligations and in support of the aforesaid reorganization and sale effort.

THE NEED FOR DIP FINANCING

18. For a chance to succeed in its aforesaid reorganization and sale efforts and to continue operation to preserve jobs and prevent substantial damage to the value of Debtor's business, it is necessary for the Debtor to receive financing. To receive such financing, it is imperative that the Debtor be able to borrow amounts from a post-petition lender.

19. The Debtor has sought financing from third party sources. However, no other lender has indicated a willingness to lend any sufficient amount or to lend under terms as generous as proposed herein.

20. Without DIP financing, all creditors and stakeholders will be harmed because without the infusion of cash from DIP financing to enable the Debtor to continue in business, the Debtor will be forced to cease operations immediately and will have no chance at any viable reorganization or sale effort.

PROPOSED FINANCING TERMS

21. The Debtor and the Postpetition Lender have agreed to the Postpetition Loan Agreement, a true and correct copy of which is attached as Exhibit 2 to the accompanying proposed Interim DIP Order, to (a) establish the DIP financing arrangement by and among the Debtor and the Postpetition Lender, and (b) incur the obligations upon the terms and conditions set forth herein.

22. In conjunction with the Postpetition Loan Agreement, the Debtor has prepared the Budget, which is attached as Exhibit 3 to the accompanying Interim DIP Order, which sets forth the anticipated obligations of the Debtor's continued operation and the Chapter 11 Case. The Budget has been approved by the Postpetition Lender.

23. The terms of the Postpetition Loan Agreement are as follows:⁴

BORROWER:

Borrower, Human Condition Safety Inc., a Delaware corporation, as debtor and debtor-in-possession in the Chapter 11 Case.

LENDER:

AIG PC Global Services, Inc., a Delaware corporation ("***Lender***").

⁴ The following is meant to provide a summary of the terms of the DIP financing arrangement. To extent of any inconsistency between the summary herein, on the one hand, and the terms set forth in the Postpetition Loan Agreement and in the proposed Interim DIP Order, on the other hand, the latter shall control.

DIP FACILITY:

Up to a \$3,000,000.00 in principal amount superpriority, senior secured debtor in possession credit facility, which shall be advanced in separate monthly tranches, subject to satisfaction of all applicable conditions, milestones, and covenants, in amounts of up to \$425,000.00. Upon the Bankruptcy Court's entry of an interim order approving the DIP Facility (in a form acceptable to Lender, in its sole discretion), Lender will advance up to \$425,000.00 of the DIP Facility, with the balance of the DIP Facility available (subject to the foregoing with respect to separate monthly tranches) upon the Bankruptcy Court's entry of a final order approving the DIP Facility (in a form acceptable to Lender in its sole discretion).

BUDGET & USE
OF PROCEEDS:

The DIP Facility shall be used only to fund operating expenses and other general corporate purposes and to fund the costs and expenses of administering the Borrower's Chapter 11 Case, and other payments, in each case as set forth in and subject to a Budget, which shall be approved by the Lender and updated from time to time, including subject to entry of a Final Order, an amount necessary to pay in full all outstanding obligations of Borrower to Lender under the Prepetition First Priority Note and all documents related thereto. The Budget shall be based on a rolling 13-week cash flow forecast prepared by the Borrower, and the Borrower shall provide Lender with weekly variance reports against the Budget.

TERMINATION DATE:

At the Lender's election, the earliest to occur of: (a) the date on which the Lender provides written notice to the Borrower, counsel for the Borrower, and counsel for any official committee of unsecured creditors (a "**Committee**") of the occurrence of an Event of Default under the DIP Facility; (b) the date of the acceleration of any outstanding extension of credit under the DIP Facility; (c) the effective date of a confirmed plan in the Case; (d) the closing date of any sale of assets in the Case; (e) the entry of an order converting the Case to a case under chapter 7 of the Bankruptcy Code; (f) the entry of an order dismissing the Case; (g) the entry of an order appointing a chapter 11 trustee or examiner in the Case; (h) the failure of the Borrower to timely obtain

entry of an interim order and final order approving the DIP Facility, each of which must be in a form acceptable to the Lender in its sole discretion; and (i) 180 days after the Petition Date.

INTEREST RATE:

LIBOR plus 7.0% per annum, payable in cash monthly in arrears.

FEES:

Facility Fee: Borrower shall pay to Lender a one-time facility fee equal to 1.25% of the maximum DIP Facility amount, payable in cash upon closing of the DIP Facility.

Exit Fee: Borrower shall pay to Lender a one-time exit fee equal to 1.25% of the maximum DIP Facility amount, payable in cash upon the termination of the DIP Facility.

DEFAULT INTEREST RATE:

1.25% in excess of the otherwise applicable non-default interest rate, payable in cash monthly in arrears.

EXPENSES:

The Borrower shall pay all of the Lender's costs and expenses, including without limitation due diligence, transportation, computer, duplication, appraisal, audit (including per diems), insurance, consultant, search, filing and recording fees, and all other reasonable out-of-pocket expenses incurred by the Lender (including the reasonable fees and expenses of counsel, accountants and other professionals and advisors), as well as all reasonable expenses of the Lender in connection with the negotiation, administration, monitoring, and enforcement of the loan documentation.

INDEMNIFICATION:

The Borrower and its estate will indemnify and hold harmless the Lender its members, officers, directors, employees, affiliates, successors, assigns, agents, counsel and other advisors (collectively, the "*Indemnified Parties*") from and against any and all claims, damages, losses, liabilities and expenses (including, without limitation, reasonable fees and expenses of counsel) that may be incurred by or asserted or awarded against any Indemnified Party, in each case arising out of or in connection with or by reason of, or in connection with the preparation for a defense of, any investigation, litigation or proceeding arising out of, related to or in connection

with (a) the DIP Facility, the transactions contemplated thereby, and any use made or proposed to be made with the proceeds thereof, (b) the Case, or (c) the actual or alleged presence of hazardous materials on any property of the Borrower or any environmental action or proceeding relating in any way to the Borrower or any of its properties, in each case, whether or not such investigation, litigation or proceeding is brought by the Borrower, its shareholders or creditors or an Indemnified Party, or an Indemnified Party is otherwise a party thereto, except to the extent such claim, damage, loss, liability or expense is found in a final, nonappealable judgment by a court of competent jurisdiction to have resulted from such Indemnified Party's gross negligence or willful misconduct.

**SUPERPRIORITY
ADMINISTRATIVE
EXPENSE CLAIM:**

The DIP Facility shall have the status of an allowed superpriority administrative expense claim in the Chapter 11 Case pursuant to Bankruptcy Code section 364(c)(1), having priority over any and all administrative expenses, whether heretofore or hereafter incurred, of any kind or nature specified in sections 503(b) and 507(b) of the Bankruptcy Code, subject only to the Carveout (as defined below).

SECURITY:

The obligations in respect of the DIP Facility, including all principal, interest, expenses, fees and other amounts owing in respect thereof, shall be secured pursuant to section 364(c)(2), (3) and (d) of the Bankruptcy Code by first priority senior liens on and security interests in all of the Collateral (as defined below), subject only to the Carveout.

"Collateral" shall include all of the Borrower's right, title, and interest in and to pre and post-petition property and assets of the Borrower's estate, whether now existing or owned or hereafter arising or acquired, including, without limitation, all real and personal property, leasehold interests, receivables, general intangibles and payment intangibles, contract rights, commercial tort claims, causes of action of whatever nature, intellectual property, insurance proceeds, insurance premium refunds, tax refunds, deposits and deposit accounts, goods, inventory, machinery and equipment, goodwill and investment property, and all cash, cash equivalents, and non-cash proceeds of the foregoing.

CHAPTER 11 MILESTONES:

Financing/Operations Milestones:

The Borrower shall: (a) on the Petition Date, file a motion to approve the DIP Facility, in form and substance acceptable to the Lender; (b) no later than 3 business days after the Petition Date, obtain entry of an Interim DIP Order of the Bankruptcy Court, in form and substance acceptable to the Lender, approving the DIP Facility on an interim basis; (c) no later than 30 days after the Petition Date, obtain entry of a Final DIP Order of the Bankruptcy Court, in form and substance acceptable to the Lender, approving the DIP Facility on a final basis (a Final Order together with the Interim DIP Order, the “*Orders*”); (d) no later than 45 days after the Petition Date, deliver to the Lender an analysis and recommendation on reducing the Borrower’s real property lease expenses; (e) no later than the last business day of each month from and after the Petition Date, execute agreements with no fewer than 2 new clients and/or generate additional revenue of not less than \$100,000; (f) no later than 30 days after the Petition Date, have the Basic SafeStart Application and VR modules ready for sale; (g) no later than 60 days after the Petition Date, finalize all of the Borrower’s pending patent applications; (h) no later than 60 days after the Petition Date, have the Borrower’s wearable sensors ready for sale; (i) no later than 60 days after the Petition Date, have the Advanced SafeStart Application and VR ready for sale; and (j) no later than 120 days after the Petition Date, have the SafeStart Application and wearable sensors integrated into a central platform. Additional milestones from and after April 2017 to be mutually agreed upon by Borrower and Lender.

Plan Milestones:

The Borrower shall: (a) no later than 45 days after the Petition Date, deliver to the Lender a draft plan of reorganization and a draft disclosure statement with respect thereto, each in form and substance acceptable to the Lender in its sole discretion; (b) no later than 60 days after the Petition Date, file with the Bankruptcy Court a proposed plan of reorganization and disclosure statement with respect thereto, each in form and substance acceptable to the Lender in its sole discretion (a “*Plan*” and “*Disclosure Statement*,” respectively); (c) no later than 90 days after the Petition Date, obtain entry of an order of the Bankruptcy Court approving the Disclosure

Statement and procedures for soliciting votes on the Plan, which order shall be in form and substance acceptable to the Lender (a “**Disclosure Statement Order**”); (d) no later than 3 business days after entry of the Disclosure Statement Order, commence solicitation of votes on a Plan pursuant to the Disclosure Statement; (e) no later than 125 days after the Petition Date, obtain entry of an order of the Bankruptcy Court confirming the Plan, which order shall be in form and substance acceptable to the Lender; and (f) no later than 135 days after the Petition Date, cause the Plan to have been substantially consummated.

Simultaneously, the Borrower Shall Pursue a 363 Sale Process in Accordance with the Following Sale Milestones:

The Borrower shall: (a) no later than 75 days after the Petition Date, file a motion requesting approval of a comprehensive sale process, including bidding procedures, for the sale of substantially all of the Borrower’s assets (a “**Sale**”), which motion, bidding procedures, and any related proposed orders shall be in form and substance acceptable to the Lender; (b) no later than 100 days after the Petition Date, obtain entry of an order of the Bankruptcy Court, in form and substance acceptable to the Lender, approving bidding procedures for a Sale; (c) no later than 150 days after the Petition Date, conduct an auction (an “**Auction**”) to determine the highest or otherwise best bid for a Sale, in consultation with the Lender; (d) no later than 3 days after conclusion of the Auction, obtain entry of an order of the Bankruptcy Court approving the Sale to the successful bidder, which order shall be in form and substance acceptable to the Lender (a “**Sale Order**”); and (e) no later than 15 days after entry of the Sale Order, cause the Sale to be consummated.

EVENTS OF DEFAULT:

Shall include the following:

The Interim Order is not entered within 3 business days following the Filing Date, and/or the Final Order is not entered within 30 days following the Petition Date.

The Chapter 11 Case shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code.

Filing of a proposed plan of reorganization or liquidation by Borrower (or, if exclusivity has terminated, by any party), which plan does not provide for the indefeasible payment in full in cash of the DIP Facility as of the effective date of such plan or which plan is not acceptable to the Lender in its sole discretion.

Entry of an order confirming a plan of reorganization that does not require repayment in full of the DIP Facility as of the effective date of such plan or which plan is not acceptable to the Lender in its sole discretion.

Appointment in the Case of a trustee under section 1104 of the Bankruptcy Code or an examiner with enlarged powers (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code.

Entry of an order amending, supplementing, staying, vacating, revoking, reversing or otherwise modifying the DIP Facility, the Orders, or any agreement relating to the DIP Facility, without the prior written consent of the Lender.

Entry of an order permitting any claim against, or obligation of, the Borrower (now existing or hereafter arising, of any kind or nature whatsoever), to have priority equal or superior to the priority of the Lender in respect of the DIP Facility and the liens securing the DIP Facility (the “**DIP Liens**”), other than the Carveout.

Any attempt by the Borrower to invalidate, reduce, or otherwise impair any of the Lender’s rights, claims, or liens under the DIP Facility, the Orders, or other DIP loan agreements, or any such rights, claims, or liens shall, for any reason, cease to be valid.

The assertion by the Borrower of a surcharge right or claim or the entry of an order which subjects the Collateral to assessment pursuant to section 506(c) of the Bankruptcy Code.

Any material payment (in excess of \$25,000) is made on, or application for authority to pay (which is supported, directly or indirectly, by the Borrower, or is not being actively contested by the Borrower in good faith), any

material prepetition claim (other than amounts provided for in the Budget) without the Lender's consent.

An order is entered granting any creditor relief from the automatic stay to exercise rights with respect to property of the estate having a value of more than \$50,000 or which has a material effect on the ability of the Borrower to operate the business consistent with current practice, maintain any material license or privilege, or dispose of the Collateral as an enterprise or going concern.

Breach of any obligation of the Borrower set forth in this Term Sheet, the Orders, or the other DIP Loan Agreements, which breach is not cured within 5 days of the Borrower's receipt of written notice of such breach by the Lender; provided that such notice and cure period shall not be applicable to any payment obligation to Lender or of the other specifically enumerated Events of Defaults in this Term Sheet.

Any advances under the DIP Facility or any portion of the Carveout is utilized to prosecute actions, claims, demands, or causes of action against the Lender or to object to or contest in any manner or to raise any defense in any pleading to the entry of the Orders, the validity, perfection, priority, or enforceability of the DIP Facility, or the rights, claims, liens, and security interests granted to the Lender under the DIP Facility and the Orders.

Entry of an order authorizing or approving the Borrower's assumption, assignment, and/or rejection of any executory contract or unexpired lease without the Lender's prior written consent.

The sale by the Borrower, or the entry of an order approving the sale by the Borrower, of any material assets outside of the ordinary course of business without the Lender's prior written consent.

A motion or application for any of the orders or actions described in the foregoing subparagraphs immediately above shall be made by any person, including the Committee, without the Lender's prior written consent, and such motion or application either is in collusion with or supported, directly or indirectly, by the Borrower, or is not actively contested by the Borrower in good faith within the applicable objection period.

Without prior written consent of the Lender, Borrower shall have failed to satisfy any of the Chapter 11 Milestones (provided that any such Milestones may be extended upon prior written consent of the Lender in its sole and absolute discretion).

The occurrence and notice of default of (a) a material adverse effect on the business, assets, liabilities, operations, prospects, or condition (financial or other) of the Borrower, recognizing that the Borrower is filing the Case; (b) the material impairment of the ability of the Borrower to meet its obligations substantially as set forth in the Budget or to otherwise perform its obligations in connection with the DIP Facility; (c) the imposition of any obligation on the Lender, compliance with which would materially impair the Lender's ability to receive its contemplated economic benefits hereunder; (d) the material impairment of the validity or enforceability of, or the rights, claims, liens, remedies, or benefits available to the Lender under, the Orders, this Term Sheet, or any other DIP Loan Agreement; or (e) the material impairment of the validity, perfection, or priority of the DIP Liens or any lien granted in favor of the Lender.

REMEDIES:

Upon the occurrence of an Event of Default and following the giving of 5 days' notice to the Borrower and any Committee, the Lender shall have relief from the automatic stay and may foreclose on all or any portion of the security for the DIP Facility, take possession of all cash and collect all accounts receivable, and apply the proceeds thereof to the obligations arising under the DIP Facility and otherwise exercise remedies against the security for the DIP Facility permitted by applicable non-bankruptcy law.

PERFORMANCE COVENANT:

The Borrower shall: (a) beginning the second week after the Petition Date and as of each Friday thereafter, maintain aggregate expenditures no greater than 110% of the aggregate amount projected by the Budget to be expended during the cumulative period commencing on the Petition Date and ending on such testing date; and (b) deliver to Lender, on a weekly basis, a budget compliance report that sets forth on a week-to-week and cumulative basis a comparison of actual cash receipts and disbursements to projected cash receipts and

disbursements for each applicable measuring period, together with a certification from the Borrower's Chief Executive Officer that no deviation from the Budget in excess of the permitted deviations set forth in (a) above has occurred.

CARVEOUT:

The DIP Facility shall be subject to a Carveout ("*Carveout*") for (i) payment of up to \$20,000 of fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code, (ii) the payment of any fees payable to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee pursuant to 28 U.S.C. § 1930(a), (iii) in the case that no Event of Default has occurred, the payment of all fees and expenses as and to the extent set forth in the Budget (without regard to any variance permitted by this Term Sheet), of professionals retained by Borrower and professionals retained by any Committee (collectively, the "*Professional Fees*"), and (iv) in the event an Event of Default has occurred, then the payment of fees and expenses incurred by professionals retained by Borrower and Committee on or after the date of an Event of Default under the DIP Facility in an amount not to exceed \$100,000. So long as no Event of Default shall have occurred and be continuing, the Carveout shall be reduced dollar for dollar by the payment of Professional Fees in accordance with and subject to the Budget.

RELEASE:

In connection with the indefeasible payment in full in cash, and the termination of, the DIP Facility, the Borrower covenants and agrees that at such time it shall execute and deliver in favor of the Lender a valid and binding termination and release agreement, in form and substance acceptable to the Lender.

GOVERNING LAW:

New York (without regard to conflict of law principles), except as governed by the United States Bankruptcy Code.

REQUESTED RELIEF AND REASONS THEREFOR

A. Approval of Postpetition Security Interests Under Section 364(c) and 364(d)

24. The Debtor intends to obtain financing under the Postpetition Loan Agreement by providing security interests and liens as set forth above pursuant to section 364(c) of the

Bankruptcy Code. The statutory requirement for obtaining post-petition credit under section 364(c) and/or 364(d) is a finding, made after notice and a hearing, that the debtors are “unable to obtain unsecured credit allowable under section 503(b)(1) of [the Bankruptcy Code] as an administrative expense.” 11 U.S.C. § 364(c) see In re Ames Dep’t Stores, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“a debtor must show that it has made a reasonable effort to seek other sources of credit under sections 364(a) and (b)” of the Bankruptcy Code).

25. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether

- the debtor is unable to obtain unsecured credit under section 364(b), i.e., by allowing a lender only an administrative claim;
- the credit transaction is necessary to preserve the assets of the estate; and
- the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Ames Dep’t Stores, 115 B.R. at 37-39 (Bankr. S.D.N.Y. 1990); see also In re Los Angeles Dodgers LLC, 457 B.R. 308, 312 (Bankr. D. Del. 2011).

B. No Alternative Borrowing Possible

26. The Debtor more than satisfies the three-part test. As discussed in detail above, the Debtor does not have the ability to borrow on any more favorable terms than provided by the Postpetition Loan Agreement. The Debtor’s other equity holders are not providing further investment, and no lender is willing to provide a loan on an unsecured basis. Indeed, the Debtor has no realistic ability to obtain debt on an unsecured basis, even with an administrative priority.

27. The Debtor has no realistic alternative to the DIP Facility. The Debtor has spent a considerable amount of time and effort seeking financing and additional capital, and only the

Postpetition Lender has indicated a willingness to advance sufficient money to the Debtor and on reasonable terms. A facility of the type provided herein could not have been obtained on an unsecured basis, particularly on an expedited basis. Under the circumstances, the Debtor submits it has demonstrated in good faith that credit was not available without the protections afforded by Subsections 364(c) and (d) of the Bankruptcy Code. See In re Snowshoe Corp., 789 F.2d 1085, 1088 (4th Cir. 1986); In re Plabell Rubber Prods., 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992).

28. Indeed, to show that the credit required is not obtainable on an unsecured basis, a debtor need only demonstrate “by a good faith effort that credit was not available without” the protections of Bankruptcy Code section 364(c). In re Snowshoe Corp., 789 F.2d at 1088. Thus, “[t]he statute imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.” Id.; see also In re Ames Dep’t Stores, 115 B.R. at 37 (holding that debtor made a reasonable effort to secure financing where it approached four lending institutions, was rejected by two, and selected the least onerous financing option from the remaining two lenders).

29. As above, members of Debtor’s leadership made extensive efforts to seek additional financing as well as potential investors and/or purchasers for the Debtor, and such efforts were reasonable and sufficient to satisfy the statutory requirements of Bankruptcy Code section 364(c). See, e.g., In re 495 Cent. Park Ave. Corp., 136 B.R. 626, 630-31 (Bankr. S.D.N.Y. 1992) (a debtor seeking financing under Bankruptcy Code section 364(c) made an acceptable attempt to obtain less onerous financing by speaking to several lenders that denied the loan request); Ames Dep’t Stores, 115 B.R. at 40.

C. The DIP Financing Is Necessary to Preserve Estate Assets

30. As set forth above, Debtor must continue to pay its staff and vendors in order to

continue operating and to preserve its value and have a chance at pursuing the Sale and the reorganization effort. Otherwise the Debtor will be forced to immediately cease operation which will result in substantial and irreparable damage to the value of the Debtor and to its estate.

31. Accordingly, the DIP Facility is necessary to ensure that the Debtor is able to maintain its business and thus maximize the value of its estate. See Burtch v. Ganz (In re Mushroom Transp. Co.), 382 F.3d 325, 339 (3d Cir. 2004) (debtors-in-possession have a duty to maximize their estates' assets).

D. The DIP Financing Terms Are Fair and Reasonable and Debtor Has Exercised Sound Business Judgment

32. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances and disparate bargaining power of both the debtor and potential lender. See In re Farmland Indus., Inc., 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003); see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.), 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds).

33. The Debtor, in its business judgment, submits that the proposed DIP financing is the only alternative available under the circumstances. The Debtor believes that the terms of the DIP Facility, which have been fully disclosed and which have been negotiated in good faith and on an arms-length basis, are fair and reasonable under the circumstances. Because DIP financing is critical to continued operations and to pursuing the Sale and reorganization effort, the Debtor submits that it has properly exercised its business judgment.

34. As above, after appropriate exploration and evaluation, Debtor's management concluded that the DIP Facility is the best and only viable option available under the circumstances. Bankruptcy courts routinely defer to a debtor's business judgment on certain

business decisions, including the decision to borrow money, unless such decision is arbitrary and capricious. See In re YL West 87th Holdings I LLC, 423 B.R. 421, 441 (Bankr. S.D.N.Y. 2010) (stating that “[c]ourts have generally deferred to a debtor’s business judgment in granting section 364 financing”). In fact, “[m]ore 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).

35. The terms of the DIP Facility are fair and reasonable. The rights and remedies being granted to the Postpetition Lender are customary and appropriate under the circumstances. Moreover, valuable consideration is being given to the estate in the form of the proposed Carveout. The provisions also were the product of good faith, arms’-length negotiations.

E. The DIP Facility is in the Best Interests of the Debtor’s Estate and Creditors

36. The Debtors believe that the approval of the DIP Facility is in the best interests of the Debtor’s estate, creditors and stakeholders. The Debtor, in the exercise of its sound business judgment, believe that it has negotiated for the best possible terms for the DIP Facility, which would permit the Debtor to operate, preserve its value and employees’ jobs while pursuing the Sale and reorganization effort.

37. The Debtor submits that the milestones under the DIP Facility are appropriate in these circumstances and provide the Debtor and its professionals with sufficient runway to continue operations while continuing the process of marketing the Debtor for sale, which Debtor’s leadership has already spent significant time doing prepetition, as well as efforts to solicit and confirm a reorganization plan in the most value-maximizing manner for the benefit of all stakeholders. See In re Farmland Indus., Inc., 294 B.R. 855, 884 (Bankr. W.D. Mo. 2003)

(stating that it “was not unreasonable for the DIP [l]enders to insist on having a definite timetable,” and that debtor in possession financing amendment “despite the tough new guidelines ... is in the best interests of the estate ... to avoid a termination of the [d]ebtors’ DIP financing [which] would have been disastrous for the [d]ebtors ... and, more than likely, have caused the [d]ebtors to cease their business operations, to the extreme detriment of their creditors.”).

F. Immediate Relief Is Necessary

38. As of the Petition Date, Debtor has little to no remaining cash to continue funding its operations, its employee payroll is due and a significant amount of prepetition obligations are due and owing to its employees and critical vendors who are vital to Debtor’s continued operations. The Debtor seeks interim relief under the Interim DIP Order in order to pay outstanding obligations to its employees and critical vendors, as well as other costs set forth in the Budget, so that, as above, the Debtor can continue to operate and preserve its value in furtherance of the Sale and reorganization efforts.

39. Accordingly, it is appropriate for the Court to approve the relief on an interim basis, as absent the relief, the Debtor will be forced to ceased operations and its estate will suffer immediate and irreparable harm.

G. Appropriate Disclosures Have Been Made and Section 364(e) Protections Are Appropriate

40. The Postpetition Lender requires that the Court find that this transaction is one that is protected under Section 364(e) of the Code. For purposes of disclosure under this section, all necessary disclosures have been made and the provisions of the DIP Facility are fair and reasonable and were the product of good faith, arms’-length negotiations.

REQUEST FOR USE OF CASH COLLATERAL

41. In connection with its need for debtor-in-possession financing, the Debtor also

requires the use of Cash Collateral. Bankruptcy Code section 363(c)(2) provides that the Debtor 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). Here, AIG, as the lender under the secured Bridge Note, is Debtor’s only secured creditor and is the Postpetition Lender and has consented to use of its Cash Collateral.

REQUEST FOR MODIFICATION OF THE AUTOMATIC STAY

42. Bankruptcy Code section 362 provides for an automatic stay upon the filing of a bankruptcy petition. The proposed Interim DIP Order contemplates the modification of the automatic stay with respect to the Postpetition Lender to the extent necessary to effectuate the provisions of the Interim DIP Order, including, after the Termination Date, to permit the Postpetition Lender to exercise its rights contemplated therein. Stay modification provisions of this type are relatively standard features of postpetition debtor-in-possession financing facilities and, in the Debtor’s business judgment, are reasonable under the present circumstances. Accordingly, the Debtor respectfully requests that this Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim DIP Order.

**REQUEST FOR HEARING AND AUTHORITY TO
MAKE INTERIM BORROWINGS UNDER THE DIP FACILITY**

43. Pursuant to Bankruptcy Rule 4001(b) and (c), the Debtor requests that this Court conduct an interim hearing and authorize the Debtor’s use of the DIP Facility and use of Cash Collateral in order to maintain and finance the ongoing operations of the Debtor, and to avoid immediate and irreparable harm to the Debtor’s estate and all parties in interest. Bankruptcy Rule 4001(b) and (c) provides that a final hearing on a motion to obtain credit and use cash collateral pursuant to Bankruptcy Code section 364 may not be commenced earlier than 14 days

after the service of such motion. Fed. R. Bankr. P. 4001(b) and (c).

44. Upon request, however, this Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the obtaining of credit and use of cash collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. 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 Simasko, 47 B.R. 444, 449 (Bankr. D. Colo. 1985); see also In re Ames Dep't Stores, 115 B.R. at 38. After the 14-day period, the request for financing and use of cash collateral is not limited to those amounts necessary to prevent disruption of the debtor's business, and the debtor is entitled to borrow and use cash collateral to the extent it believes prudent in the operation of its business. See, e.g., Simasko, 47 B.R. at 449; Ames Dep't Stores, 115 B.R. at 36.

45. Pursuant to Bankruptcy Rule 4001(b) and (c), the Debtor respectfully requests that this Court conduct a preliminary hearing on the Motion and authorize the Debtor from the entry of the Interim DIP Order until the Final Hearing to obtain access to the interim DIP Facility amount of \$425,000, as set forth in the budget, and to utilize Cash Collateral over such period under the terms contained in the Interim DIP Order.

ESTABLISHING NOTICE PROCEDURES AND SCHEDULING FINAL HEARING

46. The Debtor respectfully requests that this Court schedule the Final Hearing and authorize it to serve the Motion and the signed Interim DIP Order, which fixes the time, date, and manner for the filing of objections, on (a) the Office of the United States Trustee for the Southern District of New York; (b) creditors who hold the 20 largest unsecured claims against the Debtor and who are not insiders; (c) the Postpetition Lender, c/o DLA Piper LLP, 1251 Avenue of the Americas, 27th Floor, New York, New York 10020-1104, attn.: Daniel G. Egan;

(d) the Internal Revenue Service, (e) the Securities and Exchange Commission and any other federal, state, or local governmental agency to the extent required by the Bankruptcy Code, Bankruptcy Rules, the Local Rules, or order of the Court; and (f) all persons and entities that have filed a request for service of filings in this Chapter 11 Case pursuant to Bankruptcy Rule 2002.

NOTICE, PRIOR APPLICATIONS AND WAIVER OF BRIEF

47. No trustee, examiner or creditors' committee has been appointed in this case. Prior notice of the Motion has been given by email, facsimile and/or hand delivery on the date hereof (i) the Office of the United States Trustee for the Southern District of New York, (ii) creditors who hold the 20 largest unsecured claims against the Debtor and who are not insiders, (iii) all secured creditors known to the Debtor, (iv) the Postpetition Lender, and (v) any party-in-interest having filed and served a notice of appearance and any party known to the Debtor to be asserting a lien against the Debtor's assets as required by Rule 4001(d)(1) of the Bankruptcy Rules. In light of the emergent nature of the relief requested herein, the Debtor submits no other or further notice need be given.

48. No prior application for the relief requested herein has been made to this or any other Court.

49. The Motion does not present novel issues of law requiring the citation to any authority other than as set forth above and, thus, no brief is necessary.

CONCLUSION

WHEREFORE, the Debtor respectfully prays for entry of the proposed Interim DIP
Order and for such other and further relief as the Court deems just.

Dated: March 13, 2017
New York, New York

Respectfully submitted,

/s/ John D. Giampolo

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*Proposed Attorneys for
Human Condition Safety Inc.*

EXHIBIT A

(THE PROPOSED INTERIM DIP ORDER)

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

In re:

HUMAN CONDITION SAFETY, INC.,

Debtor.¹

Chapter 11

Case No. 17-10585-SHL

**INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363, 364, AND 507,
BANKRUPTCY RULES 2002, 4001, AND 6004, AND LOCAL RULE 4001-2
(I) AUTHORIZING DEBTOR TO OBTAIN POSTPETITION FINANCING,
(II) AUTHORIZING USE OF CASH COLLATERAL, (III) GRANTING LIENS AND
PROVIDING SUPER-PRIORITY ADMINISTRATIVE EXPENSE STATUS,
(IV) GRANTING ADEQUATE PROTECTION, (V) SCHEDULING A
FINAL HEARING, AND (VI) GRANTING RELATED RELIEF**

This matter is before the Court on the motion (the “Motion”), dated March 13, 2017, filed by the above-captioned debtor and debtor in possession (the “Debtor”) pursuant to sections 105, 361, 362, 363, 364, and 507 of title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* (the “Bankruptcy Code”), Rules 2002, 4001, and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 4001-2 of the Local Bankruptcy Rules for the Southern District of New York (the “Local Rules”), requesting, among other things, entry of this interim order (this “Interim Order”):

(i) authorizing the Debtor to obtain secured postpetition financing on a super-priority basis (the “Postpetition Debt”), subject only to certain Permitted Liens and the Carveout, on the terms and subject to the conditions set forth in the Senior Secured, Super-Priority Debtor-In-Possession Loan And Security Agreement (the “Postpetition Loan Agreement,” a copy of which is attached hereto as **Exhibit 2**, and together with all other documents, agreements, and

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

instruments executed and/or delivered in connection therewith, the “Postpetition Loan Documents”), by and between Human Condition Safety, Inc. (the “Borrower” or the “Debtor”), as borrower, and AIG PC Global Services, Inc. (the “Postpetition Lender”), as lender;

(ii) authorizing the Debtor to execute and enter into the Postpetition Loan Documents and to perform such other and further acts as may be required in connection with the Postpetition Loan Documents;

(iii) granting super-priority administrative expense claims to the Postpetition Lender, subject only to the Carveout;

(iv) authorizing the Debtor to use “cash collateral” as defined in section 363 of the Bankruptcy Code (“Cash Collateral”) in which the Prepetition First Priority Lender has an interest pursuant to any Prepetition First Priority Documents (each as defined herein) and granting adequate protection to the Prepetition First Priority Lender in connection therewith;

(v) scheduling a final hearing (the “Final Hearing”) to consider entry of a final order authorizing, among other things, the Debtors to obtain financing under the Postpetition Loan Documents; and

(vi) granting other relief as set forth herein.²

This Order shall constitute findings of fact and conclusions of law pursuant to Fed. R. Bankr. P. 7052 and shall take effect and be fully enforceable as of the Filing Date.

Having examined the Motion, being fully advised of the relevant facts and circumstances surrounding the Motion and having completed a hearing pursuant to sections 363 and 364 of the Bankruptcy Code and Fed. R. Bankr. P. 4001(c), and upon consideration of the First Day Declaration, the record of the Hearing and all proceedings had before the Court; and any

² Unless otherwise indicated, all capitalized terms used as defined terms herein have the meanings ascribed thereto in **Exhibit 1** hereto.

objections to the requested relief having been withdrawn or overruled on the merits; and after due deliberation and sufficient cause appearing therefor,

**THE MOTION IS GRANTED ON AN INTERIM BASIS AS SET FORTH
HEREIN, AND THE COURT HEREBY FINDS THAT:**

A. On the Filing Date, the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor has retained possession of its property and continues to operate its business as a debtor in possession pursuant to sections 1107 and 1108 of the Bankruptcy Code.

B. The Court has jurisdiction over the Case, the Debtor, property of the Debtor's estate, and this proceeding pursuant to 28 U.S.C. § 1334. Determination of the Motion constitutes a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). Venue over this Motion is proper under 28 U.S.C. § 1409(a).

C. Subject to the rights of any Committee or other party in interest to the extent set forth in Paragraph 9(a), the Debtor acknowledges, represents, stipulates, and agrees that: (1) the Prepetition First Priority Documents evidence and govern the Prepetition First Priority Obligations, the Prepetition Liens, and the prepetition financing relationship between the Debtor and the Prepetition First Priority Lender, and are valid and enforceable by the Prepetition First Priority Lender against the Debtor; (2) as of the Filing Date, the Debtor is liable for payment of the Prepetition First Priority Obligations, and the Prepetition First Priority Obligations shall be an allowed claim in the Case in an amount not less than \$376,924.96; (3) the Prepetition First Priority Obligations constitute the legal, valid, and binding obligation of the Debtor, enforceable in accordance with the terms of the Prepetition First Priority Documents; (4) no offsets, defenses, or counterclaims to the Prepetition First Priority Obligations exist, and no portion of the

Prepetition First Priority Obligations is subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable bankruptcy or nonbankruptcy law; (5) the Prepetition Liens, among other things, secure payment of all of the Prepetition First Priority Obligations; (6) the Prepetition Liens are First Priority Liens, subject only to Permitted Liens; and (7) the Debtor, for itself and for its estate, has no claims, equitable or legal, of any nature, whether as offset or for affirmative recovery, against the Postpetition Lender or the Prepetition First Priority Lender, including under any theory of “lender liability” or otherwise, and to the extent any such claim exists it is hereby waived.

D. No Committee has yet been appointed in the Case.

E. Even if the Debtor was authorized to use all available Cash Collateral, as that term is defined in section 363 of the Bankruptcy Code, upon a showing of adequate protection of the interests therein of the Prepetition First Priority Lender, such Cash Collateral would be insufficient to provide the Debtor with the working capital necessary to prevent immediate and irreparable harm to the Debtor and its estate.

F. The Debtor is unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code sufficient to finance the operations of the Debtor’s business, and the Debtor is unable to obtain credit allowable under sections 364(c)(1), (c)(2), or (c)(3) of the Bankruptcy Code on terms more favorable than those offered by the Postpetition Lender.

G. Consequently, an immediate need exists for the Debtor to obtain the Postpetition Debt and the balance of the relief requested by the Debtor in order to minimize disruption to and avoid the termination of its business operations, and to enhance the possibility of a successful reorganization.

H. In order to prevent immediate and irreparable harm to the Debtor and its estate pending the Final Hearing, the Debtor needs to incur Postpetition Debt on an emergency interim basis as provided herein through the conclusion of such Final Hearing.

I. The Postpetition Lender has indicated a willingness to extend the Postpetition Debt, but only on the terms and conditions set forth in this Order and the Postpetition Loan Documents. Under the circumstances of the Case, the terms and conditions of this Order are a fair and reasonable response to the Debtor's request to incur Postpetition Debt, and the entry of this Order is in the best interests of the Debtor's estate and its creditors. Such terms and conditions have been negotiated in good faith and at arms' length, and the Postpetition Debt is being extended in good faith, as that term is used in section 364(e) of the Bankruptcy Code.

J. The notice provided by the Debtor of the Motion, the interim hearing on the Motion, and the entry of this Order satisfy the requirements of Fed. R. Bankr. P. 2002, 4001(c), and 9014 and sections 363 and 364 of the Bankruptcy Code and were otherwise sufficient and appropriate under the circumstances.

WHEREFORE, IT IS HEREBY ORDERED THAT:

1. Authorization to Incur Postpetition Debt.

(a) Approval of Postpetition Loan Documents. The Debtor is hereby authorized and directed to (1) execute the Postpetition Loan Documents, including all documents that the Postpetition Lender deems necessary to implement the transactions contemplated by the Postpetition Loan Documents, and (2) perform all of its obligations under and comply with all of the terms and provisions of the Postpetition Loan Documents and of this Order. Upon execution and delivery thereof, the Postpetition Loan Documents shall constitute valid and binding obligations of the Debtor, enforceable in accordance with their terms. As consideration for the

extension of the Postpetition Debt, all fees, charges and expenses set forth in the Postpetition Loan Documents, each of which shall be nonrefundable once paid, are hereby approved in their entirety.

(b) Uses of Postpetition Debt. The Debtor is hereby authorized to incur the Postpetition Debt (1) solely in accordance with and pursuant to the terms and provisions of this Order and the Postpetition Loan Documents, and (2) solely to the extent required to pay those costs and expenses enumerated in the Budget as and when such costs and expenses become due and payable; and (c) upon entry of the Final Order, in accordance with Paragraph 1(c) below. Notwithstanding anything to the contrary in this Paragraph 1(b), if the Postpetition Lender advances monies to the Debtor and the Debtor uses such monies other than in accordance with the terms and provisions of this Order or the Postpetition Loan Documents, such advances shall be considered Postpetition Debt for purposes of this Order.

(c) Payment of Prepetition First Priority Obligations. Immediately upon entry of the Final Order, the Debtor is hereby authorized and directed to incur Postpetition Debt as set forth in Section 2.2(a) of the Postpetition Loan Agreement to repay the then-outstanding Prepetition First Priority Obligations in full on a provisional basis. Such payment of the Prepetition First Priority Obligations shall become final and binding on all parties in interest in the Case and their respective successors and assigns, including, without limitation, any Trustee or Committee, unless an objection or adversary proceeding with respect to either the Prepetition First Priority Obligations or the Prepetition Liens is timely filed pursuant to Paragraph 9(a) of this Order. If such an objection or adversary proceeding is filed, and Prepetition First Priority Lender is required to disgorge any monies received from the Debtor in satisfaction of the Prepetition First Priority Obligations or otherwise, such monies shall be remitted directly to the

Postpetition Lender and shall, without further Court order, be applied by the Postpetition Lender to the Postpetition Debt in accordance with Paragraph 6(d) of this Order.

2. Use of Cash Collateral; Procedure for Delivery of Cash Proceeds.

(a) Use of Cash Collateral. The Debtor is authorized to use Cash Collateral solely in accordance with and pursuant to the terms and provisions of this Order. Prior to the Termination Date and indefeasible payment in full of the Postpetition Debt, the Debtor agrees that it will not use or seek to use Cash Collateral other than pursuant to the terms of this Order.

(b) Delivery of Cash Proceeds to Postpetition Lender. The Debtor is authorized and directed to deposit all Cash Proceeds, regardless of the source of such Cash Proceeds, now or hereafter in its possession or under its control with the Postpetition Lender in accordance with Section 2.8 of the Postpetition Loan Agreement. The Postpetition Lender shall thereafter apply such Cash Proceeds in accordance with Paragraph 6(d) of this Order.

(c) Account Debtors. Without further order of the Court, the Postpetition Lender may direct the Debtor to (or after a Default the Postpetition Lender may directly) instruct all account debtors of existing and future accounts receivable included in the DIP Collateral to make payments directly into accounts satisfactory to the Postpetition Lender, in which event all such Cash Proceeds shall be applied in accordance with Paragraph 6(d) of this Order.

(d) Cash Proceeds in Postpetition Lender's Possession. The Postpetition Lender is authorized to collect upon, convert to Cash Proceeds, and enforce checks, drafts, instruments and other forms of payment now or hereafter coming into its possession or under its control which constitute DIP Collateral or proceeds of DIP Collateral.

3. Superpriority Administrative Expense Status: Postpetition Liens. The Postpetition Debt is hereby granted superpriority administrative expense status under

section 364(c)(1) of the Bankruptcy Code, with priority over all costs and expenses of administration of the Case that are incurred under any provision of the Bankruptcy Code, other than the Carveout. In addition, the Postpetition Lender is hereby granted, pursuant to sections 364(c)(2), 364(c)(3), and 364(d) the Bankruptcy Code, for the benefit of itself, the Postpetition Liens to secure the Postpetition Debt. The Postpetition Liens: (a) are and shall be First Priority Liens (subject only to Permitted Liens and the Carveout) that are perfected without any further action by the Debtor or the Postpetition Lender, and without the execution, filing or recordation of any financing statements, security agreements, control agreements, mortgages or other documents or instruments; (b) upon entry of a Final Order, shall not be subject to any security interest or lien which is avoided and preserved under section 551 the Bankruptcy Code and, upon entry of the Final Order, the DIP Collateral shall include all claims, causes of action, and proceeds of all claims and causes of action under sections 544, 545, 547 through 551 and 553(b) of the Bankruptcy Code; and (c) shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of the Case. Notwithstanding the foregoing, the Debtor is authorized and directed to execute and deliver to the Postpetition Lender such financing statements, control agreements, mortgages, instruments, and other documents as the Postpetition Lender may deem necessary or desirable from time to time. Any such financing statements, control agreements, mortgages, instruments, or other documents filed by the Postpetition Lender shall be deemed to have been filed as of the Filing Date.

4. Carveout Terms. The Postpetition Liens, Prepetition Liens, superpriority administrative expense claims, and any other liens and security interests in favor of the Postpetition Lender and Prepetition First Priority Lender shall be subject and subordinate to a Carveout for (a) all administrative expenses pursuant to 28 U.S.C. § 156(c), 28 U.S.C.

§ 1930(a)(6), and 31 U.S.C. § 3717 for fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee, respectively; (b) payment of up to \$20,000 of fees and expenses of a trustee appointed under section 726(b) of the Bankruptcy Code; (c) all accrued and unpaid fees, disbursements, costs, and expenses of the Carveout Professionals, to the extent allowed by the Court by an interim or final order at any time, incurred prior to and up to the Termination Date, subject to and in accordance with the Budget (which Budget line items shall not be subject to any variance) and any order entered by the Court with respect to the interim payment of professional fees and expenses; and (c) all accrued and unpaid fees, disbursements, costs and expenses incurred by the Carveout Professionals after the Termination Date, to the extent allowed by the Court at any time, in an aggregate amount not to exceed \$100,000. The Carveout shall not include, and no Postpetition Debt or DIP Collateral may be used to pay, any fees or expenses incurred by any entity, including the Debtor, the Committee, or the Carveout Professionals, in connection with claims, actions, or services adverse to the Postpetition Lender, the Prepetition First Priority Lender, or any of the Prepetition Collateral or DIP Collateral of any of the foregoing, including (a) preventing, hindering, or delaying the enforcement or realization upon any of the DIP Collateral by the Postpetition Lender once an Event of Default has occurred, (b) using or seeking to use Cash Proceeds or selling any other DIP Collateral without the Postpetition Lender's consent, (c) incurring indebtedness without the Postpetition Lender's consent, except as expressly permitted by the Postpetition Loan Documents or this Order, or (d) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of the Prepetition First Priority Obligations, the Prepetition Liens, the Postpetition Debt, or the Postpetition Liens or any other rights or interests of the Postpetition Lender or the Prepetition First Priority Lender, or in asserting any claims or

causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the Postpetition Lender or the Prepetition First Priority Lender; provided, however, that up to \$25,000 may be used by counsel for the Committee to investigate the validity, extent, amount, perfection, priority, or enforceability of the Prepetition Liens. Nothing herein shall be construed as consent to the allowance of any fees or expenses of the Carveout Professionals or shall affect the right of the Postpetition Lender to object to the allowance and payment of such fees, costs, or expenses.

5. Termination of Right to Incur Postpetition Debt.

(a) Termination Date. Unless extended by the Court upon the written agreement of the Postpetition Lender, this Order and the Debtor's authorization to incur Postpetition Debt pursuant to this Order will automatically terminate on the Termination Date without further notice or order of Court.

(b) Rights Upon Termination. Upon the Termination Date, without further notice or order of the Court, at the Postpetition Lender's election: (1) the Postpetition Debt shall be immediately due and payable; (2) the Postpetition Lender shall be entitled to apply or set off any Cash Proceeds in the Postpetition Lender's possession or control against the Postpetition Debt in accordance with Paragraph 6(d) of this Order, until such Postpetition Debt is indefeasibly and finally paid in full and then applied as Prepetition First Priority Obligations; and (3) the Debtor shall be prohibited from using any Cash Proceeds for any purpose other than application to the Postpetition Debt and Prepetition First Priority Obligations in accordance with Paragraph 6(d) of this Order, until such Postpetition Debt and Prepetition First Priority Obligations are indefeasibly and finally paid in full. After the Termination Date, upon seven days written notice to the Debtor and its counsel, the United States Trustee, and the Committee

and its counsel: (1) at the Postpetition Lender's election, without further order of the Court, the Postpetition Lender shall have automatic and immediate relief from the automatic stay with respect to the DIP Collateral (without regard to any passage of time provided for in Fed. R. Bankr. P. 4001(a)(3)), and shall be entitled to exercise all rights and remedies available to it under the Postpetition Loan Documents and applicable nonbankruptcy law with respect to the DIP Collateral; and (2) the Debtor shall be authorized and directed to surrender the DIP Collateral and to otherwise cooperate to assist the Postpetition Lender in the exercise of the rights and remedies available to the Postpetition Lender under the Postpetition Loan Documents and applicable nonbankruptcy law with respect to the DIP Collateral (provided, however, that during the seven day notice period, the Debtor shall have the right to obtain an order of this Court determining that the Termination Date has not occurred, but that during such seven day notice period, the Postpetition Lender shall have no obligation to advance Postpetition Debt to the Debtor).

6. Adequate Protection of Interests of Prepetition First Priority Lender in the Aggregate Collateral; Application of Cash Proceeds. As adequate protection of the interests of Prepetition First Priority Lender in the Aggregate Collateral:

(a) Priority of Prepetition Liens/Allowance of Prepetition First Priority Lender's Claim/ Release. Subject to the reservation of rights set forth in Paragraph 9(a) of this Order: (1) the Prepetition Liens shall constitute First Priority Liens, subject only to the Postpetition Liens, the Replacement Liens, and the Permitted Liens and the Carveout; (2) the Prepetition First Priority Lender's claim with respect to the Prepetition First Priority Obligations shall constitute an allowed claim in an amount not less than \$376,924.96; and (3) effective upon the entry of the Final Order, the Debtor hereby releases, discharges, and acquits the Prepetition

First Priority Lender and each of its officers, directors, members, managers, agents, attorneys, predecessors in interest, and successors and assigns in such capacity of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness, and obligations, of every type, which accrued on or prior to the date of the entry of this Order with respect to or in connection with the Prepetition First Priority Obligations or the Prepetition First Priority Documents.

(b) Replacement Liens. Solely to the extent of any diminution in value of the Aggregate Collateral on or after the Filing Date, the Prepetition First Priority Lender is hereby granted the Replacement Liens. The Replacement Liens: (1) are and shall be in addition to the Prepetition Liens; (2) are and shall be First Priority Liens, subject only to the Postpetition Liens, Carveout, and the Permitted Liens, that are properly perfected, valid, and enforceable without any further action by the Debtor or the Postpetition Lender and without the execution, filing, or recordation of any financing statements, security agreements, mortgages, or other documents or instruments; and (3) shall remain in full force and effect notwithstanding any subsequent conversion or dismissal of any of the Cases. Notwithstanding the foregoing, the Debtor is authorized and directed to execute and deliver to the Prepetition First Priority Lender such financing statements, mortgages, instruments, and other documents as the Prepetition First Priority Lender may deem necessary or desirable from time to time.

(c) Allowed Code § 507(b) Claim. Solely to the extent of any diminution in value of the Aggregate Collateral on or after the Filing Date, if and to the extent the adequate protection of the interests of the Prepetition First Priority Lender in the Aggregate Collateral granted to the Prepetition First Priority Lender pursuant to this Order proves insufficient, the Prepetition First Priority Lender shall have an allowed claim under section 507(b) of the

Bankruptcy Code in the amount of any such insufficiency, subject to the Carveout but with priority over: (1) all costs and expenses of administration of the Case that are incurred under any provision of the Bankruptcy Code, including, without limitation, sections 503(b) and 507(a) of the Bankruptcy Code, and, subject to the entry of the Final Order, sections 506(c) and 552(b) of the Bankruptcy Code; and (2) the claims of any other party in interest under section 507(b) the Bankruptcy Code.

(d) Application of Cash Proceeds. The Postpetition Lender, at its election, is authorized to apply and directed to apply all Cash Proceeds now or hereafter coming into the Postpetition Lender's possession or control prior to entry of the Final Order and repayment of the outstanding Prepetition First Priority Obligations under and in accordance with Paragraph 1(c) of this Order as follows: (1) first, at the option of the Postpetition Lender, to any unpaid Postpetition Charges then due and owing; (2) second, derived from Prepetition Collateral to payment of the Prepetition First Priority Obligations; and (3) third, to payment of the Postpetition Debt in accordance with the terms of the Postpetition Loan Agreement. The Postpetition Lender, at its election, is authorized and directed to apply all Cash Proceeds now or hereafter coming into the Postpetition Lender's possession or control after entry of the Final Order and repayment of the outstanding Prepetition First Priority Obligations under and in accordance with Paragraph 1(c) of this Order to payment of the Postpetition Debt in accordance with the terms of the Postpetition Loan Agreement. All such applications shall be final and not subject to challenge by any person, including any Trustee or Committee, subject only to the challenge rights of any Committee, Trustee, or other parties in interest set forth in Paragraphs 1(c) and 9(a) of this Order.

7. Additional Consideration For Postpetition Debt. As additional consideration for the extension of the Postpetition Debt:

(a) Prohibition Against Use of Cash Collateral. Subject to the Carveout, the Debtor will not use or seek to use Cash Proceeds, unless, in addition to the satisfaction of all requirements of section 363 of the Bankruptcy Code for the use of such Cash Proceeds: (i) the Postpetition Lender has consented to such order; (ii) at the time of the entry of such an order, there is no Postpetition Debt outstanding, and no obligation of the Postpetition Lender to extend additional Postpetition Debt; or (iii) such Cash Proceeds are first used to immediately and indefeasibly pay the Postpetition Debt and Prepetition First Priority Obligations in cash in full.

(b) Prohibition Against Additional Debt. The Debtor will not incur or seek to incur debt secured by a lien which is equal to or superior to the Postpetition Liens, or which is given superpriority administrative expense status under section 364(c)(1) of the Bankruptcy Code, unless, in addition to the satisfaction of all requirements of section 364 of the Bankruptcy Code for the incurrence of such debt: (i) the Postpetition Lender has consented to such order; (ii) at the time of the entry of such an order, neither any Postpetition Debt nor any Prepetition First Priority Obligations remain outstanding, and no obligation of the Postpetition Lender to extend additional Postpetition Debt remains outstanding; or (iii) such credit or debt is first used to immediately and indefeasibly pay the Postpetition Debt and Prepetition First Priority Obligations in cash in full.

(c) No Surcharge. Except for the Carveout, and subject to the entry of the Final Order, at no time during the Case shall the surcharge provisions of section 506(c) of the Bankruptcy Code, the enhancement of collateral provisions of section 552 of the Bankruptcy Code (including, without limitation, the “equities of the case” exception under section 552(b) of

the Bankruptcy Code), or any other legal or equitable doctrine (including, without limitation, unjust enrichment) be imposed upon the Postpetition Lender or any of the DIP Collateral for the benefit of any party in interest, including the Debtor, the Committee, any of the Carveout Professionals, or any Trustee.

(d) Right to Credit Bid. Subject to the reservation of rights set forth in paragraph 9(a) of this Order, the Debtor stipulates and agrees that, pursuant to section 363(k) of the Bankruptcy Code, the Postpetition Lender shall have the right to credit bid the total of the Postpetition Debt and Prepetition First Priority Obligations for any or all of the Aggregate Collateral at a sale, lease, or other disposition of such Aggregate Collateral outside the ordinary course of business (including any auction or similar sales), whether pursuant to a plan of reorganization or a motion pursuant to section 363 of the Bankruptcy Code or otherwise (which credit bid rights under section 363(k) of the Bankruptcy Code or otherwise shall not be impaired in any manner).

(e) Plan. Unless the Postpetition Lender consents thereto, no order shall be entered confirming a plan in this Case unless such order provides for the indefeasible and final payment of the Postpetition Debt and Prepetition First Priority Obligations in full in cash on the earlier of: (1) the effective date thereof; and (2) the Termination Date.

(f) Indemnification. Subject to entry of the Final Order, the Debtor shall indemnify and hold harmless the Postpetition Lender and other Indemnified Persons (as defined in the Postpetition Loan Agreement) pursuant to Section 10.3 of the Postpetition Loan Agreement.

8. Miscellaneous Provisions.

(a) Notice of and Objections to Postpetition Charges. The Postpetition Lender shall provide the Debtor's counsel, counsel for any Committee, and the United States Trustee with copies of all invoices (edited to delete any attorney-client or other confidential information) with respect to the Postpetition Lender's attorneys' fees and related costs and expenses asserted as Postpetition Charges that are incurred after the entry of this Order. Any such party may object to the reasonableness of any such fees, costs, and expenses. However, any such objection shall be forever waived and barred unless, within fourteen (14) days of receipt of the invoice to which the objection relates or such later date as agreed to by the Postpetition Lender: (1) the objection is served upon the Postpetition Lender and its counsel; and (2) the objection describes with particularity the items or categories of fees, costs, and expenses that are the subject of the objection and provides the specific basis of the objection to each such item or category of fees, costs, and expenses. To the extent such objection cannot be resolved, the objection shall be filed with the Court and set for a hearing. Any objection to the fees, costs, and expenses set forth on any such invoice shall be limited to the reasonableness or necessity of the particular items or categories of the fees, costs, and expenses which are the subject of such objection. The disallowance of any such fees and expenses shall not affect the Postpetition Lender's right to collect such amounts from any person or entity other than the Debtor.

(b) Force and Effect of Postpetition Loan Documents. To the extent there exists any conflict among the Motion, the Postpetition Loan Documents, and the terms of this Order, this Order shall govern and control.

(c) Modification of Stay. The automatic stay of section 362 of the Bankruptcy Code is hereby modified with respect to the Postpetition Lender to the extent

necessary to effectuate the provisions of this Order, including, after the Termination Date, to permit the Postpetition Lender to exercise its rights contemplated by Paragraph 5(b) above.

(d) Financial Information. The Debtor is hereby directed to deliver to the Postpetition Lender such financial and other information concerning the business and affairs of the Debtor and any of the DIP Collateral as may be required pursuant to the Postpetition Loan Documents and/or as the Postpetition Lender shall reasonably request from time to time. The Debtor is also directed to allow the Postpetition Lender access to the premises in accordance with the terms of the Postpetition Loan Agreement for the purpose of enabling the Postpetition Lender to inspect and audit the DIP Collateral and the Debtor's books and records.

(e) No Waiver. The Postpetition Lender's failure, at any time or times hereafter, to require strict performance by the Debtor (or by any Trustee) of any provision of this Order or the Postpetition Loan Documents shall not waive, affect, or diminish any right of the Postpetition Lender thereafter to demand strict compliance and performance therewith. No delay on the part of the Postpetition Lender in the exercise of any right or remedy under this Order, the Postpetition Loan Documents, the Bankruptcy Code, or applicable nonbankruptcy law shall preclude any other or further exercise of any right or remedy. The Postpetition Lender shall not be deemed to have suspended or waived any of its rights or remedies under this Order, the Postpetition Loan Documents, the Bankruptcy Code, or applicable nonbankruptcy law unless such suspension or waiver is in writing, signed by a duly authorized officer of such party, and directed to the Debtor.

(f) "Responsible Person." By executing the Postpetition Loan Documents or taking any actions pursuant to this Order, the Postpetition Lender shall not: (1) be deemed to be

in control of the operations or liquidation of the Debtor; or (2) be deemed to be acting as a “responsible person” with respect to the operation, management, or liquidation of the Debtor.

9. Binding Effect.

(a) Stipulations and Findings. The stipulations, representations, and findings and the release contained in Paragraphs C and 6(a) of this Order shall be binding on all parties in interest in the Case and their respective successors and assigns, including any Trustee and Committee, subject only to the right of any parties in interest, any Trustee or any Committee, timely to file an adversary proceeding challenging such stipulations, representations, and findings by no later than the date that is 60 days after the entry of the Final Order.

(b) Order. Except as provided in Paragraph 9(a) herein, this Order shall be binding on all parties in interest in the Case and their respective successors and assigns, including any Trustee. If, in accordance with section 364(e) of the Bankruptcy Code, this Order does not become a final nonappealable order or if any of the provisions of the Order are hereafter modified, amended, vacated, or stayed by subsequent order of this Court or any other court, such termination or subsequent order shall not affect (a) subject to Paragraph 9(a) of this Order, the stipulations, representations, and findings and the release contained in Paragraphs C and 6(a) of this Order; and (b) the priority, validity, enforceability, or effectiveness of any lien, security interests, or any other benefit or claim authorized hereby with respect to any Postpetition Debt incurred prior to the effective date of such termination or subsequent order. All such liens, security interests, claims, and other benefits shall be governed in all respects by the original provisions of this Order, and the Postpetition Lender shall be entitled to all the rights, remedies, privileges, and benefits granted herein, including the liens and priorities granted herein, with respect to the Postpetition Debt, subject to the Carveout. Except as otherwise explicitly set forth

in this Order, no third party is intended to be, or shall be deemed to be, a third party beneficiary of this Order.

(c) Survival. The provisions of this Order, and any actions taken pursuant to or in reliance upon the terms hereof, shall survive entry of, and govern in the event of any conflict with, any order which may be entered in the Case (1) confirming any chapter 11 plan, (2) converting the Case to a case under chapter 7, or (3) dismissing the Case. The terms and provisions of this Order, including the rights granted to the Postpetition Lender under sections 364(c) and (d) of the Bankruptcy Code, shall continue in full force and effect until all of the Postpetition Debt is indefeasibly and finally paid in cash in full and discharged.

10. No Marshaling. Neither the Postpetition Lender nor the Prepetition First Priority Lender 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.

11. Proofs of Claim. Neither the Postpetition Lender nor the Prepetition First Priority Lender shall be required to file any proof of claim in the Case for any claim under the Postpetition Loan Documents or the Prepetition First Priority Documents, as applicable, or for any claim allowed herein.

12. Notice of Final Hearing. The Final Hearing is scheduled for [____], 2017, at [____] and may be continued from time to time with the consent of the Postpetition Lender without further notice other than that given in open court. The Debtor is directed to immediately serve a copy of this Order by first class mail, postage prepaid, on the Postpetition Lender, the Debtor's other secured creditors (if any), the Debtor's twenty largest unsecured creditors, and the United States Trustee, which service shall constitute adequate and proper notice of the Final Hearing.

13. Retention of Jurisdiction. The Court has and will retain jurisdiction to interpret and enforce this Order according to its terms.

UNITED STATES BANKRUPTCY JUDGE

Dated: _____, 2017

EXHIBIT 1 TO THE INTERIM DIP ORDER

(DEFINED TERMS)

1. **“Aggregate Collateral”** means, collectively, the Prepetition Collateral and the DIP Collateral.
2. **“Bankruptcy Code”** means title 11 of the United States Code, 11 U.S.C. §§ 101, *et seq.* Unless otherwise indicated, all statutory section references in this Order are to the Bankruptcy Code.
3. **“Budget”** means the budget attached to this Order as **Exhibit 3** as amended, modified, or supplemented from time to time subject to an in accordance with the Postpetition Loan Agreement, all as may be agreed to by the Postpetition Lender from time to time without the necessity for further Court approval.
4. **“Carveout”** means, for the purposes of enabling the Debtor’s estate to pay allowed fees and disbursements of the Carveout Professionals as may be awarded from time to time pursuant to section 330 of the Bankruptcy Code, the aggregate amount set forth in Paragraph 4 of this Order; provided, however, that the Carveout may be used only subject to the terms and provisions of Paragraph 4 of this Order.
5. **“Carveout Professionals”** means all professionals retained by the Debtor or the Committee during the Case under section 327 or section 1103 of the Bankruptcy Code.
6. **“Case”** means this chapter 11 case or any superseding chapter 7 case of the Debtor.
7. **“Cash Collateral”** means all “cash collateral”, as that term is defined in section 363(a) of the Bankruptcy Code.
8. **“Cash Proceeds”** means all “cash collateral” and other cash coming into the possession or control of the Debtor, including arising from the collection or other conversion to cash of the DIP Collateral, including cash from the sale of inventory and the collection of accounts receivable, tax refunds, deposits subject to setoff, and insurance proceeds.
9. **“Committee”** means any official creditors’ committee appointed to represent unsecured creditors in this Case pursuant to section 1102 of the Bankruptcy Code.
10. **“Default”** means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.
11. **“DIP Collateral”** means all of the real and personal property of the Debtor of any description whatsoever, wherever located and whenever arising or acquired, including all cash proceeds, accounts, inventory, equipment, fixtures, chattel paper, general intangibles (including, effective upon entry of the Final Order, all claims, causes of action, and proceeds of all claims and causes of action under sections 544, 545, 547 through 551 and 553(b) of the Bankruptcy Code), all leases and leaseholds, and all other Collateral (as that term is defined in the Postpetition Loan Agreement) and all proceeds, rents, issues,

profits and products, whether tangible or intangible, of any of the foregoing, including proceeds of insurance covering any of the foregoing; provided, however, that if the terms of any lease or leasehold prohibit, or are silent with respect to, the granting of a lien on such lease or leasehold, then the DIP Collateral shall only include the proceeds and products of such lease or leasehold.

12. **“Event of Default”** means any one or more of the following: (a) the Debtor fails to comply with any of the Chapter 11 Milestones set forth in Section 5.17 of the Postpetition Loan Agreement or the Performance Covenants set forth in Section 7 of the Postpetition Loan Agreement, or commits any other Event of Default under the Postpetition Loan Agreement; or (b) the Debtor fails to perform any of its obligations in strict accordance with the terms of, or otherwise fails to comply with any of the provisions of, this Order.
13. **“Filing Date”** means March 10, 2017.
14. **“Final Hearing”** means the final hearing on the Motion conducted in accordance with Fed. R. Bankr. P. 4001.
15. **“Final Order”** means a final order authorizing the Debtor to incur Postpetition Debt entered at or in connection with the Final Hearing.
16. **“First Priority Liens”** means Liens which are first priority, properly perfected, valid and enforceable security interests, which are not subject to any claims, counterclaims, defenses, setoff, recoupment, or deduction, and which are otherwise unavoidable and not subject to avoidance or subordination pursuant to any provisions of the Bankruptcy Code, applicable nonbankruptcy law, or any agreement.
17. **“Obligations”** means the “Obligations”, as that term is defined in the Postpetition Loan Agreement.
18. **“Permitted Liens”** means all “Permitted Liens,” as that term is defined in the Postpetition Loan Agreement, that (i) have priority under applicable law over the Postpetition Liens, (ii) are not subordinated by agreement or applicable law, and (iii) are non-avoidable, valid, properly perfected, and enforceable.
19. **“Postpetition Charges”** means interest at the rate set forth in Section 2.6 of the Postpetition Loan Agreement, and all fees, costs, expenses, and other charges (including, without limitation, all attorneys’ fees and paralegals’ fees and expenses, financial advisor fees and expenses, appraiser fees and expenses, valuation related fees and expenses, consultant fees and expenses, out-of-pocket filing and recording fees, external and internal audit fees and expenses, closing fees, letter of credit fees, unused line fees, facility fees, administrative fees, agency fees, arrangement fees, deferred fees, consultant fees and expenses, and all other costs and expenses) incurred by or on behalf of the Postpetition Lender before, on, or after the Filing Date in connection with the Debtor, the Aggregate Collateral, the restructuring of the Debtor’s liabilities, the preparation, negotiation, and documentation of the Postpetition Loan Documents and the Postpetition Debt, and the preparation for and filing of the Case.

20. **“Postpetition Debt”** means (a) all indebtedness or Obligations of the Debtor to the Postpetition Lender incurred on or after the Filing Date pursuant to this Order, the Postpetition Loan Documents, or otherwise, including any advances made by the Postpetition Lender to pay any Prepetition First Priority Obligations, plus (b) the Postpetition Charges.
21. **“Postpetition Liens”** means First Priority Liens in the DIP Collateral in favor of the Postpetition Lender, subject only to Permitted Liens and the Carveout.
22. **“Postpetition Loan Agreement”** means that certain Senior Secured, Super-Priority Debtor-In-Possession Loan and Security Agreement by and among the Debtor and the Postpetition Lender dated as of the date hereof attached hereto as **Exhibit 2**, as amended, modified, or supplemented from time to time.
23. **“Postpetition Loan Documents”** means the Postpetition Loan Agreement and the other Loan Documents, as that term is defined in the Postpetition Loan Documents.
24. **“Prepetition Collateral”** means all of the “Collateral” (as that term is defined in the Prepetition First Priority Security Agreement) existing as of the Filing Date, and all proceeds, rents, issues, profits, and products thereof.
25. **“Prepetition First Priority Documents”** means the Prepetition First Priority Note, Prepetition First Priority Security Agreement, and any documents, agreements, and instruments executed and/or delivered in connection therewith, each as amended, modified, or supplemented from time to time.
26. **“Prepetition First Priority Lender”** means AIG PC Global Services, Inc.
27. **“Prepetition First Priority Note”** means the Secured Promissory Note, dated as of February 16, 2017, issued by Borrower in favor of Prepetition First Priority Lender in the original principal amount of \$375,000, as amended, modified, restated, and/or supplemented from time to time.
28. **“Prepetition First Priority Security Agreement”** means that certain Security Agreement dated as of February 16, 2017, by and between Borrower and Prepetition First Priority Lender, as amended, modified, restated, and/or supplemented from time to time.
29. **“Prepetition First Priority Obligations”** means all indebtedness or obligations under the Prepetition First Priority Note and Prepetition First Priority Security Agreement, together with all agreements, documents, and instruments executed in connection therewith, as of the Filing Date, including all fees, costs, interest, and expenses.
30. **“Prepetition Liens”** means Prepetition First Priority Lender’s asserted security interests in the Prepetition Collateral under the Prepetition First Priority Documents, subject only to (a) the Postpetition Liens and Carveout; (b) the Replacement Liens; and (c) the Permitted Liens.

31. **“Replacement Liens”** means First Priority Liens in the DIP Collateral granted to the Prepetition First Priority Lender pursuant to this Order, subject only to Postpetition Liens, Carveout, and Permitted Liens.
32. **“Termination Date”** means the “Termination Date”, as that term is defined in the Postpetition Loan Agreement.
33. **“Trustee”** means any trustee appointed or elected in the Case.

EXHIBIT 2 TO THE INTERIM DIP ORDER
(POSTPETITION LOAN AGREEMENT)

**SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION
LOAN AND SECURITY AGREEMENT**

by and among

HUMAN CONDITION SAFETY INC.,

as Borrower,

and

AIG PC GLOBAL SERVICES, INC.,

as Lender

Dated as of March 10, 2017

**SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION
LOAN AND SECURITY AGREEMENT**

THIS SENIOR SECURED, SUPER-PRIORITY DEBTOR-IN-POSSESSION LOAN AND SECURITY AGREEMENT (this “Agreement”), is entered into as of March 10, 2017, by and among AIG PC Global Services, Inc., a Delaware corporation, as lender (together with its successors and assigns, the “Lender”), and Human Condition Safety Inc., a Delaware corporation, as borrower (the “Borrower”).

WHEREAS, on March 10, 2017 (the “Filing Date”), the Borrower commenced a voluntary case under chapter 11 of title 11 of the United States Code (the “Chapter 11 Case”) in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”);

WHEREAS, Borrower intends to continue to operate its business and manage its properties as a debtor and debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has asked the Lender to make post-petition loans and advances to the Borrower in an aggregate principal amount not to exceed \$3,000,000 (the “Facility”) pursuant to sections 364(c) and 364(d) of the Bankruptcy Code;

WHEREAS, Lender is willing to extend the Facility to Borrower, subject to the terms and conditions set forth herein and in the other Loan Documents and in accordance with sections 364(c) and 364(d) of the Bankruptcy Code including that all of the Obligations (i) are secured by Liens on the Collateral granted by Borrower, subject in priority only to certain Permitted Liens and the Carveout, as hereinafter provided, and (ii) constitute allowed superpriority administrative expense claims pursuant to sections 364(c) and 364(d)(1) of the Bankruptcy Code, subject in priority only to the Carveout, in each case as set forth herein and in the Interim Order and Final Order, as applicable; and

WHEREAS, Borrower has agreed to provide such collateral security, superpriority claims and adequate protection, subject to the approval of the Bankruptcy Court.

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

1. DEFINITIONS AND CONSTRUCTION.

1.1 **Definitions.** Capitalized terms used in this Agreement shall have the meanings specified on Schedule 1.1.

1.2 **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with Economic Basis; provided, however, that if Borrower notifies Lender that Borrower requests an amendment to any provision hereof to eliminate the effect of any change occurring after the Closing Date in Economic Basis or in the application thereof on the operation of such provision (or if Lender notifies Borrower that Lender requests an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such change in Economic Basis or in the application thereof, then Lender and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such change in Economic Basis with the intent of having the respective positions of Lender and Borrower after such change in Economic Basis conform as nearly as possible to their respective positions as of the date of this

Agreement and, until any such amendments have been agreed upon, the provisions in this Agreement shall be interpreted on the basis of Economic Basis as in effect and applied immediately before such change shall have become effective. When used herein, the term “financial statements” shall include the notes and schedules thereto. Whenever the term “Borrower” is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower and any of its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise.

1.3 **UCC.** Any terms used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, however, that to the extent that the UCC is used to define any term herein and such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern.

1.4 **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms “includes” and “including” are not limiting, and the term “or” has, except where otherwise indicated, the inclusive meaning represented by the phrase “and/or.” The words “hereof,” “herein,” “hereby,” “hereunder,” and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words “asset” and “property” shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in full in cash of all Obligations other than unasserted contingent indemnification Obligations (with all such Obligations consisting of monetary or payment Obligations having been paid in full in cash). Any reference herein to any Person shall be construed to include such Person’s successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5 **Schedules and Exhibits.** All of the schedules and exhibits attached to this Agreement shall be deemed incorporated herein by reference.

2. **LOAN, SECURITY, AND TERMS OF PAYMENT.**

2.1 **[Intentionally Omitted].**

2.2 **Agreement to Lend; Advances; Security Instruments and Loan Documents.**

(a) Subject to the terms and conditions of this Agreement and the Orders, Lender agrees, during the term of this Agreement, to make advances to Borrower (the “Advances”) as follows, in each case provided that all applicable conditions set forth in Section 3 and all applicable Chapter 11 Milestones set forth in Section 5.17 are satisfied:

(i) upon the Bankruptcy Court’s entry of the Interim Order, the Lender shall make an initial Advance in an amount equal to \$425,000 (the “Initial Advance”); and

(ii) upon the first Business Day of each month during the term of this Agreement after the Bankruptcy Court's entry of the Final Order, the Lender shall make a subsequent advance in the amount of up to \$425,000 (the "Monthly Advances" and, each, a "Monthly Advance"), subject to the Budget approved by Lender and less the amount of any reserve that may be imposed in the Lender's discretion up to the amount of the Carveout;

provided that in no event shall the aggregate amount of all Advances exceed the Loan Amount. Advances that are borrowed and repaid may not be reborrowed.

(b) The outstanding unpaid principal balance and all accrued and unpaid interest on the Advances shall be due and payable on the earlier of the (i) Termination Date, and (ii) date of the acceleration of the Obligations in accordance with the terms hereof. All principal of, interest on, and other amounts payable in respect of the Advances shall constitute Obligations.

(c) The Advances shall be evidenced by the Loan Documents (including, without limitation, the Interim Order and the Final Order), and the Borrower's obligation to repay the Advances and pay any other amounts that is or may become payable hereunder shall at all times be secured by, and the Borrower hereby pledges, assigns, and grants to Lender, a continuing, valid, binding, enforceable, non-avoidable and automatically properly perfected post-petition security interest and first priority (subject to the Carveout and other Permitted Liens) Lien on all of the Borrower's existing and after acquired real and personal property and other assets that constitute Collateral hereunder, tangible and intangible, whether now owned by or owing to, or hereafter acquired by or arising in favor of, the Borrower, regardless of where located. The Lien securing the Obligations shall be deemed valid and perfected by entry of the Interim Order, and the Interim Order (and, upon entry, the Final Order) shall be conclusive evidence of the validity, perfection, and priority of the Lender's Lien upon the Collateral. The Lender shall be permitted, but is not required, to file and/or record any financing statements, mortgages, leasehold mortgages, security agreements, notices of Lien, or similar instruments in any jurisdiction or filing office or to take any other action in connection with the Liens granted hereunder as Lender deems advisable or appropriate, and the Borrower hereby irrevocably authorizes Lender to take and such action and make any such filings or recordings.

2.3 Disbursement of Advances.

(a) **Procedure for Borrowing.** Upon satisfaction of all applicable conditions set forth in Section 3 and applicable Chapter 11 Milestones in Section 5.17 and delivery to Lender of a certificate executed by Borrower's Chief Executive Officer certifying the satisfaction of all such conditions and milestones, the Lender shall disburse the amount of the applicable Advance by wire transfer to the Borrower's operating account identified by Borrower to Lender, unless the Borrower and Lender shall agree to another manner of disbursement.

(b) **Notation.** Lender, as a non-fiduciary agent for Borrower, shall maintain a register showing the principal amount of the Advances owing to Lender and the interests thereon of Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

2.4 Payments; Prepayments; Use of Proceeds.

(a) **Payments by Borrower.** Except as otherwise expressly provided herein, all payments by Borrower shall be made to Lender and shall be made in immediately available funds, no later than 4:00 p.m. (Eastern time) on the date specified herein. Any payment received by Lender later

than 4:00 p.m. (Eastern time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(b) **Apportionment and Application.** All payments remitted to Lender and all proceeds of Collateral received by Lender shall be applied as follows (unless otherwise directed by Lender):

(i) first, to pay any Lender Expenses (including cost or expense reimbursements) in accordance with the Orders or indemnities then due to Lender under the Loan Documents, until paid in full,

(ii) second, to pay any fees or premiums then due to Lender under the Loan Documents until paid in full,

(iii) third, to pay interest due in respect of the Advances until paid in full,

(iv) fourth, to pay the principal of all Advances until paid in full,

(v) fifth, to pay any other Obligations until paid in full, and

(vi) sixth, to Borrower (to be wired to the Designated Account) or as otherwise required by applicable law.

In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reduction of Commitments.** Any payment under Sections 2.4(d) or (e) shall permanently reduce the Commitment by the amount of such payment.

(d) **Optional Prepayments.** Borrower may prepay the outstanding principal amount of any Advance at any time in whole or in part, without premium or penalty.

(e) **Mandatory Prepayments.**

(i) **Dispositions.** Within one (1) Business Day of the date of receipt by Borrower of the Net Cash Proceeds of any voluntary or involuntary sale or disposition of any of Borrower's assets, Borrower shall prepay the outstanding amount of the Obligations in accordance with Section 2.4(b) in an amount equal to 100% of such Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received by Borrower in connection with such sales or dispositions. Nothing contained in this Section 2.4(e)(i) shall permit Borrower to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(ii) **Extraordinary Receipts.** Within one (1) Business Day of the date of receipt by Borrower of any Extraordinary Receipts that are not otherwise included in the Budget, Borrower shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(b) in an amount equal to 100% of such Extraordinary

Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts.

(iii) **Indebtedness.** Within one (1) Business Day of the date of incurrence by Borrower of any Indebtedness (other than Permitted Indebtedness), Borrower shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(b) in an amount equal to 100% of the Net Cash Proceeds received by such Person in connection with such incurrence. The provisions of this Section 2.4(e)(iii) shall not be deemed to be implied consent to any such incurrence otherwise prohibited by the terms and conditions of this Agreement.

2.5 **Overadvances.** If, at any time or for any reason, the amount of Obligations owed by Borrower to Lender pursuant to Section 2.2 is greater than the Loan Amount (any such excess, an "Overadvance"), unless otherwise consented to by Lender, Borrower shall immediately pay to Lender, in cash, the amount of such excess, which amount shall be used by Lender to reduce the Obligations in accordance with the priorities set forth in Section 2.4(b). Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses) in Dollars in full on the Termination Date or, if earlier, on the date on which the Obligations are declared due and payable pursuant to the terms of this Agreement. Borrower may, upon notice to Lender, without premium or penalty, terminate in whole or permanently reduce in part ratably any unused portion of the Commitment.

2.6 **Interest Rates and Rates, Payments, and Calculations.**

(a) **Interest Rate.** Except as provided in Section 2.6(c), all Obligations shall bear interest at a rate equal to LIBOR plus seven percent (7.0%) per annum.

(b) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default, all Obligations shall bear interest at a per annum rate equal to one and a quarter percentage points (1.25%) above the per annum rate otherwise applicable hereunder without any notice from Lender or any other Person.

(c) **Payment.** Except to the extent provided to the contrary in Section 2.10, interest, all other fees payable hereunder or under any of the other Loan Documents, and all costs, expenses, and Lender Expenses payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first day of each month at any time that Obligations are outstanding. Any interest, fees, costs, expenses, Lender Expenses, or other amounts payable hereunder or under any other Loan Document not paid when due shall constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances in accordance with the terms of this Agreement.

(d) **Computation.** All interest and fees chargeable under the Loan Documents shall be computed on the basis of a 360 day year, in each case, for the actual number of days elapsed in the period during which the interest or fees accrue.

(e) **Intent to Limit Charges to Maximum Lawful Rate.** In no event shall the interest rate or rates payable under this Agreement, plus any other amounts paid in connection herewith, exceed the highest rate permissible under any law that a court of competent jurisdiction shall, in a final determination, deem applicable. Borrower and Lender, in executing and delivering this Agreement, intend legally to agree upon the rate or rates of interest and manner of payment stated within it; provided, however, that, anything contained herein to the contrary notwithstanding, if said rate or rates of interest or manner of payment exceeds the maximum allowable under applicable law, then, ipso facto, as of the date of this Agreement, Borrower is and shall be liable only for the payment of such maximum as allowed by

law, and payment received from Borrower in excess of such legal maximum, whenever received, shall be applied to reduce the principal balance of the Obligations to the extent of such excess.

2.7 **Crediting Payments; Clearance Charge.** The receipt of any payment item by Lender shall not be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to the Loan Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Lender only if it is received into the Loan Account on a Business Day on or before 4:00 p.m. (Eastern time). If any payment item is received into the Loan Account on a non-Business Day or after 4:00 p.m. (Eastern time) on a Business Day, it shall be deemed to have been received by Lender as of the opening of business on the immediately following Business Day.

2.8 **Designated Account.** Lender is authorized to make the Advances under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person, or, without instructions, if pursuant to Section 13.4. Borrower agrees to establish and maintain the Designated Account with the Designated Account Bank and to (i) receive the proceeds of the Advances requested by Borrower and made by Lender hereunder in such Designated Account; and (ii) deposit all proceeds of the Collateral and all mandatory prepayments hereunder into such Designated Account, after which such sums shall be immediately paid to Lender to be applied in accordance with Section 2.4(b) and, upon such application, permanently reduce the Commitments in a like amount in accordance with Section 2.4(c).

2.9 **[Intentionally Omitted].**

2.10 **Fees.**

(a) **Facility Fee.** Borrower shall pay to Lender a facility fee (the "Facility Fee") equal to one and a quarter percent (1.25%) of (i) the Interim Order Amount, which shall be fully earned and added to the outstanding principal amount of the Facility upon entry of the Interim Order and (ii) the Loan Amount minus the Interim Order Amount, which shall be fully earned and added to the outstanding principal amount of the Facility upon entry of the Final Order.

(b) **Exit Fee.** Borrower shall pay to Lender a one-time exit fee (the "Exit Fee") equal to one and a quarter percent (1.25%) of the amount of the Loan Amount, which amount shall be payable to Lender in cash upon the Termination Date.

2.11 **Use of Proceeds.** The Borrower shall use the proceeds of the Advances for the purpose of funding certain post-petition costs and expenses of the Borrower solely in accordance with the Budget and, subject to entry of the Final Order, to repay in full all Prepetition First Priority Obligations. No proceeds of any Advance may be utilized to finance in any way professional fees, disbursements, costs, or expenses incurred in connection with asserting, investigating, preparing, or prosecuting any claims or causes of action against Lender or its counsel or advisors arising from or relating to this Agreement and/or investigating, challenging, or raising any defenses to the Indebtedness and/or Liens under this Agreement or other Loan Documents.

2.12 **Single Loan.** All Advances to Borrower and all of the other Indebtedness of Borrower under this Agreement or any other Loan Document shall constitute one general obligation of Borrower secured by all of the Collateral.

3. **CONDITIONS; TERM OF AGREEMENT.**

3.1 **Conditions Precedent to the Initial Advance of Interim Order Amount.**

Lender shall not be required to make the Initial Advance unless and until all of the conditions specified below shall have been satisfied (the making of any Initial Advance by Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent contained in this Section 3.1):

(a) Lender shall have received the Budget (as defined in Section 5.18 of this Agreement), in form and substance satisfactory to Lender, in its sole discretion.

(b) Borrower shall represent to Lender that there are no defaults under any of its Material Contracts, except based solely upon the commencement of the Chapter 11 Case or unpaid prepetition obligations.

(c) The Bankruptcy Court shall have entered the Interim Order, in form and substance satisfactory to Lender, in its sole discretion, within three (3) Business Days of the Filing Date, and such order shall be in full force and effect and shall not have been modified or amended (unless otherwise approved by Lender), reversed, stayed or subject to a motion for reargument or reconsideration, or appealed. The Borrower and Lender shall be entitled to rely in good faith upon the Interim Order, and shall be permitted and required to perform their respective obligations in compliance with this Agreement notwithstanding any such objections thereto, unless the relevant order has been stayed by a court of competent jurisdiction.

(d) Lender shall have received evidence, in form and substance reasonably satisfactory to Lender, that the Borrower has obtained all requisite consents and approvals in connection with the filing of the Chapter 11 Case and the execution, delivery, and performance of this Agreement and the other Loan Documents.

(e) Borrower shall have filed its Chapter 11 Case in the Bankruptcy Court on or before March 10, 2017, and Borrower shall be a debtor and debtor in possession under Chapter 11 of the Bankruptcy Code.

(f) All first day motions and applications shall have been filed, and all orders with respect thereto and any other orders entered in the Chapter 11 Case prior to the Closing Date shall be in form and substance reasonably satisfactory to Lender.

(g) All fees required to be paid on the Closing Date under this Agreement shall have been paid.

(h) All other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance reasonably satisfactory to Lender.

(i) Borrower shall have timely and fully satisfied any and all applicable Chapter 11 Milestones required to be satisfied under Section 5.17 on or prior to the date Borrower requests the Initial Advance to be made.

3.2 **Conditions Precedent to all Advances.**

The obligation of Lender to make any Advances hereunder (or to extend any other credit hereunder), other than the Initial Advance, at any time shall be subject to the satisfaction (or waiver by Lender in its sole discretion) of the following conditions precedent (the making of any Advance or other extension of credit by Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent with respect to such Advance):

(a) The Borrower shall have complied fully and completely with all applicable Chapter 11 Milestones and the Performance Covenants through the date of the requested Advance set forth in Section 5.17 and Section 7.1, respectively.

(b) The representations and warranties of the Borrower contained in this Agreement or in the other Loan Documents 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 date of such extension of credit, as though made on and as of such date (except to the extent that such representations and warranties relate solely to an earlier date).

(c) No Default or Event of Default shall have occurred and be continuing on the date of making of such Advance, nor shall either result from the making thereof.

(d) Other than with respect to the Interim Order Amount, the Bankruptcy Court shall have entered the Final Order, in form and substance satisfactory to Lender, in its sole discretion, no later than the date that is thirty (30) days after the Filing Date, and such order shall be in full force and effect and shall not have been modified or amended (unless otherwise approved by Lender), reversed, stayed or subject to a motion for reargument or reconsideration, or appealed.

(e) The Budget shall be in form and substance acceptable to Lender.

(f) Lender shall have received such other approvals, opinions or documents as Lender may reasonably request.

(g) Borrower shall have obtained any registrations, consents, approvals, notices, or other actions required by any Governmental Authority in connection with the execution, delivery, and performance by the Borrower of the Loan Documents, and the consummation of the transactions contemplated by the Loan Documents;

(h) No injunction, writ, restraining order, or other order of any nature restricting or prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against the Borrower or Lender;

(i) The Borrower shall have delivered Schedule 3.2(i) (as such Schedule may be updated from time to time in accordance herewith), a list of the Material Contracts of the Borrower; provided, however, that Borrower shall amend Schedule 3.2(i) from time to time to add additional Material Contracts that have been approved by Lender pursuant to Section 5.15 hereof, in its sole discretion;

(j) No action, proceeding, investigation, regulation or legislation shall have been instituted or threatened before any Governmental Authority to enjoin, restrain or prohibit, or to obtain damages in respect of, or which is related to or arises out of this Agreement or any of the other Loan

Documents or the consummation of the transactions contemplated hereby and thereby and which, in Lender's sole judgment, would make it inadvisable to consummate the transactions contemplated by this Agreement or any of the other Loan Documents; and

(k) Lender shall have received a certificate signed by Borrower's Chief Executive Officer certifying Borrower's satisfaction of each of the foregoing conditions set forth in this Section 3.2 as of the date of each requested Advance.

3.3 **Maturity.**

(a) This Agreement shall continue in full force and effect for a term ending on the earliest of: (i) the date on which Lender provides written notice to counsel for the Borrower and counsel to any Committee of the occurrence of an Event of Default; (ii) the date of entry of an order converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code or dismissing the Chapter 11 Case; (iii) if the Interim Order is modified at the Final Hearing in a manner unacceptable to Lender, in its sole discretion, the date of the commencement of the Final Hearing; (iv) the effective date of a chapter 11 plan in the Chapter 11 Case; (v) the date of entry of an order appointing a chapter 11 trustee or an examiner, with enlarged powers relating to the operation of the business pursuant to section 1104 of the Bankruptcy Code (powers beyond those set forth in section 1106(a)(3) and (4) and 1106(b) of the Bankruptcy Code) in the Chapter 11 Case; (vi) the date of the closing of any Sale; and (vii) the date that is one hundred eighty (180) days after the Filing Date (such date, the "Termination Date"). All Obligations, including without limitation, the outstanding unpaid principal balance and all accrued and unpaid interest on the Advances, shall be due and payable on the Termination Date. All principal of, interest on, and other amounts payable in respect of the Advances shall constitute Obligations.

(b) The foregoing notwithstanding, Lender may terminate its obligations under this Agreement immediately upon the occurrence and during the continuation of an Event of Default.

3.4 **Effect of Maturity.** On the Termination Date, all commitments of Lender to provide additional credit hereunder shall automatically be terminated and all Obligations immediately shall become due and payable without notice or demand. No termination of the obligations of Lender (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge the Borrower of its duties, Obligations, or covenants hereunder or under any other Loan Document and Lender's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full in cash and Lender's obligations to provide additional credit under the Loan Documents have been terminated Lender will, at Borrower's sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Lender's Liens and all notices of security interests and liens previously filed by Lender with respect to the Obligations.

4. **REPRESENTATIONS AND WARRANTIES.**

In order to induce Lender to enter into this Agreement, the Borrower makes the following representations and warranties to Lender which shall be true, correct, and complete, in all respects, as of the Closing Date, and shall be true, correct, and complete, in all respects, as of the date of the making of each Advance (or other extension of credit) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1 **Due Organization and Qualification; Subsidiaries.**

(a) Subject to the Bankruptcy Court's entry of the Orders, the Borrower (i) is duly formed and existing and in good standing under the laws of the jurisdiction of its formation, (ii) is qualified to do business in any state where the failure to be so qualified could reasonably be expected to result in a Material Adverse Change, and (iii) subject to any limitation under applicable bankruptcy law, has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Schedule 4.1(b) sets forth the complete and accurate ownership and capitalization of the Borrower. Other than as described on Schedule 4.1(b), there are no subscriptions, options, warrants, or calls relating to any shares or other equity interest of the Borrower, including any right of conversion or exchange under any outstanding security or other instrument. The Borrower is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Stock or any security convertible into or exchangeable for any of its Stock.

4.2 **Due Authorization; No Conflict.**

Subject to the Bankruptcy Court's entry of the Orders:

(a) The execution, delivery, and performance by the Borrower of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of the Borrower.

(b) Other than as set forth on Schedule 4.2, the execution, delivery, and performance by the Borrower of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to the Borrower, the Governing Documents of the Borrower, or any order, judgment, or decree of any court or other Governmental Authority binding on the Borrower, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract of the Borrower except to the extent that any such conflict, breach or default could not individually or in the aggregate reasonably be expected to result in a Material Adverse Change, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any Collateral of the Borrower, other than Permitted Liens and Liens in favor of Lender, or (iv) require any approval of the Borrower's interest holders or any approval or consent of any Person under any Material Contract or Material Leases of the Borrower, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of Material Contracts or Material Leases, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to result in a Material Adverse Change.

4.3 **[Intentionally Omitted].**

4.4 **Binding Obligations; Perfected Liens.**

Subject to the Bankruptcy Court's entry of the Orders:

(a) Each Loan Document has been duly executed and delivered by the Borrower and is the legally valid and binding obligation of the Borrower, enforceable against it in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally (regardless of whether such enforceability is considered in a proceeding at law or in equity).

(b) Lender's Liens are validly created, perfected and first priority Liens, subject only to the Carveout and the Permitted Liens. The Borrower owns the Collateral described on Schedule 4.4 as of the Closing Date.

4.5 **Title to Assets; No Encumbrances.** The Borrower has (i) good, sufficient and legal title to (in the case of fee interests in Real Property), (ii) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (iii) good and marketable title to (in the case of all other personal property), all of the Borrower's assets that constitute Collateral hereunder. The Collateral is free and clear of Liens except for Permitted Liens.

4.6 **Jurisdiction of Formation; Location of Chief Executive Office; Organizational Identification Number; Commercial Tort Claims.**

(a) The name of (within the meaning of section 9-503 of the UCC) and jurisdiction of formation of the Borrower is set forth on Schedule 4.6 (as such Schedule may be updated from time to time by notice from Borrower to Lender to reflect changes resulting from transactions permitted under this Agreement).

(b) The chief executive office of the Borrower is located at the address indicated on Schedule 4.6 (as such Schedule may be updated from time to time by notice from Borrower to Lender to reflect changes resulting from transactions permitted under this Agreement).

(c) ments shall be computed on the basis of and organizational identification number, if any, are identified on Schedule 4.6 (as such Schedule may be updated from time to time by notice from Borrower to Lender to reflect changes resulting from transactions permitted under this Agreement).

(d) All Commercial Tort Claims of the Borrower are set forth on Schedule 4.6 (as such Schedule may be updated from time to time by notice from Borrower to Lender to reflect changes resulting from transactions permitted under this Agreement).

4.7 **Litigation.**

Except with respect to the Chapter 11 Case:

(a) There are no actions, suits, or proceedings pending or, to the knowledge of the Borrower, threatened in writing against the Borrower that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change, except as disclosed on Schedules 4.19 and 4.7(b).

(b) Schedule 4.7(b) sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, \$25,000 that, as of the Closing Date, is pending or, to the knowledge of the Borrower, threatened against the Borrower, of (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, (iii) the status, as of the Closing Date, with respect to such actions, suits, or proceedings, and (iv) whether any liability of the Borrower in connection with such actions, suits, or proceedings is covered by insurance.

4.8 **Compliance with Laws.** Except as disclosed on Schedule 4.8, the Borrower (a) is not in violation of any applicable laws, rules, regulations, executive orders, or codes (including Environmental Laws) that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse

Change, and (b) is not subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.9 **No Material Adverse Change.** All historical financial statements relating to the Borrower that have been delivered by Borrower to Lender have been prepared in accordance with Economic Basis (except, (i) in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments and (ii) any accounting of deferred revenue) and present fairly in all material respects, the Borrower's financial condition as of the date thereof and results of operations for the period then ended. Other than arising as the result of the commencement of the Chapter 11 Case or those matters set forth on Schedule 4.7(b) or Schedule 4.19, since December 31, 2016, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Change with respect to the Borrower.

4.10 **Fraudulent Transfer.** No transfer of property is being made by the Borrower and no obligation is being incurred by the Borrower in connection with the transactions contemplated by this Agreement or the other Loan Documents with the intent to hinder, delay, or defraud either present or future creditors of the Borrower.

4.11 **Employee Benefits.** Except as set forth on Schedule 4.11, neither the Borrower nor its ERISA Affiliates (if any) maintains or contributes to any Benefit Plan. Any such Benefit Plan complies with all provisions of applicable laws, rules, regulations, executive orders and codes.

4.12 **Environmental Condition.** Except to the extent that any of the matters referred to in clauses (a), (b), and (d) below could not reasonably be expected to result in a Material Adverse Change, (a) to the Borrower's knowledge, none of the Borrower's properties or assets have ever been used by the Borrower or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to the Borrower's knowledge, none of the Borrower's properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) the Borrower has never received notice that a Lien arising under any Environmental Law has attached to any revenues or to any Real Property owned or operated by the Borrower, except to the extent that such Liens are the subject of a Permitted Protest, and (d) neither the Borrower nor any of its facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Change.

4.13 **Intellectual Property.** Schedule 4.13 sets forth all registered Intellectual Property owned, licensed or utilized by the Borrower and sets forth all licenses of Intellectual Property granted by or to a third party and entered into by the Borrower which are material to the business of the Borrower. The Borrower owns directly, or is entitled to use by license or otherwise, all Intellectual Property material to the Borrower's business. All Intellectual Property material to the Borrower's business is properly maintained, subsisting, in full force and effect and not in known conflict with the rights of any Person. The Borrower has made all filings and recordations necessary in the exercise of reasonable and prudent business judgment to protect its interest in its Intellectual Property. No actions, suits, proceedings or investigations are pending or, to the knowledge of the Borrower, threatened with respect to the validity, enforceability, infringement, use or ownership of the Borrower's Intellectual Property. The Borrower is not in material breach of or material default under any agreement, arrangement or instrument relating to

any Intellectual Property, nor is there any event, fact, condition or circumstance which, with notice or passage of time or both, would constitute or result in any of the foregoing.

4.14 **Leases.** Except as provided in Schedule 4.14 or defaults solely as a result of the filing of the Chapter 11 Case, the Borrower enjoys peaceful and undisturbed possession under all Material Leases, and, subject to Permitted Protests, all of such Material Leases are valid and subsisting and no material default by the Borrower exists under any of them.

4.15 **Deposit Accounts and Securities Accounts.** Set forth on Schedule 4.15 is a listing of all of the Borrower's Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

4.16 **Complete Disclosure.** All financial statements and other factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the Borrower's industry) furnished on or before the date hereof by or on behalf of the Borrower in writing to Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about the Borrower's industry) hereafter furnished by or on behalf of the Borrower in writing to Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Budget attached to this Agreement as Exhibit B-2 represents, and as of the date on which any other Budget is delivered to Lender, such additional Budget represents the Borrower's good faith estimate, on the date such Budget is delivered, of the Borrower's future performance for the periods covered thereby based upon the Borrower's good faith assumptions believed by the Borrower to be reasonable at the time of the delivery thereof to Lender.

4.17 **Material Contracts.** Other than arising as a result of the commencement of the Chapter 11 Case, and except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the Borrower and, to the Borrower's knowledge, each other Person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified, and (c) is not in default in any material respect due to the action or inaction of the Borrower except any defaults based on unpaid prepetition obligations. The Borrower is not obligated to pay any service or management fee to any Affiliate.

4.18 **Patriot Act.** To the extent applicable, the Borrower is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used by the Borrower or any of its Affiliates, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.19 **Indebtedness.** Set forth on Schedule 4.19 is a true and complete list of all Indebtedness (other than the Obligations) of the Borrower outstanding immediately prior to the Closing Date in excess of \$25,000 that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date. Except with respect to the Prepetition First Priority Obligations, none of the Indebtedness set forth on Schedule 4.19 is secured by any of the Collateral.

4.20 **Payment of Taxes.** Except as provided on Schedule 4.20 and except as otherwise permitted under Section 5, all United States federal, state and other material tax returns and reports of the Borrower required to be filed by it with respect to the Collateral have been timely filed, and all taxes due with respect to the period covered by such tax returns and all material assessments, fees and other governmental charges upon the Borrower's Collateral that are due and payable, other than taxes that are the subject of a Permitted Protest, have been paid when due and payable, (b) with respect to the Collateral, the Borrower has made adequate provision in accordance with Economic Basis for all material taxes not yet due and payable, and (c) with respect to the Collateral, the Borrower knows of no proposed tax assessment against the Borrower with respect to United States federal or state taxes that is not being actively contested by the Borrower diligently, in good faith, and by appropriate proceedings; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with Economic Basis shall have been made or provided therefor.

4.21 **Governmental Regulation.** The Borrower is not subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. The Borrower is not a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.22 **Budget.** Attached to this Agreement as Exhibit B-2 is a true and complete copy of the initial Budget (as defined in Section 5.18 of this Agreement), in form and substance satisfactory to Lender, in its sole discretion.

5. **AFFIRMATIVE COVENANTS.**

The Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Borrower shall comply with each of the following:

5.1 **Financial Statements and Reports.** Deliver to Lender when issued or received, reports to members and notices of defaults, litigation and other material events. In addition, the Borrower agrees to maintain a system of accounting that enables the Borrower to produce financial statements in accordance with Economic Basis.

5.2 **Reporting.** The Borrower will: (a) prepare and deliver to Lender (i) all reports and certifications described in Section 7.1, and (ii) a written explanation of all material variances (the "Weekly Budget Variance Report"); (b) update and roll-forward the proposed Budget on a weekly basis, each such amended Budget to be delivered to Lender no later than the third Business Day of each week for the week immediately prior; and (c) participate in a weekly conference call, if requested by Lender, commencing on the third Business Day of each week following the Filing Date regarding the Budget, management issues, sale process, and other matters.

5.3 **[Intentionally Omitted].**

5.4 **Existence.** Except as otherwise permitted under Section 6.3, at all times (a) maintain and preserve in full force and effect its existence (including being in good standing in its jurisdiction of formation), (b) conduct its business in all material respects in an orderly, efficient, and regular manner, and (c) maintain all its rights and franchises, licenses and permits, except where the failure to maintain any such rights and franchises, or licenses and permits, could not reasonably be expected to result in a Material Adverse Change.

5.5 **Maintenance of Properties And Intellectual Property; Permits.** Except where the failure to do so could not be expected to result in a Material Adverse Change, (a) maintain and preserve all of its assets that are necessary to the proper conduct of its business in good working order and condition, ordinary wear, tear, and casualty excepted and Permitted Dispositions excepted, (b) comply with the material provisions of all material leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest; and (c) maintain, comply with and keep in full force and effect its Permits and its Intellectual Property, except as could not be expected to result in a Material Adverse Change. Except as set forth on Schedule 5.5, the Borrower is in material compliance with, and has, all Permits required for the operation of its business, and for the execution, delivery and performance by, and enforcement against, the Borrower of each Loan Document. The Borrower is not in material breach of or default under the provisions of any such Permit, nor is there any event, fact, condition or circumstance which, with notice or passage of time or both, would constitute or result in any of the foregoing.

5.6 **Taxes.** Cause all assessments and taxes imposed, levied, or assessed against any Collateral to be paid in full, before delinquency or before the expiration of any extension period.

5.7 **Insurance.** At Borrower's expense, maintain insurance respecting the Borrower's assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. The Borrower also shall maintain business interruption, general liability, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance, and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to Lender. All property insurance policies covering the Collateral are to be made payable to Lender for the benefit of Lender, in case of loss, pursuant to a standard loss payable endorsement with a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as Lender may reasonably require to fully protect Lender's interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Lender, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Lender and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Lender of the exercise of any right of cancellation. If the Borrower fails to maintain such insurance, Lender may arrange for such insurance, but at Borrower's expense and without any responsibility on Lender's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. The Borrower shall give Lender prompt notice of any loss covered by its casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Lender shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments, reassignments or other documents that may be necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

5.8 **Inspection.** Permit Lender and each of its duly authorized representatives or agent to visit any of its properties and inspect any of its assets or books and records, to conduct appraisals and valuations, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Lender may reasonably require and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrower.

5.9 **Compliance with Laws.** Comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change.

5.10 **Environmental.**

(a) Keep any property either owned or operated by the Borrower free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) Comply with Environmental Laws and provide to Lender documentation of such compliance which Lender reasonably requests, except to the extent that any such failure to comply could not reasonably be expected to result in a Material Adverse Change,

(c) Promptly notify Lender of any release of which the Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by the Borrower that could reasonably be expected to result in a Material Adverse Change, and take any Remedial Actions required to abate said release or otherwise to come into compliance, in all material respects, with applicable Environmental Law (except to the extent that any such noncompliance could not reasonably be expected to result in a Material Adverse Change), and

(d) Promptly, but in any event within one (1) Business Day of its receipt thereof, provide Lender with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of the Borrower, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against the Borrower, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority.

5.11 **Disclosure Updates.** Promptly and in no event later than one (1) Business Day after obtaining knowledge thereof, notify Lender if any written information, exhibit, or report (other than materials marked as drafts and forward-looking information and projections and information of a general economic nature and general information about the Borrower's industry) furnished to Lender contained, at the time it was furnished, any untrue statement of a material fact or omitted to state any material fact necessary to make the statements contained therein (taken as a whole) not misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.12 **Formation of Subsidiaries.** Except as set forth in Schedule 5.12, the Borrower has no Subsidiaries. The Borrower may not form any direct or indirect Subsidiary or acquire any direct or indirect Subsidiary after the Closing Date without the consent of Lender, in its sole discretion. Any

Subsidiary that is formed after the Closing Date shall be a guarantor of the Obligations hereunder, and shall execute an appropriate guaranty agreement in form and substance acceptable to the Lender.

5.13 **Further Assurances.** At any time upon the reasonable request of Lender, execute or deliver to Lender any and all financing statements, control agreements (including a control agreement, in form and substance acceptable to Lender, for the Designated Account), fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust, opinions of counsel, and all other documents (collectively, the "Additional Documents") that Lender may reasonably request in form and substance reasonably satisfactory to Lender, to create, perfect, and continue perfected or to better perfect Lender's Liens in all the Collateral (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), to create and perfect Liens in favor of Lender in any Collateral acquired by the Borrower after the Closing Date, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents. To the maximum extent permitted by applicable law, the Borrower authorizes Lender to execute any such Additional Documents in the Borrower's name, and authorizes Lender to file such executed Additional Documents in any appropriate filing office.

5.14 **Staffing.** The Borrower shall maintain at all times an appropriate and necessary staff to carry out its business in compliance with all other applicable laws and with training and experience and in number equal to or greater than would be customarily maintained by businesses engaging in similar activities, except where the failure to maintain such staff could not, after taking into account any formal or informal compliance deadline extensions granted by applicable regulatory authorities in effect, reasonably be expected to result in a Material Adverse Change.

5.15 **Material Contracts.** The Borrower may not enter into, amend or modify a Material Contract or Material Lease after the Filing Date without the consent of Lender, in its sole discretion.

5.16 **[Intentionally Omitted].**

5.17 **Chapter 11 Milestones.** The Borrower shall timely satisfy each of the following requirements and milestones (collectively, the "Chapter 11 Milestones"):

(a) **Financing/General Milestones.**

(i) On the Filing Date, file a motion seeking interim and final approval of this Agreement and the Facility, which motion shall be in form and substance acceptable to the Lender;

(ii) No later than the date that is three (3) Business Days after the Filing Date, obtain entry of the Interim Order in form and substance acceptable to Lender, in its sole discretion;

(iii) No later than the date that is thirty (30) days after the Filing Date, obtain entry of the Final Order in form and substance acceptable to Lender, in its sole discretion;

(iv) No later than the date that is forty-five (45) days after the Filing Date, deliver to the Lender the Borrower's good faith analysis, plan, and recommendation for reducing the Borrower's Real Property lease costs and expenses;

(v) No later than the last Business Day of each month from and after the Filing Date, execute one or more contracts or other agreements with no fewer than two

(2) new customers or clients, which contracts or other agreements shall provide for additional revenue to the Borrower in an aggregate amount of not less than \$100,000;

(vi) No later than the date that is thirty (30) days after the Filing Date, have the Borrower's Basic SafeStart Application and related virtual reality modules ready for sale to customers;

(vii) No later than the date that is thirty (30) days after the Filing Date, file with the Bankruptcy Court and deliver to Lender's counsel schedules of assets and liabilities and statements of financial affairs for the Borrower;

(viii) No later than the date that is sixty (60) days after the Filing Date, finalize all of the Borrower's pending patent and other Intellectual Property applications;

(ix) No later than the date that is sixty (60) days after the Filing Date, have the Borrower's wearable sensor products ready for sale to customers;

(x) No later than the date that is sixty (60) days after the Filing Date, have the Borrower's Advanced SafeStart Application and related virtual reality modules ready for sale to customers; and

(xi) No later than the date that is one hundred twenty (120) days after the Filing Date, have the Borrower's Advanced SafeStart Application and wearable sensor products fully integrated into a central platform.¹

(b) Chapter 11 Plan Milestones.

(i) No later than the date that is forty-five (45) days after the Filing Date, deliver to the Lender a draft Plan of Reorganization and Disclosure Statement;

(ii) No later than the date that is sixty (60) days after the Filing Date, file with the Bankruptcy Court a proposed Plan of Reorganization and Disclosure Statement in form and substance acceptable to the Lender;

(iii) No later than the date that is ninety (90) days after the Filing Date, obtain entry of Disclosure Statement Order in form and substance acceptable to the Lender;

(iv) No later than the date that is three (3) Business Days after entry of the Disclosure Statement Order, commence solicitation of votes on the Plan of Reorganization pursuant to the Disclosure Statement;

(v) No later than the date that is one hundred twenty-five (125) days after the Filing Date, obtain entry of an order of the Bankruptcy Court, in form and substance acceptable to the Lender, confirming the Plan of Reorganization; and

(vi) No later than the date that is one hundred thirty-five (135) days after the Filing Date, cause the Plan of Reorganization to have been substantially consummated and the effective date thereof to occur, and indefeasibly and finally pay the Obligations, any remaining Prepetition First Priority Obligations, and all other obligations to Lender,

¹ Additional milestones to be agreed upon by Lender and Borrower.

whether arising prior to, on, or after the Filing Date, in full, in cash, on the effective date of the Plan of Reorganization.

(c) **Sale Milestones.** Simultaneously with the plan process described above, the Borrower shall pursue a sale process under section 363 of the Bankruptcy Code as follows:

(i) No later than the date that is seventy-five (75) days after the Filing Date, file a motion, in form and substance acceptable to Lender (the "Sale Motion"), to conduct the Sale and to approve auction and bidding procedures in connection therewith, which auction and bidding procedures shall be in form and substance acceptable to the Lender (the "Bid Procedures");

(ii) No later than the date that is one hundred (100) days after the Filing Date, obtain an order of the Bankruptcy Court, in form and substance acceptable to Lender, approving the Bid Procedures;

(iii) No later than the date that is one hundred fifty (150) days after the Filing Date, commence and conclude the auction (an "Auction") pursuant to the Bid Procedures to determine the highest or otherwise best bid for the Sale, in consultation with the Lender;

(iv) No later than the date that is three days after conclusion of the Auction, obtain entry of an order of the Bankruptcy Court, in form and substance acceptable to the Lender, approving the Sale to the successful bidder (the "Sale Order"); and

(v) No later than the date that is fifteen (15) days after entry of the Sale Order, cause the Sale to be substantially consummated and indefeasibly and finally pay the Obligations, any remaining Prepetition First Priority Obligations, and all other obligations to Lender, whether arising prior to, on, or after the Filing Date, in full, in cash, at the closing of the Sale.

5.18 **Budget.** Attached hereto as Exhibit B-2 is an initial budget, prepared by Borrower, that sets forth in reasonable detail all receipts and disbursements of Borrower on a weekly and calendar month basis, separated into line items for each category of receipt or disbursement, and is otherwise in form and substance acceptable to Lender, in its sole discretion (as amended with the consent of Lender in its sole discretion, the "Budget").

6. **NEGATIVE COVENANTS.**

The Borrower covenants and agrees that, and without the prior consent of Lender in its sole discretion, until termination of all of the Commitments and payment in full of the Obligations, the Borrower will not do any of the following:

6.1 **Indebtedness.** Create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any Indebtedness, except for Permitted Indebtedness.

6.2 **Liens.** Create, incur, assume, or suffer to exist, directly or indirectly, any Lien on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, except for (a) Permitted Liens and (b) Liens created by the Loan Documents.

6.3 **Restrictions on Fundamental Changes.**

Except in connection with a Plan of Reorganization or a Sale approved by the Bankruptcy Court:

- (a) Enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Stock,
- (b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), or
- (c) Suspend or close a substantial portion of its business.

6.4 **Disposal of Assets.** Other than Permitted Dispositions, Permitted Investments, or transactions expressly permitted by Section 6.12, convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any Collateral held by the Borrower.

6.5 **Change Name.** Change the Borrower's name, organizational identification number, state of organization or organizational identity.

6.6 **Nature of Business.** Make any change in the nature of its business as described in Schedule 6.6 or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, however, that the foregoing shall not prevent the Borrower from (i) engaging in any business that is reasonably related or ancillary to its or their business, or (ii) complying with any requirement of the Bankruptcy Code.

6.7 **Prepayments and Amendments.**

(a) Prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of the Borrower, other than the Obligations in accordance with this Agreement.

(b) Make any payment on account of Indebtedness that has been contractually subordinated in right of payment if such payment is not permitted at such time under the subordination terms and conditions, or

(c) Directly or indirectly, amend, modify, or change any material terms or provisions of:

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness other than the Obligations in accordance with this Agreement, to the extent such amendments, modifications, or changes, individually or in the aggregate, could not reasonably be expected to be adverse to the interests of Lender,

(ii) any Material Contract or Material Lease, without the consent of Lender, in its sole discretion, or

(iii) the Governing Documents of the Borrower.

6.8 **Change of Control.** Cause, permit, or suffer, directly or indirectly, any Change of Control.

6.9 **Restricted Junior Payment.** Make any Restricted Junior Payment.

6.10 **Accounting Methods.** Modify or change its fiscal year or its method of accounting (other than as may be required to conform to Economic Basis).

6.11 **[Intentionally Omitted].**

6.12 **Transactions with Affiliates.** Directly or indirectly enter into or permit to exist any transaction with any Affiliate of Borrower (except for transactions that are (a) in the Ordinary Course of the Borrower's business; (b) upon fair and reasonable terms that are no less favorable to the Borrower than would be obtained in an arm's length transaction with a non-Affiliate, and (c) are fully disclosed to Lender) if they involve one or more payments by the Borrower in excess of \$10,000 per year in the aggregate.

6.13 **Use of Advances.** The Borrower covenants and agrees that the Borrower shall incur Advances and use the proceeds thereof solely to the extent required to pay those expenses enumerated in the Budget as and when such expenses become due and payable and to repay in full the Prepetition First Priority Obligations.

6.14 **Prepetition Indebtedness.** Pay or discharge, or cause to be paid or discharged, any Indebtedness of the Borrower incurred before the Filing Date, other than in connection with the Prepetition First Priority Obligations.

6.15 **Limitation on Capital Expenditures.** Except as set forth in the Budget, make or incur any Capital Expenditure.

6.16 **Chapter 11 Case.** Except with respect to the Carveout, seek, consent or suffer to exist (i) any modification, stay, vacation or amendment to the Orders; (ii) a priority claim for any administrative expense or unsecured claim against the Borrower (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expense of any kind specified in section 503(b) or 507(b) of the Bankruptcy Code or, from and after the entry of the Final Order, section 506(c) of the Bankruptcy Code) equal to or superior to the priority claim of Lender in respect to the Obligations, other than the Carveout; and (iii) any Lien on any Collateral having a priority equal or superior to the Liens in favor of Lender in respect of the Obligations other than Permitted Liens.

6.17 **Plan.** Propose and/or support any plan or reorganization or other chapter 11 plan that fails to indefeasibly and finally pay in full in cash all Obligations on the effective date of said plan.

6.18 **[Intentionally Omitted].**

7. PERFORMANCE COVENANTS

7.1 **Budget Covenant.** Borrower covenants and agrees that Borrower shall: (a) commencing on the second week after the Filing Date and on each Friday of each week thereafter, maintain aggregate disbursements no greater than 110% of the aggregate amount projected by the Budget to be expended during the cumulative period commencing on the Filing Date and ending on such testing date; and (b) deliver to Lender, on a weekly basis, a budget compliance report that sets forth on a week-to-week and cumulative basis a comparison of actual cash receipts and disbursements to projected cash receipts and disbursements for each applicable measuring period, together with a certification from the Borrower's Chief Executive Officer that no deviation from the Budget in excess of the permitted deviations set forth in Section 7.1(a) has occurred.

8. **EVENTS OF DEFAULT.**

8.1 **Event of Default.** Any one or more of the following events shall constitute an event of default (each, an “Event of Default”) under this Agreement:

(a) If Borrower fails to pay when due and payable, or when declared due and payable, all or any portion of the Obligations consisting of principal, interest, fees, or charges due Lender, reimbursement of Lender Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations;

(b) If Borrower:

(i) without prior written consent of Lender, fails to comply with any of the Chapter 11 Milestones contained in Section 5.17 of this Agreement, which milestones may be extended upon prior written consent of Lender in Lender’s sole and absolute discretion;

(ii) fails to comply with any of the Performance Covenants contained in Section 7 of this Agreement;

(iii) fails to perform any of its obligations in strict accordance with the terms of, or otherwise fails to comply with any of the provisions of the Interim Order or the Final Order and such failure continues for a period of three (3) Business Days after the date on which written notice thereof is given to Borrower by Lender or Borrower has knowledge thereof;

(iv) fails to perform or observe any covenant or other agreement contained in any of (a) [Sections 5.1, 5.4, 5.7, 5.8, or 5.15] of this Agreement or (b) Sections 6.1 through 6.16 of this Agreement or (c) breaches or fails to comply with any provision of the Order; or

(v) fails to perform or observe any other covenant or other agreement contained in this Agreement and such failure continues for a period of three (3) Business Days after the date on which written notice thereof is given to Borrower by Lender or the Borrower has knowledge thereof.

(c) Except as authorized by the Bankruptcy Court, if one or more judgments, orders, or awards for the payment of money involving an aggregate amount of \$25,000, or more (in excess of insurance coverage with respect to which the insurer has not denied coverage) is entered or filed against the Borrower, or with respect to any of its respective assets, and either (i) there is a period of 30 consecutive days at any time after the entry of any such judgment, order, or award during which (A) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (B) a stay of enforcement thereof is not in effect, or (ii) enforcement proceedings are commenced upon such judgment, order, or award;

(d) If Borrower is enjoined, restrained, or in any way prevented by court order from continuing to conduct all or any material part of the business affairs of Borrower;

(e) If there is a default in one or more agreements to which Borrower is a party with one or more third Persons relative to (i) Borrower’s Indebtedness (not disclosed on Schedule 4.19) involving an aggregate amount of \$25,000 or more, or (ii) any Material Contract (as defined below), and such default (x) occurs at the final maturity of the obligations thereunder, (y) results in a right by such

third Person, irrespective of whether exercised, to accelerate the maturity of the Borrower's obligations thereunder, to the extent not otherwise stayed by the Chapter 11 Case, or (z) results in a breach of any terms of any Material Contract;

(f) If any warranty, representation, certificate, or Record made herein or in any other Loan Document or delivered in writing to Lender in connection with this Agreement or any other Loan Document proves to be untrue in any material respect (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) as of the date of issuance or making or deemed making thereof;

(g) If any Loan Document that purports to create a Lien, 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 on the Collateral covered thereby;

(h) The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Lender) be declared to be null and void, or a proceeding shall be commenced by the Borrower seeking to establish the invalidity or unenforceability thereof, or the Borrower shall deny that the Borrower has any liability or obligation purported to be created under any Loan Document;

(i) The Bankruptcy Court shall enter any order (i) amending, reversing, revoking, supplementing, altering, staying, vacating, rescinding or otherwise modifying the Interim Order, the Final Order or any other order with respect to the Chapter 11 Case affecting in any material respect this Agreement or the Loan Documents, without Lender's consent, (ii) appointing a chapter 11 trustee or an examiner, with enlarged powers relating to the operation of the business pursuant to section 1104 of the Bankruptcy Code (powers beyond those set forth in section 1106(a)(3) and (4) and 1106(b) of the Bankruptcy Code) in the Chapter 11 Case, (iii) dismissing the Chapter 11 Case or converting the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code, (iv) granting relief from the automatic stay to any creditor holding or asserting a Lien or reclamation claim on the assets of the Borrower to permit such creditor to foreclose upon or to reclaim Collateral with a value in excess of \$50,000 or which has a material effect on the Borrower's ability to operate its business consistent with current practice, maintain any material license or privilege, or dispose of the Collateral as an enterprise or ongoing concern, or (v) authorizing or approving the Borrower's assumption, assignment, and/or rejection of any executory contract or unexpired lease without Lender's prior consent;

(j) A motion shall be filed seeking approval of any other Superpriority Claim in the Chapter 11 Case (other than the Carveout) which is *pari passu* with or senior to the claims of Lender against Borrower unless (i) after giving effect to the transactions contemplated by such motion, all Obligations of Borrower under the Loan Documents (other than contingent indemnification and reimbursement Obligations in respect of which no claim for payment has been asserted by the Person entitled thereto) shall be paid in full in cash, or (ii) the relief requested in such motion is challenged by Borrower within the applicable objection period;

(k) The failure of the Bankruptcy Court to enter the Interim Order, in form and substance satisfactory to Lender, within three (3) Business Days after the Filing Date;

(l) The failure of the Bankruptcy Court to enter the Final Order, in form and substance satisfactory to Lender, within thirty (30) days after the Filing Date;

(m) A motion shall be filed (i) seeking to obtain additional financing under section 364 of the Bankruptcy Code and to use cash collateral of Lender under section 363(c) of the Bankruptcy

Code without the consent of Lender, (ii) to recover from any portions of the Collateral any costs or expenses of preserving or disposing of such Collateral under section 506(c) of the Bankruptcy Code (other than the Carveout), or (iii) to take any other action or actions adverse to Lender or its rights and remedies hereunder or under any of the other Loan Documents or any of the documents evidencing or creating Lender's interest in any of the Collateral;

(n) The filing of any plan other than a Plan of Reorganization, a motion to approve bid procedures other than the Bid Procedures, or a motion to approve an Alternative Transaction;

(o) If the Borrower enters into a signed commitment letter, a signed letter of intent, signed purchase agreement or other definitive documents that are agreed to by the Borrower and a buyer with respect to an Alternative Transaction;

(p) The use by Borrower of cash collateral other than in accordance with the terms of an order approving its use entered by the Bankruptcy Court;

(q) Any Material Adverse Change shall occur;

(r) The occurrence of any material damage to or loss of assets of the Borrower taken as a whole (after application of any insurance as to which the applicable insurance company has accepted responsibility to cover such damage or loss, but inclusive of any deductible amount);

(s) An order terminating exclusivity has been entered by the Bankruptcy Court or requested of the Bankruptcy Court unless actively and timely contested by Borrower;

(t) Any Person other than a Person already appointed to and serving on the board of directors (or similar governing body) of Borrower on the Closing Date shall be appointed to any such board of directors or similar governing body in any capacity, unless consented to by Lender;

(u) There shall exist or have occurred a material violation, default or failure to perform, comply with or observe any term, provision, covenant or agreement under any Material Contract which is not cured by the later of (i) five (5) days after the date of receipt by the Borrower of such violation, default or failure or after the Borrower has knowledge thereof, and (ii) the expiration of any applicable cure period under the Material Contract, or if any Material Contract is terminated or otherwise not in full force and effect;

(v) The Borrower shall fail to perform, observe or comply with, any covenant, obligation or agreement set forth in its Organizational Documents;

(w) The sale by the Borrower, or the entry of an order approving the sale by the Borrower or approving any sale, marketing, or bid procedures in connection with a sale by Borrower, of any material assets outside of the ordinary course of business without Lender's prior written consent; or

(x) Any material payment (in excess of \$25,000) is made on, or any motion or application for authority to make a material payment (in excess of \$25,000) on (which is supported, directly or indirectly, by the Borrower, or is not being actively contested by the Borrower in good faith), any prepetition claim without the Lender's consent (other than amounts set forth in the Budget);

then, and in any such event, Lender may, by notice to Borrower, declare (A) the Commitments of Lender and the obligation of Lender to make Advances to be terminated, whereupon the same shall forthwith terminate, and (B) the Advances, all interest thereon and all other amounts payable under this Agreement

and the other Loan Documents to be forthwith due and payable, whereupon the Obligations, all such interest and all such amounts shall be forthwith due and payable.

8.2 **Rights and Remedies.** Upon the occurrence of an Event of Default and on the fifth (5th) Business Day after providing written notice to the Borrower and any Committee, and notwithstanding the provisions of section 362 of the Bankruptcy Code, Lender may, in addition to any other rights or remedies provided for hereunder or under any other Loan Document (including, without limitation, the Orders) or by the UCC or any other applicable law, do any one or more of the following:

(a) declare the Obligations, whether evidenced by this Agreement or by any of the other Loan Documents immediately due and payable, whereupon the same shall become and be immediately due and payable, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrower; and

(b) obtain, take possession of, liquidate, and/or foreclose on the Collateral, take possession of all cash and collect all accounts receivable, and apply the proceeds thereof to the Obligations, all without the necessity for any further order from the Bankruptcy Court or any other court, or the initiation of any further proceeding with Borrower. In connection with the foregoing exercise of any such rights and remedies, the Borrower will on demand assemble the Collateral and make it available to the Lender at a place to be designated by the Lender which is reasonably convenient to both parties.

8.3 **Remedies Cumulative.** The rights and remedies of Lender under this Agreement, the other Loan Documents, and all other agreements shall be cumulative. Lender shall have all other rights and remedies not inconsistent herewith as provided under the UCC, by law, or in equity. No exercise by Lender of one right or remedy shall be deemed an election, and no waiver by Lender of any Event of Default shall be deemed a continuing waiver. No delay by Lender shall constitute a waiver, election, or acquiescence by it.

9. **PRIORITY AND COLLATERAL SECURITY.**

9.1 **Superpriority Claims and Collateral Security.**

(a) Borrower warrants and covenants that, except as otherwise expressly provided in this paragraph, upon the entry of the applicable Order, the Obligations of Borrower under the Loan Documents:

(i) shall at all times constitute a Superpriority Claim in the Chapter 11 Case having priority, pursuant to section 364(c)(1) and 507(b) of the Bankruptcy Code (subject only to the Carveout), over the other administrative claims of any entity, including, without limitation any claims under sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 and 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code (including, subject to entry of the Final Order, section 506(c)), and shall at all times be senior to the rights of the Borrower, the Borrower's estate, any successor trustee to the extent permitted by law, or any other creditor in the Chapter 11 Case;

(ii) pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code and any Security Instruments, shall at all times be secured by, and the Borrower hereby grants to Lender, a continuing, valid, binding, enforceable, non-avoidable and automatically properly perfected post-petition security interest and first priority (subject to the Carveout and other Permitted Liens) Lien on all of the Borrower's

existing and after acquired real and personal property and other assets that constitute Collateral hereunder, tangible and intangible, whether now owned by or owing to, or hereafter acquired by or arising in favor of the Borrower, regardless of where located.

(b) Such Superpriority Claim and Liens referred to in Section 9.1 shall be subject to the Carveout, but shall otherwise be senior in priority to (i) all claims against the Borrower in the Chapter 11 Case; and (ii) all other Liens on the assets and properties of the Borrower other than Permitted Liens.

9.2 **[Intentionally Omitted]**.

9.3 **No Discharge; Survival of Claims.** Pursuant to section 1141(d)(4) of the Bankruptcy Code, the Borrower hereby waives any discharge of the Obligations with respect to any plan of reorganization that shall not provide for the payment in full in cash of the Obligations (other than contingent indemnification and reimbursement Obligations in respect of which no claim for payment has been asserted by the Person entitled thereto) under this Facility.

9.4 **Adequate Protection.** The Prepetition First Priority Lender may receive, subject to agreement of the Lender, administrative claims junior to the Superpriority Claim to the extent of any diminution in the value of the Prepetition Collateral, pursuant to the Orders.

10. **WAIVERS; INDEMNIFICATION.**

10.1 **Demand; Protest; etc.** The Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by Lender on which the Borrower may in any way be liable.

10.2 **Lender's Liability for Collateral.** The Borrower hereby agrees that: (a) so long as Lender complies with its obligations, if any, under the UCC, Lender shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Borrower, except any thereof resulting from the gross negligence, bad faith or willful misconduct of Lender as finally determined by a court of competent jurisdiction.

10.3 **Indemnification.** The Borrower shall pay, indemnify, defend, and hold the Lender-Related Persons (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable and documented out-of-pocket fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery, enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of the Borrower's compliance with the terms of the Loan Documents, (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets

or properties owned, leased or operated by the Borrower or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of the Borrower (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, the Borrower shall have no obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence, bad faith or willful misconduct of such Indemnified. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which the Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by the Borrower with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. **NOTICES.**

All notices or demands relating to this Agreement or any other Loan Document shall be in writing and (except for financial statements and other informational documents which may be sent by first-class mail, postage prepaid) shall be personally delivered or sent by registered or certified mail (postage prepaid, return receipt requested), overnight courier, electronic mail (at such email addresses as a party may designate in accordance herewith), or facsimile. In the case of notices or demands to the Borrower hereunder or any service of process to the Borrower or Lender, as the case may be, they shall be sent to the respective address set forth below:

If to Lender: AIG PC Global Services, Inc.
 175 Water Street
 New York, NY 10038
 Attn: _____
 Email: _____
 Fax No. _____

with copies to: DLA Piper LLP (US)
 1251 Avenue of the Americas
 New York, New York 10020
 Attn: Thomas R. Califano, Esq.
 Daniel G. Egan, Esq.
 Email: thomas.califano@dlapiper.com
 daniel.egan@dlapiper.com
 Fax No. (212) 335-4501

If to Borrower: Human Condition Safety Inc.
61 Broadway
New York, New York 10006
Attn: Gregory Wolyniec, President and CEO
Email: _____
Fax: _____

with copies to: Wollmuth Maher & Deutsch LLP
500 Fifth Avenue
New York, New York 10110
Attn: John D. Giampolo, Esq.
Email: jgiampolo@wmd-law.com
Fax: (212) 382-0050

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or three (3) Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received when sent. If any notice, disclosure, or report is required to be delivered pursuant to the terms of this Agreement on a day that is not a Business Day, such notice, disclosure, or report shall be deemed to have been required to be delivered on the immediately following Business Day.

12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER.

(a) THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK, WIHTOUT REGARD FOR CONFLICT OF LAW PRINCIPLES.

(b) THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN NEW YORK COUNTY, STATE OF NEW YORK; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT LENDER'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE LENDER ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. THE BORROWER AND LENDER WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT

EACH MAY HAVE TO ASSERT THE DOCTRINE OF *FORUM NON CONVENIENS* OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b); PROVIDED, FURTHER, HOWEVER, THAT ALL PARTIES HEREBY AGREE THAT THEY HAVE CONSENTED TO THE JURISDICTION OF THE BANKRUPTCY COURT.

(c) TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER AND LENDER HEREBY WAIVE THEIR RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF ANY OF THE LOAN DOCUMENTS OR ANY OF THE TRANSACTIONS CONTEMPLATED THEREIN, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW OR STATUTORY CLAIMS. THE BORROWER AND LENDER REPRESENT THAT EACH HAS REVIEWED THIS WAIVER AND EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. IN THE EVENT OF LITIGATION, A COPY OF THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

13. AMENDMENTS; WAIVERS; SUCCESSORS; INDEMNIFICATION.

13.1 **Amendments and Waivers.** 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 Lender and the Borrower and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given.

13.2 **No Waivers; Cumulative Remedies.** No failure by Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Lender in exercising the same, will operate as a waiver thereof. No waiver by Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Lender on any occasion shall affect or diminish Lender's rights thereafter to require strict performance by the Borrower of any provision of this Agreement. Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Lender may have.

13.3 **Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without Lender's prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by Lender shall, unless otherwise provided in such consent, release Borrower from its Obligations. Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder or assign any Advances or Commitment (in whole or in part) to an affiliate without notice to or consent of Borrower.

13.4 **Costs and Expenses; Indemnification.** Lender may incur and pay Lender Expenses to the extent Lender reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorney's fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not the Borrower is obligated to reimburse Lender for such expenses pursuant to this Agreement or otherwise. Lender is authorized and directed to deduct and retain sufficient amounts from the Collections of the Borrower received by Lender to reimburse Lender for such out-of-pocket costs and expenses. Subject to and in accordance with Section 10.3 hereof, whether or not the transactions contemplated hereby are consummated, the Borrower shall indemnify upon demand the Lender-Related Persons from and against any and all Indemnified Liabilities;

provided, however, that the Borrower shall not be liable for the payment to any Lender-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct. The undertaking in this Section shall survive the payment of all Obligations hereunder.

14. GENERAL PROVISIONS.

14.1 **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Borrower and Lender.

14.2 **Section Headings.** Headings and numbers have been set forth herein for convenience only. Unless the contrary is compelled by the context, everything contained in each Section applies equally to this entire Agreement.

14.3 **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against Lender or the Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

14.4 **Severability of Provisions.** Each provision of this Agreement shall be severable from every other provision of this Agreement for the purpose of determining the legal enforceability of any specific provision.

14.5 **Debtor-Creditor Relationship.** The relationship between Lender, on the one hand, and the Borrower, on the other hand, is solely that of creditor and debtor. Lender does not have (and shall not be deemed to have) any fiduciary relationship or duty to the Borrower arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between Lender, on the one hand, and the Borrower, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

14.6 **Counterparts; Electronic Execution.** This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by facsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by facsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

14.7 **Revival and Reinstatement of Obligations.** If the incurrence or payment of the Obligations by the Borrower or the transfer to Lender of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "**Voidable Transfer**"), and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that Lender is required or elects to repay or restore, and as to all reasonable out-of-pocket costs, expenses, and attorney's fees of Lender related thereto, the liability of the Borrower automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

14.8 **Setoff.** The Lender may at any time or from time to time, at its sole discretion and without demand and without notice to anyone, setoff any liability owed to the Borrower by the Lender, whether or not due, against any outstanding Indebtedness that is due and payable hereunder.

14.9 **Lender Expenses.** The Borrower agrees to pay any and all Lender Expenses promptly after demand therefor by Lender and agrees that its obligation to pay such Lender Expenses shall survive payment or satisfaction in full of all other Obligations.

14.10 **USA PATRIOT Act.** Lender hereby notifies the Borrower that pursuant to the requirements of the Patriot Act, it is required to obtain, verify and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow Lender to identify the Borrower in accordance with the Patriot Act.

14.11 **Integration.** This Agreement, together with the other Loan Documents, reflects the entire understanding of the parties with respect to the transactions contemplated hereby and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

14.12 **Credit Bid.** The Lender expressly maintains, and Borrower shall take no action to impair, Lender's right to credit bid its claims under this Agreement and the other Loan Documents pursuant to section 363(k) of the Bankruptcy Code.

15. **RELEASE**

15.1 **Lender Release.** Upon the indefeasible payment in full in cash of all Obligations, and the termination of the Facility, the Borrower shall execute and deliver in favor of the Lender a valid and binding release and termination agreement, in form and substance acceptable to the Lender.

[Signature pages follow]

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed and delivered as of the date first above written.

BORROWER:

HUMAN CONDITION SAFETY INC.,
a Delaware corporation, as Borrower

By: _____
Name:
Title:

LENDER:

AIG PC GLOBAL SERVICES, INC.,
a Delaware corporation, as Lender

By: _____
Name:
Title:

Schedule 1.1

As used in the Agreement, the following terms shall have the following definitions:

“Account Debtor” means any Person who is obligated on an Account, chattel paper, or a general intangible.

“Additional Documents” has the meaning specified in Section 5.13 of the Agreement.

“Advances” has the meaning specified in Section 2.2(a) of the Agreement.

“Affiliate” means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, “control” means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of Section 6.12 of the Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

“Aggregate Collateral” means, collectively, the Prepetition Collateral and the Collateral.

“Agreement” means the Credit Agreement to which this Schedule 1.1 is attached.

“Alternative Transaction” a transaction or series of related transactions pursuant to which the Borrower sells, transfers, leases or otherwise disposes of, directly or indirectly, including through an asset sale, stock sale, merger, reorganization or other similar transaction (by Borrower or otherwise), including pursuant to a stand-alone plan of reorganization or refinancing, any of the Aggregate Collateral (or agrees to do any of the foregoing) in a transaction or series of transactions to a party or parties.

“Auction” has the meaning specified in Section 5.17 of the Agreement.

“Authorized Person” means any one of the individuals identified on Schedule A-2, as such schedule is updated from time to time by written notice from Borrower to Lender.

“Bankruptcy Code” means title 11 of the United States Code, as in effect from time to time.

“Bankruptcy Court” has the meaning specified in the recitals to the Agreement.

“Benefit Plan” means a (i) “defined benefit plan” (as defined in section 3(35) of ERISA) for which the Borrower or any ERISA Affiliate has been an “employer” (as defined in section 3(5) of ERISA) within the past six years and (ii) any other healthcare, pension, multiemployer benefit, welfare or similar plans or obligations of the Borrower maintained for any of its employees, offices or directors.

“Bid Procedures” shall have the meaning set forth in Section 5.17 of the Agreement.

“Borrower” has the meaning specified in the preamble to the Agreement.

“Borrowing” means a borrowing hereunder consisting of Advances made on the same day by Lender.

“Budget” has the meaning specified in Section 5.18 of the Agreement.

“Business Day” means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the State of New York.

“Capital Expenditures” means, with respect to any Person for any period, the aggregate of all expenditures by such Person and their Subsidiaries during such period that are capital expenditures as determined in accordance with Economic Basis, whether such expenditures are paid in cash or financed.

“Capital Lease” means a lease that is required to be capitalized for financial reporting purposes in accordance with Economic Basis.

“Carveout” shall mean “Carveout” as that term is defined in the Order.

“Cash Collateral” means “Cash Collateral” as that term is defined in section 363 of the Bankruptcy Code.

“Cash Equivalents” means (a) marketable direct obligations issued by, or unconditionally guaranteed by, the United States or issued by any agency thereof and backed by the full faith and credit of the United States, in each case maturing within 1 year from the date of acquisition thereof, (b) marketable direct obligations issued or fully guaranteed by any state of the United States or any political subdivision of any such state or any public instrumentality thereof maturing within one (1) year from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor’s Rating Group (“S&P”) or Moody’s Investors Service, Inc. (“Moody’s”), (c) commercial paper maturing no more than 270 days from the date of creation thereof and, at the time of acquisition, having a rating of at least A-1 from S&P or at least P-1 from Moody’s, (d) certificates of deposit, time deposits, overnight bank deposits or bankers’ acceptances or time deposits maturing within one (1) year from the date of acquisition thereof issued or guaranteed by any bank organized under the laws of the United States or any state thereof or the District of Columbia or any United States branch of a foreign bank having at the date of acquisition thereof combined capital and surplus of not less than \$250,000,000, (e) Deposit Accounts maintained with (i) any bank that satisfies the criteria described in clause (d) above, or (ii) any other bank organized under the laws of the United States or any state thereof so long as the full amount maintained with any such other bank is insured by the Federal Deposit Insurance Corporation, (f) repurchase obligations of any commercial bank satisfying the requirements of clause (d) of this definition or recognized securities dealer having combined capital and surplus of not less than \$250,000,000, having a term of not more than seven days, with respect to securities satisfying the criteria in clauses (a) or (d) above, (g) debt securities with maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

“Change of Control” means the occurrence of any of the following:

- (i) any merger, consolidation, sale, transfer or pledge of the Borrower’s Stock or the creation or issuance of new stock; or

(ii) Borrower voluntarily removes or replaces any director without Lender's prior approval, in its sole discretion.

"Chapter 11 Case" has the meaning specified in the recitals to the Agreement.

"Chapter 11 Milestones" means, collectively, the Chapter 11 Milestones contained in Section 5.17 of the Agreement.

"Closing Date" means the first date upon which funds are advanced pursuant to an acceptable Interim Order entered by the Bankruptcy Court.

"Collateral" means, collectively, (a) all assets, rights, and interests of Borrower, including all real property and all personal property, whether now owned or existing or hereafter acquired, including all Prepetition Collateral, (b) effective upon entry of the Final Order, all claims, causes of action and proceeds of any and all avoidance power claims under sections 544, 545, 547 through 551 and 553(b) of the Bankruptcy Code, (c) all unencumbered assets and interests in assets and proceeds thereof now owned or hereafter acquired by the Borrower in or upon which a Lien is granted in favor of Lender, (d) the collateral described in any Security Instrument, (e) the Designated Account and all funds therein, (f) all Deposit Accounts and Securities Accounts with respect to the Collateral and all funds therein, (g) any property subject to liens or security interest that may be avoided pursuant to the Bankruptcy Code, but only to the extent so avoided, (h) all Commercial Tort Claims, (i) all claims and proceeds from D&O Claims, and (j) all of the proceeds (as such term is defined in the UCC) and products, whether tangible or intangible, of any of the foregoing, money, or other tangible or intangible property resulting from the sale, lease, license, exchange, collection, or other disposition of any of the foregoing, the proceeds of any award in condemnation with respect to any of the foregoing, any rebates or refunds, whether for taxes or otherwise, and all proceeds of any such proceeds, or any portion thereof or interest therein, and the proceeds thereof, and all proceeds of any loss of, damage to, or destruction of the above, whether insured or not insured, and, to the extent not otherwise included, any indemnity, warranty, or guaranty payable by reason of loss or damage to, or otherwise with respect to any of the foregoing.

"Collections" means all cash, checks, notes, instruments, and other items of payment (including insurance proceeds, cash proceeds of asset sales, rental proceeds, and tax refunds), other than any rental proceeds that Borrower is not (or would not be) entitled to deduct from the purchase price in connection with any sale of the Collateral to which they relate.

"Commitment" means the maximum principal amount of Lender's agreement to make Loans to Borrower pursuant to Section 2 of the Agreement. As of the Closing Date, the Commitment is \$3,000,000.

"Committee" means any official committee of unsecured creditors that may be appointed by the United States Trustee in relation to the Chapter 11 Case.

"D&O Claims" means any and all rights, claims, causes of action, defenses, debts, demands, damages, offset rights, setoff rights, recoupment rights, obligations, and liabilities of any kind or nature under contract, at law or in equity, known or unknown, contingent or matured, liquidated or unliquidated, and all rights and remedies with respect thereto, that either Borrower or its estate now has, ever had or may hereafter have against any current or former officer, director or manager of the Borrower (or any predecessor thereof) in such officer's, director's or manager's capacity as an officer, director and/or manager (as applicable) of the Borrower.

“Debtor” means Human Condition Safety Inc., in its capacity as debtor and debtor in possession in the Chapter 11 Case.

“Default” means an event, condition, or default that, with the giving of notice, the passage of time, or both, would be an Event of Default.

“Deposit Account” means any deposit account (as that term is defined in the UCC), including the Designated Account.

“Designated Account” means the Deposit Account of Borrower identified on Schedule D-1.

“Designated Account Bank” has the meaning specified in Schedule D-1.

“Disclosure Statement” means a disclosure statement for a Plan of Reorganization that is in form and substance acceptable to the Lender.

“Disclosure Statement Order” means an order of the Bankruptcy Court, in form and substance acceptable to the Lender, approving the Disclosure Statement and procedures for soliciting and tabulating votes on the Plan of Reorganization.

“Dollars” or “\$” means United States dollars.

“Economic Basis” means economic basis accounting principles as in effect from time to time in the United States, consistently applied.

“Environmental Action” means any written complaint, summons, citation, notice, directive, order, claim, litigation, investigation, judicial or administrative proceeding, judgment, letter, or other written communication from any Governmental Authority, or any third party involving violations of Environmental Laws or releases of Hazardous Materials (a) from any assets, properties, or businesses of Borrower or any of its predecessors in interest, (b) from adjoining properties or businesses, or (c) from or onto any facilities which received Hazardous Materials generated by Borrower or any of its predecessors in interest.

“Environmental Law” means any applicable federal, state, provincial, foreign or local statute, law, rule, regulation, ordinance, code, binding and enforceable guideline, binding and enforceable written policy, or rule of common law now or hereafter in effect and in each case as amended, or any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree or judgment, in each case, to the extent binding on the Borrower, relating to the environment, the effect of the environment on employee health, or Hazardous Materials, in each case as amended from time to time.

“Environmental Liabilities” means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

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

“Equipment” means equipment (as that term is defined in the UCC).

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended, and any successor statute thereto.

“ERISA Affiliate” means (a) any Person subject to ERISA whose employees are treated as employed by the same employer as the employees of the Borrower under IRC section 414(b), (b) any trade or business subject to ERISA whose employees are treated as employed by the same employer as the employees of the Borrower under IRC section 414(c), (c) solely for purposes of section 302 of ERISA and section 412 of the IRC, any organization subject to ERISA that is a member of an affiliated service group of which the Borrower is a member under IRC section 414(m), or (d) solely for purposes of section 302 of ERISA and section 412 of the IRC, any Person subject to ERISA that is a party to an arrangement with the Borrower and whose employees are aggregated with the employees of the Borrower under IRC section 414(o).

“Event of Default” has the meaning specified in Section 8 of the Agreement.

“Exchange Act” means the Securities Exchange Act of 1934, as in effect from time to time.

“Exit Fee” has the meaning specified in Section 2.10(b) of the Agreement.

“Extraordinary Receipts” means any cash received by the Borrower not in the Ordinary Course (net of all out-of-pocket fees, costs, legal fees, court costs, taxes and other expenses incurred by the Borrower in connection with the collection, litigation, adjudication, arbitration, receipt or recovery of any such Extraordinary Receipt) consisting of, without limitation, (a) proceeds of judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (b) indemnity payments (other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of the Borrower, or (ii) received by the Borrower as reimbursement for any payment previously made to such Person), (c) any purchase price adjustment (other than a working capital adjustment received in connection with any purchase agreement), (d) any insurance proceeds or tax refunds, and (e) any refunds relating to any employee benefit plans.

“Facility” has the meaning specified in the recitals to the Agreement.

“Facility Fee” has the meaning specified in Section 2.10(a) of the Agreement.

“Filing Date” means March 10, 2017.

“Final Hearing” means a hearing held by the Bankruptcy Court regarding the approval of the Final Order.

“Final Order” means a final order pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (a) approving postpetition financing pursuant to the Facility on a final basis and the making of the Advances in an amount not to exceed the Loan Amount, (b) authorizing use of cash collateral, (c) granting Liens and providing superpriority administrative expense status, (d) granting adequate protection, and (e) modifying the automatic stay, to be entered on the docket of the Chapter 11 Case after a Final Hearing and within thirty (30) days of the Filing Date, and which shall be in form and substance acceptable to the Lender in its sole discretion.

“Governing Documents” means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

“Governmental Authority” means any federal, state, local, or other governmental or administrative body, instrumentality, board, department, or agency or any court, tribunal, administrative hearing body, arbitration panel, commission, or other similar dispute-resolving panel or body.

“Hazardous Materials” means (a) substances that are defined or listed in, or otherwise classified pursuant to, any applicable laws or regulations as “hazardous substances,” “hazardous materials,” “hazardous wastes,” “toxic substances,” or any other formulation intended to define, list, or classify substances by reason of deleterious properties such as ignitability, corrosivity, reactivity, carcinogenicity, reproductive toxicity, or “EP toxicity”, (b) oil, petroleum, or petroleum derived substances, natural gas, natural gas liquids, synthetic gas, drilling fluids, produced waters, and other wastes associated with the exploration, development, or production of crude oil, natural gas, or geothermal resources, (c) any flammable substances or explosives or any radioactive materials, and (d) asbestos in any form or electrical equipment that contains any oil or dielectric fluid containing levels of polychlorinated biphenyls in excess of 50 parts per million.

“Indebtedness” means (a) all obligations for borrowed money, including, without limitation, the Obligations, (b) all obligations evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all payment obligations to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all indebtedness created or arising under any conditional sale or other title retention agreement, or incurred as financing, in either case with respect to property acquired by such Person, (g) the principal balance outstanding under any synthetic lease, off-balance sheet loan or similar off balance sheet financing products, or (h) any obligation guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (h) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation.

“Indemnified Liabilities” has the meaning specified in Section 10.3 of the Agreement.

“Indemnified Person” has the meaning specified in Section 10.3 of the Agreement.

“Insolvency Proceeding” means a proceeding under the Bankruptcy Code, an assignment for the benefit of credits, the appointment of a receiver, or any similar proceeding.

“Intellectual Property” means (a) all present and future trade secrets, know-how and other proprietary information, (b) trademarks, trademark applications, internet domain names, service marks, service mark applications, trade dress, trade names, business names, designs, logos, slogans (and all translations, adaptations, derivations and combinations of the foregoing) indicia and other source and/or business identifiers, and the goodwill of the business relating thereto and all registrations or applications for registrations which have heretofore been or may hereafter be issued thereon throughout the world, (c)

copyrights and copyright applications (including copyrights for computer programs) and all tangible and intangible property embodying the copyrights, (d) unpatented inventions (whether or not patentable), patents and patent applications, (e) industrial design applications and registered industrial designs, (f) license agreements related to any of the foregoing and income therefrom, books, records, writings, computer tapes or disks, flow diagrams, specification sheets, computer software, source codes, object codes, executable code, data, databases and other physical manifestations, embodiments or incorporations of any of the foregoing, (g) the right to sue for all past, present and future infringements of any of the foregoing, (h) all other intellectual property, and (i) all common law and other rights throughout the world in and to all of the foregoing.

“Interim Order” means an interim order pursuant to 11 U.S.C. §§ 105, 361, 362, 363, 364 and 507 (a) approving postpetition financing pursuant to the Facility and the making of the Initial Advance in an amount not to exceed the Interim Order Amount, (b) authorizing use of cash collateral, (c) granting Liens and providing superpriority administrative expense status, (d) granting adequate protection, (e) modifying the automatic stay, and (f) scheduling a final hearing with respect to the Chapter 11 Case (including the Budget), to be entered on the docket of the Chapter 11 Case within three (3) Business Days of the Filing Date and which shall be in form and substance acceptable to the Lender in its sole discretion.

“Interim Order Amount” means, for the period between the Interim Order and the Final Order, up to \$425,000.

“Initial Advance” has the meaning specified in Section 2.2(a) of the Agreement.

“Investment” means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) *bona fide* Accounts arising in the ordinary course of business), or acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with Economic Basis.

“IRC” means the Internal Revenue Code of 1986, as in effect from time to time.

“Lender” has the meaning set forth in the preamble to the Agreement.

“Lender Expenses” means all (a) costs or expenses (including taxes, and insurance premiums) required to be paid by the Borrower under any of the Loan Documents that are paid, advanced, or incurred by Lender, (b) out-of-pocket fees or charges paid or incurred by Lender in connection with its transactions with the Borrower under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication, appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement), real estate surveys, real estate title policies and endorsements, and environmental audits, (c) reasonable out-of-pocket costs and expenses incurred by Lender in the disbursement of funds to Borrower (by wire transfer or otherwise), (d) out-of-pocket charges paid or incurred by Lender resulting from the dishonor of checks payable by or to Borrower, (e) reasonable out-of-pocket costs and expenses paid or incurred by Lender to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing

for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) reasonable out-of-pocket audit fees and expenses (including travel, meals, and lodging) of Lender related to any inspections or audits to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement, (g) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by Lender in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or Lender's relationship with the Borrower, (h) Lender's reasonable costs and expenses (including reasonable attorney's fees) incurred in negotiating, advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including rating the Facility), or amending the Loan Documents, and (i) Lender's reasonable costs and expenses (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning the Borrower or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral.

"Lender-Related Person" means, Lender, together with Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Lender's Liens" means the Liens granted by the Borrower to Lender under the Loan Documents.

"LIBOR" means the London Interbank Offered Rate as in effect from time to time.

"Lien" means any pledge, hypothecation, assignment (which is intended as security), charge, deposit arrangement (which is intended as security), encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever (which is intended as security), including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

"Loan Account" means the Deposit Account of Lender identified on Schedule A-1.

"Loan Amount" means (a) prior to entry of the Final Order, up to the Interim Order Amount and (b) thereafter, up to \$3,000,000.

"Loan Documents" means the Agreement, the Interim Order, the Final Order, the Governing Documents, any Security Instruments, control agreements, and any other note or notes executed by Borrower in connection with the Agreement and payable to Lender, any other agreement entered into, now or in the future, by the Borrower and Lender in connection with the Agreement, and all amendments, modifications, renewals, substitutions and replacements of any of the foregoing.

"Material Adverse Change" means (a) except as a result of the commencement of the Chapter 11 Case, a material adverse change in the business, operations, results of operations, prospects, assets, liabilities or financial condition of the Borrower, taken as a whole, (b) a material impairment of the Borrower's ability to perform its obligations under the Loan Documents to which it is a party or of Lender's ability to enforce the Obligations or realize upon the Collateral or receive the benefits contemplated under any Loan Document or (c) a material impairment of the validity, perfection, enforceability or priority of Lender's Liens with respect to the Collateral.

“Material Contract” means each contract or agreement to which the Borrower is a party involving aggregate consideration payable to or by the Borrower of \$50,000 or more, including without limitation, any real property lease or any management agreement.

“Material Lease” means each lease related to the Collateral to which the Borrower is a party.

“Monthly Advance(s)” has the meaning specified in Section 2.2(a) of the Agreement.

“Moody’s” has the meaning specified in the definition of Cash Equivalents.

“Net Cash Proceeds” means:

(a) with respect to any sale or disposition by the Borrower of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of the Borrower, in connection therewith after deducting therefrom only (i) reasonable fees, commissions, and expenses related thereto and required to be paid by the Borrower in connection with such sale or disposition and (ii) taxes paid or payable to any taxing authorities by the Borrower in connection with such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of the Borrower, and are properly attributable to such transaction; and

(b) with respect to the issuance or incurrence of any Indebtedness by the Borrower, or the issuance by the Borrower of any shares of its Stock, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of the Borrower in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses related thereto and required to be paid by the Borrower in connection with such issuance or incurrence, (ii) taxes paid or payable to any taxing authorities by the Borrower in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of the Borrower, and are properly attributable to such transaction.

“Obligations” means all loans, Advances, debts, principal, interest, contingent reimbursement or indemnification obligations, premiums, liabilities, obligations (including indemnification obligations), fees, Lender Expenses, guaranties, covenants, and duties of any kind and description owing by the Borrower to Lender pursuant to or evidenced by the Loan Documents and/or pursuant to or in connection with any one or more documents, instruments or agreements described in clause (i) of the definition of Lender Expenses and, in each case, irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that the Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents.

“Orders” means the Interim Order and the Final Order; and “Order” means whichever of the Interim Order or the Final Order is then in effect.

“Ordinary Course” shall mean, in respect of any Person, the ordinary course and reasonable requirements of such Person’s business, as conducted in accordance with past practices, and

undertaken in good faith and not for purposes of evading any provision of any Loan Document or material applicable law.

“Organizational Documents” means (a) for any corporation, the certificate or articles of incorporation, the bylaws, any certificate of designation or other instrument relating to the rights of preferred shareholders or stockholders of such corporation, any shareholder rights agreement and all applicable resolutions of the board of directors (or any committee thereof) of such corporation, (b) for any partnership, the partnership agreement and, if applicable, the certificate of limited partnership, (c) for any limited liability company, the operating agreement and articles or certificate of formation or organization and all applicable resolutions of any managing member of such limited liability company, and (d) any agreement between the Borrower and its shareholders, members, partners or its equity owners, or among any of the foregoing.

“Overadvance” has the meaning specified in Section 2.5 of the Agreement.

“Patriot Act” has the meaning specified in Section 4.18 of the Agreement.

“Performance Covenants” means the covenants set forth in Section 7 of the Agreement.

“Permits” means any license, lease, power, permit, franchise, certificate, authorization or approval issued by a Governmental Authority.

“Permitted Dispositions” means:

- (a) sales, abandonment, or other dispositions of Equipment that is substantially worn, damaged, or obsolete in the ordinary course of business,
- (b) any involuntary loss, damage or destruction of property,
- (c) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,
- (d) the making of a Permitted Investment, and
- (e) dispositions expressly set forth in the Budget.

“Permitted Indebtedness” means:

- (a) Indebtedness evidenced by the Agreement and the other Loan Documents,
- (b) Indebtedness consisting of unsecured guarantees incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations,
- (c) Indebtedness incurred in the ordinary course of business during the Chapter 11 Case under performance, surety, statutory, and appeal bonds,
- (d) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to the Borrower in an amount not to exceed \$500,000 at any time outstanding incurred in the Ordinary Course under financing arrangements related to the payment of premiums and deductibles under insurance policies so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of such insurance (exclusive of interest, fees and other charges incurred in connection with premium

financing), and shall be incurred only to defer the cost of, such insurance for a period not to exceed one year and shall be payable in full not later than the end of such one year period, and

(e) Indebtedness composing Permitted Investments.

“Permitted Investments” means:

(a) Investments in cash and Cash Equivalents,

(b) advances made in connection with purchases of goods or services in the ordinary course of business,

(c) Investments received in settlement of amounts due to the Borrower effected in the ordinary course of business or owing to the Borrower as a result of insolvency proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of the Borrower,

(d) guarantees permitted under the definition of Permitted Indebtedness,

(e) Stock or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to the Borrower (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims,

(f) deposits of cash made in the ordinary course of business to secure performance of operating leases, and

(g) so long as no Event of Default has occurred and is continuing or would result therefrom, any other Investments in an aggregate amount not to exceed \$25,000 during the term of the Agreement.

“Permitted Liens” means, collectively: (a) the Carveout; and (b) all other liens that, as of the Filing Date, have priority under applicable law over the Liens created under the Loan Documents, are not subordinated by agreement or applicable law, and are non-avoidable, valid, properly perfected and enforceable.

“Permitted Protest” means the right of Borrower or any of its Affiliates to protest any Lien (other than any Lien that secures the Obligations), taxes (other than payroll taxes or taxes that are the subject of a United States federal tax lien), or rental payment, provided that (a) a reserve with respect to such obligation is established on Borrower’s or its Affiliate’s books and records in such amount as is required under Economic Basis, (b) any such protest is instituted promptly and prosecuted diligently by Borrower or its Affiliate, as applicable, in good faith, and (c) Lender is reasonably satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Lender’s Liens.

“Person” means natural persons, corporations, limited liability companies, limited partnerships, general partnerships, limited liability partnerships, joint ventures, trusts, land trusts, business trusts, or other organizations, irrespective of whether they are legal entities, and governments and agencies and political subdivisions thereof.

“Plan of Reorganization” means a chapter 11 plan for the Borrower that is in form and substance acceptable to Lender that provides for, *inter alia*, payment in full in cash of all Obligations on

the effective date thereof and no later than one hundred thirty five (135) days after the Filing Date, together with releases, exculpations, waivers and indemnification, acceptable to Lender in its sole discretion.

“Prepetition Collateral” means all of the “Collateral” (as that term is defined in the Prepetition First Priority Security Agreement) existing as of the Filing Date, and all proceeds, rents, issues, profits and products thereof.

“Prepetition First Priority Note” means the Secured Promissory Note, dated as of February 16, 2017, issued by Borrower in favor of Prepetition First Priority Lender in the original principal amount of \$375,000, as amended, modified, restated, and/or supplemented from time to time.

“Prepetition First Priority Security Agreement” means that certain Security Agreement dated as of February 16, 2017, by and between Borrower and Prepetition First Priority Lender, as amended, modified, restated, and/or supplemented from time to time.

“Prepetition First Priority Lender” means AIG PC Global Services, Inc.

“Prepetition First Priority Obligations” means all indebtedness or obligations under the Prepetition First Priority Note and Prepetition First Priority Security Agreement, together with all agreements, documents and instruments executed in connection therewith, as of the Filing Date, including all fees, costs, interest, and expenses.

“Real Property” means any estates or interests in real property now owned or hereafter acquired by the Borrower and the improvements thereto.

“Record” means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

“Remedial Action” means all actions taken to (a) clean up, remove, remediate, contain, treat, monitor, assess, evaluate, or in any 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) restore or reclaim natural resources or the environment, (d) perform any pre-remedial studies, investigations, or post-remedial operation and maintenance activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

“Restricted Junior Payment” means to (a) declare or pay any dividend or make any other payment or distribution on account of Stock issued by the Borrower (including any payment in connection with any merger or consolidation involving the Borrower) or to the direct or indirect holders of Stock issued by the Borrower in their capacity as such, (b) purchase, redeem, or otherwise acquire or retire for value (including in connection with any merger or consolidation involving the Borrower) any Stock issued by the Borrower, or (c) declare, pay or agree to pay any management, advisory or similar fees or expenses.

“Sale” shall mean the sale of all or substantially all of the Collateral to such qualified bidder who has submitted the highest and otherwise best bid and which provides for the indefeasible and final payment in full, in cash, of the Obligations, any outstanding Prepetition First Priority Obligations, and all other obligations to Lender, whether arising prior to, on, or after the Filing Date, upon the closing of such sale.

“Sale Motion” has the meaning specified in Section 5.17 of the Agreement.

“Sale Order” has the meaning specified in Section 5.17 of the Agreement.

“Schedules” means those certain schedules annexed to the Agreement and made a part thereof.

“S&P” has the meaning specified in the definition of Cash Equivalents.

“SEC” means the United States Securities and Exchange Commission and any successor thereto.

“Securities Account” means a securities account (as that term is defined in the UCC).

“Security Instruments” means all UCC financing statements filed in connection with the Facility and the Advances.

“Stock” means all shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in a Person, whether voting or nonvoting, including common stock, preferred stock, or any other “equity security” (as such term is defined in Rule 3a11-1 of the General Rules and Regulations promulgated by the SEC under the Exchange Act).

“Subsidiary” of a Person means a corporation, partnership, limited liability company, or other entity in which that Person directly or indirectly owns or controls the shares of Stock having ordinary voting power to elect a majority of the board of directors (or appoint other comparable managers) of such corporation, partnership, limited liability company, or other entity.

“Superpriority Claim” means a claim against the Borrower or its estate in the Chapter 11 Case which is an administrative expense claim having priority over (a) any and all allowed administrative expenses, and (b) unsecured claims now existing or hereafter arising, including, without limitation, administrative expenses of the kind specified in sections 105, 326, 328, 330, 331, 365, 503(a), 503(b), 507(b), 546(c), 546(d), 726 (to the extent permitted by law), 1113 or 1114 of the Bankruptcy Code, and any other provision of the Bankruptcy Code (including, subject to entry of the Final Order, section 506(c)).

“Termination Date” has the meaning specified in Section 3.3 of the Agreement.

“UCC” means the New York Uniform Commercial Code, as in effect from time to time.

“United States” means the United States of America.

“Voidable Transfer” has the meaning specified in Section 14.7 of the Agreement.

“Weekly Budget Variance Report” has the meaning specified in Section 5.2 of the Agreement.

Schedule A-1

To be provided

Schedule A-2

To be provided

Schedule D-1

To be provided

Schedule 3.2(i)

To be provided

Schedule 4.1(b)

To be provided

Schedule 4.2

To be provided

Schedule 4.4

To be provided

Schedule 4.6

To be provided

Schedule 4.7(b)

To be provided

Schedule 4.8

To be provided

Schedule 4.11

To be provided

Schedule 4.13

To be provided

Schedule 4.14

To be provided

Schedule 4.15

To be provided

Schedule 4.19

To be provided

Schedule 4.20

To be provided

Schedule 5.5

To be provided

Schedule 5.12

To be provided

Schedule 6.6

To be provided

EXHIBIT 3 TO THE INTERIM DIP ORDER

(BUDGET)

Assumes bankruptcy filing on 3/10/2017

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13	Week 14	Week 15	Week 16	Week 17	Total
Human Condition Safety Inc. ("Debtor") Chapter 11 Budget	3/10/2017 Through	3/12/2017 Through	3/19/2017 Through	3/26/2017 Through	4/2/2017 Through	4/9/2017 Through	4/16/2017 Through	4/23/2017 Through	4/30/2017 Through	5/7/2017 Through	5/14/2017 Through	5/21/2017 Through	5/28/2017 Through	6/4/2017 Through	6/11/2017 Through	6/18/2017 Through	6/25/2017 Through	
Assumes bankruptcy filing on 3/10/2017	3/11/2017	3/18/2017	3/25/2017	4/1/2017	4/8/2017	4/15/2017	4/22/2017	4/29/2017	5/6/2017	5/13/2017	5/20/2017	5/27/2017	6/3/2017	6/10/2017	6/17/2017	6/24/2017	7/1/2017	
Cash Beginning of Week	\$2,500.00	\$382,715.14	\$150,659.14	\$38,656.14	\$18,656.14	\$121,935.58	\$118,935.58	\$212,935.58	\$107,935.58	\$286,581.58	\$215,581.58	\$314,581.58	\$209,281.58	\$40,809.08	\$174,325.08	\$273,325.08	\$273,325.08	
Projected Fees from Clients	\$40,000.00	\$10,000.00	\$50,000.00			\$37,000.00	\$100,000.00			\$27,500.00	\$100,000.00			\$10,000.00	\$100,000.00			\$474,500.00
Projected Credit Card Receivables														\$10,000.00	\$100,000.00			\$0.00
Any Other Projected Receipts																		\$0.00
Total Projected Cash Receipts & Revenues	\$40,000.00	\$10,000.00	\$50,000.00	\$0.00	\$0.00	\$37,000.00	\$100,000.00	\$0.00	\$0.00	\$27,500.00	\$100,000.00	\$0.00	\$0.00	\$10,000.00	\$100,000.00	\$0.00	\$0.00	\$474,500.00
Total Projected Available Cash	\$42,500.00	\$392,715.14	\$200,659.14	\$38,656.14	\$18,656.14	\$158,935.58	\$218,935.58	\$212,935.58	\$107,935.58	\$314,081.58	\$315,581.58	\$314,581.58	\$209,281.58	\$50,809.08	\$274,325.08	\$273,325.08	\$273,325.08	
Cash Disbursements																		
Cash Disbursements for Operations																		
Employee payroll wages, salaries, other compensation, employee benefit obligations, reimbursable expenses, and costs incident thereto, including payroll taxes and processing costs accrued and unpaid as of the bankruptcy filing		\$100,138.00												\$139,794.00				
Employee severance payments accrued and unpaid as of the bankruptcy filing under prepetition severance agreement					\$0.00				\$9,500.00				\$0.00				\$9,500.00	\$19,000.00
Payroll, reimbursable expenses, and costs incident thereto accrued and unpaid as of the bankruptcy filing for independent contractor consultant Lorenzo Gallo		\$12,850.00												\$13,190.00				\$26,040.00
Payroll, reimbursable expenses, and costs incident thereto accrued and unpaid as of the bankruptcy filing for independent contractor consultant Mohsen Sarraf		\$0.00																\$0.00
Payroll, reimbursable expenses, and costs incident thereto accrued and unpaid as of the bankruptcy filing for independent contractor consultant Bryan Turo		\$1,028.00																\$1,028.00
Total employee and independent contractor payroll wages, salaries, severance, other compensation, employee benefit obligations, reimbursable expenses, and costs incident thereto, including payroll taxes and processing costs accrued and unpaid as of the bankruptcy filing - "Prepetition Employee Obligations"	\$0.00	\$114,016.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$152,984.00	\$0.00	\$0.00	\$9,500.00	\$286,000.00
Total accrued, unpaid and owed to critical vendors as of the bankruptcy filing - "Prepetition Critical Vendor Claims"		\$102,000.00																\$102,000.00
Total Prepetition Employee Obligations & Prepetition Critical Vendor Claims	\$0.00	\$216,016.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$0.00	\$9,500.00	\$0.00	\$0.00	\$0.00	\$0.00	\$152,984.00	\$0.00	\$0.00	\$9,500.00	\$388,000.00
Employee payroll wages, salaries, other compensation, and costs incident thereto, including payroll taxes and processing costs accrued after the bankruptcy filing			\$133,500.00		\$138,500.00			\$98,500.00		\$98,500.00		\$98,500.00		\$98,500.00			\$98,500.00	\$764,500.00
Workers' compensation insurance benefits accrued after the bankruptcy filing					\$500.00				\$500.00				\$500.00					\$1,500.00
Employee benefits - Cobra administrative fees & reimbursement accrued after the bankruptcy filing					\$225.00				\$225.00				\$225.00					\$675.00
Employee benefits specifically for Adam Bellin accrued after the bankruptcy filing			\$2,503.00						\$2,503.00									\$5,006.00
Other employee benefits accrued after the bankruptcy filing					\$16,200.00				\$16,200.00				\$16,200.00					\$48,600.00
Employee expense reports for reimbursable expenses accrued after the bankruptcy filing					\$2,000.00				\$2,000.00				\$2,000.00					\$6,000.00
Payroll, reimbursable expenses, and costs incident thereto accrued after the bankruptcy filing for independent contractor consultant Lorenzo Gallo					\$10,416.00				\$10,416.00				\$10,416.00					
Payroll, reimbursable expenses, and costs incident thereto accrued after the bankruptcy filing for independent contractor consultant Mohsen Sarraf					\$9,000.00				\$9,000.00				\$9,000.00					
Payroll, reimbursable expenses, and costs incident thereto accrued after the bankruptcy filing for independent contractor consultant Bryan Turo			\$1,000.00		\$1,000.00		\$1,000.00		\$1,000.00		\$1,000.00		\$1,000.00		\$1,000.00			

Total employee and independent contractor payroll wages, salaries, severance, other compensation, employee benefit obligations, reimbursable expenses, and costs incident thereto, including payroll taxes and processing costs accrued after the bankruptcy filing - "Postpetition Employee Obligations"	\$0.00	\$0.00	\$137,003.00	\$0.00	\$177,841.00	\$0.00	\$1,000.00	\$98,500.00	\$41,844.00	\$98,500.00	\$1,000.00	\$98,500.00	\$39,341.00	\$98,500.00	\$1,000.00	\$0.00	\$98,500.00	\$891,529.00
East Coast Product				\$20,000.00	\$48,200.00				\$48,200.00				\$48,200.00					\$164,600.00
Preview LABS			\$0.00				\$5,000.00											\$5,000.00
DMO		\$2,250.00						\$6,500.00				\$6,800.00					\$2,900.00	\$18,450.00
Bluemix Equipment	\$9,507.00				\$11,327.00				\$11,327.00				\$11,327.00					\$43,488.00
GBS Equipment																		\$0.00
Software Maint & Support																		\$0.00
Rent (other than monthly rent to be deducted from existing security deposit)																		\$0.00
Electric					\$800.00				\$800.00				\$800.00					\$2,400.00
Lighttower	\$5,651.10				\$1,000.00				\$1,000.00				\$1,000.00					\$8,651.10
Cogent	\$5,848.00				\$1,200.00				\$1,200.00				\$1,200.00					\$9,448.00
Corporate Essentials	\$210.56				\$100.00				\$100.00				\$100.00					\$510.56
Confidential Shredding	\$371.20				\$100.00				\$100.00				\$100.00					\$671.20
R&D Hardware & Equipment																		\$0.00
R&D Prototype																		\$0.00
Marketing & Sales - PR Newswire	\$990.00				\$195.00				\$195.00				\$195.00					\$1,575.00
Marketing & Sales - Verdantix		\$0.00			\$11,000.00				\$0.00				\$0.00					\$11,000.00
Marketing & Sales - Shane Parrish					\$0.00				\$20,000.00				\$0.00					\$20,000.00
D&O Insurance - CNNA Insurance									\$2,130.00									\$2,130.00
One Beacon Insurance		\$6,252.00							\$0.00				\$6,251.50					\$12,503.50
Axis Capital Inc					\$1,319.56				\$1,320.00				\$1,320.00					\$3,959.56
LCA Lease (CPU)		\$2,538.00			\$2,538.00				\$2,538.00				\$2,538.00					\$10,152.00
Misc					\$100.00				\$100.00				\$100.00					\$300.00
CNB	\$2,000.00				\$2,000.00				\$2,000.00				\$2,000.00					\$8,000.00
Signature Bank (Credit Card)					\$4,000.00				\$4,000.00				\$4,000.00					\$12,000.00
Total additional costs and expenses of operation accrued after the bankruptcy filing	\$24,577.86	\$11,040.00	\$0.00	\$20,000.00	\$83,879.56	\$0.00	\$5,000.00	\$6,500.00	\$95,010.00	\$0.00	\$0.00	\$6,800.00	\$79,131.50	\$0.00	\$0.00	\$0.00	\$2,900.00	\$334,838.92
Total Cash Disbursements for Operations	\$24,577.86	\$227,056.00	\$137,003.00	\$20,000.00	\$261,720.56	\$0.00	\$6,000.00	\$105,000.00	\$146,354.00	\$98,500.00	\$1,000.00	\$105,300.00	\$118,472.50	\$251,484.00	\$1,000.00	\$0.00	\$110,900.00	\$1,614,367.92
Bankruptcy Costs & Other Professional Fees & Expenses																		
Wollmuth Maher & Deutsch LLP - estimated fees and expenses for services as Debtor's bankruptcy counsel and other legal services rendered to the Debtor on/after the bankruptcy filing	\$50,000.00	\$0.00	\$25,000.00	\$0.00	\$50,000.00	\$40,000.00		\$50,000.00	\$40,000.00			\$50,000.00	\$40,000.00			\$50,000.00		\$395,000.00
Accretive Solutions	\$8,507.00				\$7,000.00				\$7,000.00				\$7,000.00					\$29,507.00
Fitzpatrick - services related to preservation of Debtor's intellectual property rights		\$15,000.00							\$0.00				\$0.00					\$15,000.00
Ladas & Parry - services related to preservation of Debtor's intellectual property rights	\$1,700.00				\$3,000.00				\$3,000.00				\$3,000.00					\$10,700.00
US Trustee Fees																		\$0.00
DIP Loan Fees		\$0.00			\$0.00				\$0.00				\$0.00					\$0.00
DIP Loan Interest																		\$0.00
DIP Lenders' Legal Fees & Expenses																		\$0.00
Total Bankruptcy Costs & Other Professional Fees & Expenses	\$60,207.00	\$15,000.00	\$25,000.00	\$0.00	\$60,000.00	\$40,000.00	\$0.00	\$50,000.00	\$50,000.00	\$0.00	\$0.00	\$50,000.00	\$50,000.00	\$0.00	\$0.00	\$50,000.00	\$0.00	\$450,207.00
Total Cash Disbursements	\$84,784.86	\$242,056.00	\$162,003.00	\$20,000.00	\$321,720.56	\$40,000.00	\$6,000.00	\$155,000.00	\$196,354.00	\$98,500.00	\$1,000.00	\$155,300.00	\$168,472.50	\$251,484.00	\$1,000.00	\$50,000.00	\$110,900.00	\$2,064,574.92
Ending Cash Balance																		
	(\$42,284.86)	\$150,659.14	\$38,656.14	\$18,656.14	(\$303,064.42)	\$118,935.58	\$212,935.58	\$57,935.58	(\$88,418.42)	\$215,581.58	\$314,581.58	\$159,281.58	\$40,809.08	(\$200,674.92)	\$273,325.08	\$223,325.08	\$162,425.08	
DIP Financing Cash Inflow																		
DIP Financing Monthly Advances for Operating Costs	\$375,000.00				\$375,000.00				\$375,000.00	\$0.00				\$375,000.00				\$1,500,000.00
DIP Financing Advances for Bankruptcy Costs	\$50,000.00				\$50,000.00			\$50,000.00				\$50,000.00				\$50,000.00		\$250,000.00
Total DIP Financing Cash Inflow	\$425,000.00	\$0.00	\$0.00	\$0.00	\$425,000.00	\$0.00	\$0.00	\$50,000.00	\$375,000.00	\$0.00	\$0.00	\$50,000.00	\$0.00	\$375,000.00	\$0.00	\$50,000.00	\$0.00	\$1,750,000.00
Adjusted Ending Cash Balance	\$382,715.14	\$150,659.14	\$38,656.14	\$18,656.14	\$121,935.58	\$118,935.58	\$212,935.58	\$107,935.58	\$286,581.58	\$215,581.58	\$314,581.58	\$209,281.58	\$40,809.08	\$174,325.08	\$273,325.08	\$273,325.08	\$162,425.08	