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IT IS SO ORDERED.

Dated: October 4, 2017



ALAN M. KOSCHIK
U.S. Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

In re:)	
)	Chapter 11
DATA COOLING TECHNOLOGIES LLC,)	
<i>et al.</i> , ¹)	Case Nos. 17-52170 and 17-52177
)	(Request for Joint Administration
Debtors.)	Pending)
)	
)	Judge Koschik

**FINAL ORDER AUTHORIZING THE USE OF CASH
COLLATERAL AND PROVIDING ADEQUATE PROTECTION**

Before the Court is the Debtor’s² motion (the “Motion”) for entry of a final order (the “Final Order”), pursuant to sections 105, 361, 362, 363 and 507 of title 11 of the United States Code (the “Bankruptcy Code”) and Rule 4001 of the Federal Rules of Bankruptcy Procedures (the “Bankruptcy Rules”), authorizing the Debtor to (a) use cash collateral, and (b) provide adequate protection to KeyBank National Association (the “Prepetition Secured Lender”).

¹ The Debtors and the last four digits of each of the Debtors’ tax identification numbers following in parentheses are: Data Cooling Technologies LLC (3425); and Data Cooling Technologies Canada LLC (3172).

² Capitalized terms not defined herein shall have the meanings set forth in the Motion. For the purposes of this Final Order, the term “Debtor” shall only refer to Data Cooling Technologies LLC.

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After due deliberation and consideration of the Motion, the accompanying exhibits thereto, and the evidence presented at the interim and final hearings convened by the Court, all objections, if any, to the relief requested in the Motion having been withdrawn, resolved or overruled by the Court, and this Court, in the exercise of its discretion, having found that:

- A. On September 8, 2017 (the “Petition Date”), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtor continues to retain possession of its property and operate its business as a Debtor-in-Possession pursuant to sections 1107 and 1108 of the Bankruptcy Code;
- B. The Prepetition Secured Lender believes that it is the only secured creditor of the Debtor having an interest in the Cash Collateral (defined below);
- C. The Prepetition Secured Lender asserts and the Debtor acknowledges and agrees that:
 1. Prior to the initiation of the above-captioned case (the “Bankruptcy Case”), the Debtor became indebted to, and granted certain security interests to, the Prepetition Secured Lender pursuant to certain loan and security agreements (collectively, the “Loan Documents”), including without limitation the following:
 - i. Revolving Credit Note, dated as of April 27, 2016, in the maximum amount of \$12 million, executed by the Debtor³ in favor of the Prepetition Secured Lender, together with related contractual agreements, as thereafter amended, supplemented and modified;

³ The obligor on the Note is identified as Air Enterprises Acquisition LLC. Subsequent to the execution of the Note, Air Enterprises Acquisition LLC changed its name to Data Cooling Technologies LLC.

- ii. Second Amended and Restated Credit Agreement, dated as of April 27, 2016, by and between the Debtor and Prepetition Secured Lender, together with related contractual agreements, as thereafter amended, supplemented and modified;
 - iii. Amended and Restated Security Agreement, dated as of July 17, 2013, by and between the Debtor and Prepetition Secured Lender, together with related contractual agreements, as thereafter amended, supplemented and modified;
 - iv. Term Promissory Note, dated as of May 11, 2016, in the amount of \$3.2 million executed by the Debtor in favor of the Prepetition Secured Lender, together with related contractual agreements, as thereafter amended, supplemented and modified; and
 - v. various Subordination Agreements, dated as of August 12, 2016, by and between the Debtor, the Prepetition Secured Lender and, in each case, William M. Weber, Patrick Auletta, A. Malachi Mixon, and Mark Mansour.
2. Pursuant to the Loan Documents, in consideration of the loans and other financial accommodations extended to the Debtor under such agreements and to secure the payment and performance of the Debtor's obligations under the Loan Documents, the Debtor granted the Prepetition Secured Lender security interests and liens in substantially all of its personal property to the extent described in the Loan Documents (collectively, the

“Prepetition Collateral”), including without limitation the Debtor’s accounts receivable, inventory, equipment, cash, general intangibles, and the proceeds thereof;

3. The Prepetition Secured Lender duly perfected its security interests in, and liens and upon, the Prepetition Collateral by filing financing statements and taking certain other actions. The Prepetition Secured Lender has valid, perfected and enforceable first priority liens upon, and security interests in, the Prepetition Collateral (collectively, the “Prepetition Liens”);

4. As of the Petition Date, the Debtor was—and it remains—in default of its obligations under the Loan Documents. The total due to the Prepetition Secured Lender under the Loan Documents as of the Petition Date is approximately \$1,933,328.00, plus interest and costs that have accrued or may accrue. All obligations of the Debtor arising under the Loan Documents shall collectively be referred to herein as the “Credit Obligations”;

D. Without prejudice to the rights of any other party, the Debtor acknowledges and agrees that the Credit Obligations and the Loan Documents constitute valid and binding obligations of the Debtor and that all of the cash generated by the Debtor’s operations wherever located and all cash generated from asset dispositions with respect to the Prepetition Collateral constitute the Prepetition Secured Lender’s cash collateral as defined in section 363(a) of the Bankruptcy

Code (the “Cash Collateral”), and that the Prepetition Secured Lender has a first, valid and perfected security interest in, and lien on, all of the Debtor’s Cash Collateral and the other Prepetition Collateral;

- E. The cash in the possession of the Debtor on the Petition Date or in accounts of the Debtor on such date, and all proceeds of any Prepetition Collateral in existence on the Petition Date are claimed by the Prepetition Secured Lender to be proceeds from collection of accounts receivable or use of other Prepetition Collateral;
- F. In order to provide adequate protection to the Prepetition Secured Lender for the Debtor’s use of Cash Collateral, the Debtor hereby grants to the Prepetition Secured Lender, to the extent of decrease or diminution in the value of the Prepetition Collateral resulting from the use, sale or lease by the Debtor (or other decline in value due to the automatic stay), except and excluding the use of any Cash Collateral to remit payments to the Prepetition Secured Lender in respect of the Credit Obligations (the “Diminution in Value”): (i) valid, binding, enforceable, and perfected first priority Adequate Protection Liens (as defined below in Paragraph 5) in all property acquired or created postpetition and all proceeds thereof, except and excluding avoidance actions under chapter 5 of the Bankruptcy Code and all proceeds thereof, subject only to the Carve-Out (as defined below); (ii) an administrative expense claim in accordance with section 507(b) of the Bankruptcy Code, subject only to the Carve-Out, with priority over every other claim allowable under section 507(a) of the Bankruptcy Code, to the extent of any Diminution in Value of the Prepetition Collateral from and after the

Petition Date; and (iii) adequate protection payments (the “Adequate Protection Payments”) as set forth in and to be made in accordance with the Approved Budget (as defined below), a copy of which is attached hereto as Exhibit A. Following the payment of any Adequate Protection Payment, in the event that the Debtor requests additional funding, the Prepetition Secured Lender may, in its sole and absolute discretion, allow for the usage by the Debtor of all (or part) of such Adequate Protection Payment without such usage constituting a Termination Event (as defined below in Paragraph 9). Any additional Cash Collateral made available to the Debtor, if any, is to be on terms satisfactory to the Prepetition Secured Lender, in its sole and absolute discretion, as set forth in the terms of this Final Order;

- G. The Court has jurisdiction over the Motion and the authority to grant the relief requested therein;
- H. The notice provided by Debtor is adequate and sufficient under the circumstances herein pursuant to sections 102 and 363 of the Bankruptcy Code and Bankruptcy Rule 4001 and no other or further notice is required;
- I. The relief requested in the Motion is of a genuinely urgent nature and is necessary, essential and appropriate for the continued operation of the Debtor’s business and preservation of its assets;
- J. The Debtor represents that it is not presently able to obtain financing for its business on an unsecured basis pursuant to subsections (a) and (b) of section 364 of the Bankruptcy Code, nor is the Debtor able to obtain secured or priority

financing on better terms than those agreed to by the Prepetition Secured Lender with respect to the use of Cash Collateral;

- K. An immediate need exists for the Debtor to use the Cash Collateral subject to the terms hereof in order to continue the operation of its business without interruption, since the Debtor will be unable to pay wages and meet other current and immediate operating expenses without the use of the Cash Collateral;
- L. The ability of the Debtor to preserve the value of its assets depends upon its ability to use the Cash Collateral;
- M. The Prepetition Secured Lender has indicated that it objects to the use of Cash Collateral unless it is provided with adequate protection;
- N. The terms and conditions embodied in this Final Order are those under which the Prepetition Secured Lender is willing to consent to the Debtor's use of Cash Collateral, such terms having been agreed to by the Prepetition Secured Lender, the Debtor and the Official Committee of Unsecured Creditors appointed in this case (the "UCC") after good faith and arm's length negotiations;
- O. The Prepetition Secured Lender has further indicated that its willingness to permit use of Cash Collateral does not constitute consent to the incurrence by the Debtor, its counsel, or any other party, person or entity of any of the costs, expenses or fees contemplated under section 506(c) of the Bankruptcy Code, and its agreement to permit the use of Cash Collateral is conditioned upon the Debtor's absolute and irrevocable waiver of any rights under section 506(c) of the Bankruptcy Code;

- P. In order to provide adequate protection to the Prepetition Secured Lender for the Debtor's use of Cash Collateral as set forth in this Final Order, the Debtor hereby grants to the Prepetition Secured Lender, as herein authorized: (1) valid, binding, enforceable, and perfected Adequate Protection Liens, subject only to the Carve-Out; and (2) to the extent of the Diminution in Value of the Prepetition Secured Lender's interest in the Prepetition Collateral, an allowed superpriority administrative expense claim under 507(b) of the Bankruptcy Code;
- Q. The Prepetition Secured Lender has acted in good faith in indicating a willingness to allow the use of the Cash Collateral under the terms and conditions set forth in this Final Order and subject to: (i) entry of this Final Order and the fulfillment of the conditions stated herein; and (ii) the granting, regranting and continuing of the Prepetition Liens and the Adequate Protection Liens;
- R. The Court has the authority to grant the relief requested by the Motion as set forth in this Final Order under section 363(c) of the Bankruptcy Code (authorizing the use of the Cash Collateral) and 363(e) of the Bankruptcy Code (authorizing the Court to grant adequate protection to the Prepetition Secured Lender);
- S. Good and adequate cause justifies granting of the relief requested, which relief will minimize the disruption of the Debtor's operations, facilitate a successful reorganization and further the best interests of the Debtor, its creditors and its estate;
- T. It is in the best interests of the Debtor and all of its creditors that the Debtor be permitted to use the Cash Collateral pursuant to the terms hereof; and

- U. The relief granted by this Order is in the best interests of the Debtor and its creditors;

IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:

1. **Motion Granted on a Final Basis.** The Motion is granted on a final basis, all objections to the Motion not withdrawn or resolved are overruled, and the use of Cash Collateral on a final basis is authorized, subject to the terms and conditions set forth in this Final Order. The Final Order replaces and supersedes in all respects the *Interim Order Authorizing the Use of Cash Collateral and Providing Adequate Protection* (Dkt. No. 31) previously entered by the Court.

2. **Maintenance of Bank Accounts.** Any and all Cash Collateral and proceeds of the other Collateral held or received by the Debtor shall be collected, received, maintained and segregated by the Debtor by depositing all cash, checks, or other forms of remittance evidencing same in Debtor's existing bank accounts with the Prepetition Secured Lender (the "KeyBank Accounts"). Any banks other than the Prepetition Secured Lender holding such funds of the Debtor on or after the Petition Date in depository accounts are hereby authorized and directed to collect and transfer all such funds on a daily basis by wire transfer to the KeyBank Accounts. The Debtor is permitted to continue to use its existing bank accounts to continue funding payroll consistent with this Final Order. Nothing in this Final Order prohibits the Debtor from establishing depository accounts with financial institutions approved by the United States Trustee other than the Prepetition Secured Lender and depositing funds that are not proceeds of the Collateral in such accounts.

3. **Maximum Amount.** Subject to the terms and conditions hereof, prior to the occurrence of a Termination Event (as defined below in Paragraph 9) not waived by the Prepetition Secured Lender in accordance with the terms and conditions hereof, the Debtor is authorized to use, for the period beginning on the Petition Date and continuing through October 13, 2017 (the "Subject Period"), the Cash Collateral of the Prepetition Secured Lender in an amount not to exceed \$259,609.00 (the "Maximum Amount"). The Prepetition Secured Lender does not consent to the use of Cash Collateral by the Debtor except in strict compliance with the terms and conditions contained herein. The Prepetition Secured Lender has no obligation to consent to either an increase in the Maximum Amount or an extension of the Subject Period, such consent being in the sole discretion of the Prepetition Secured Lender. Notwithstanding the Prepetition Secured Lender's sole discretion to consent to an extension of the Subject Period, any such consent shall require the Debtor to provide the Prepetition Secured Lender with a further proposed budget acceptable to the Prepetition Secured Lender. The Debtor shall file a notice with the Court of any agreement reached with the Prepetition Secured Lender to extend the Subject Period and/or Maximum Amount pursuant to a supplemental budget approved by the Prepetition Secured Lender (which supplemental budget shall be attached as an exhibit to the notice filed with the Court), which budget shall constitute an "Approved Budget" for purposes of this Final Order.

4. **Permitted Uses.** For the Subject Period, the Debtor only may use the Cash Collateral, not to exceed the Maximum Amount at any time, in strict compliance with, in all respects, including without limitation the amount allocated to each specific line item and the timing of the disbursements for each such specific line item, the budget (the "Approved Budget")

attached to this Final Order as Exhibit A. During the Subject Period, the Debtor may not expend any additional Cash Collateral without the Prepetition Secured Lender's prior written consent. Notwithstanding anything to the contrary in this Final Order, the Debtor agrees and is directed that no Cash Collateral shall be used to make transfers to insiders of the Debtor, as that term is defined in section 101(31) of the Bankruptcy Code, including, without limitation, payments of any wages, compensation or other benefits to any such insider except for wages, compensation or other benefits expressly authorized under the Approved Budget. Except as otherwise set forth in the Approved Budget, the Debtor shall not at any time use Cash Collateral or the proceeds of any other Collateral unless the Debtor has obtained written consent from the Prepetition Secured Lender authorizing such use, which written consent can be provided by email.

5. **Adequate Protection Liens.** In addition to the existing rights and interests of the Prepetition Secured Lender in the Cash Collateral and the other Prepetition Collateral, the Debtor hereby grants, regrants and continues to the Prepetition Secured Lender as security for the repayment of the obligations owed to it, valid, binding, enforceable, and perfected first priority replacement liens (the "Adequate Protection Liens") in all property of the Debtors, including Data Cooling Technologies and Data Cooling Technologies Canada LLC⁴ (the "Additional Collateral") and together with the Prepetition Collateral, the "Collateral"), including without limitation, property acquired or created postpetition, and all proceeds of the foregoing, but excluding avoidance actions under chapter 5 of the Bankruptcy Code and all proceeds thereof, to the extent of any Diminution in Value of the Prepetition Secured Lender's Prepetition Collateral from and after the Petition Date, subject in all respects to the Carve-Out.

⁴ The Debtor does not believe Data Cooling Technologies Canada LLC holds any assets.

6. **Adequate Protection.** The value of the Prepetition Collateral may continue to decline and erode and, as a result, the Prepetition Secured Lender is entitled to adequate protection of its interest in the Cash Collateral and the other Prepetition Collateral pursuant to section 363(e) of the Bankruptcy Code. As adequate protection of the Prepetition Secured Lender's interest in the Prepetition Collateral, the Debtor: (a) grants the Prepetition Secured Lender Adequate Protection Liens pursuant to and in accordance with Paragraph 5 above; (b) grants the Prepetition Secured Lender, to the extent of the Diminution in Value of the Prepetition Secured Lender's interest in the Prepetition Collateral (as defined herein) an allowed superpriority administrative expense claim under 507(b) of the Bankruptcy Code, with priority over every other claim allowable under section 507(a) of the Bankruptcy Code (the "Superpriority Claim"), subject in all respects to the Carve-Out; (c) shall timely pay all Adequate Protection Payments, as provided for in Paragraph F above; (d) shall provide regular reporting to the Prepetition Secured Lender, including, without limitation, weekly budget updates and, if requested, participate in conference calls with the Prepetition Secured Lender and/or its representatives; (e) shall allow the Prepetition Secured Lender access, pursuant to Paragraph 10 below, to the Debtor's business premises, during regular business hours, wherever located, for the purpose of examining the Debtor's books and records, inspecting the Collateral, monitoring the Debtor's business operations, or monitoring and verifying the Debtor's compliance with the terms of this Final Order; (f) shall maintain its current levels of loss and liability insurance coverage on all of the Debtor's assets; (g) shall provide the Prepetition Secured Lender with the financial information and business data required pursuant to Paragraph 9 below, and any other information or documentation which the Prepetition Secured Lender shall reasonably request;

(h) is prohibited from making any increase in compensation, dividends, or benefits for any of their officers, employees or insiders; and (i) shall timely pay all postpetition taxes and assessments as they become due. Without limiting the foregoing in any respect, the Prepetition Secured Lender may, at any time, request that the Court grant other protections for the benefit of the Prepetition Secured Lender as a condition to the continued use by the Debtor of the Cash Collateral; and the Debtor and the UCC may oppose such relief.

7. **Carve-Out.** Subject to the limitations on the use of Cash Collateral and other Prepetition Collateral as set forth in this Final Order, and without prejudice to the Prepetition Secured Lender's ability and right to challenge any request for fees or expenses made by a professional retained pursuant to an order of this Court under Section 330 or 331 including, without limitation, any such professional retained by the Debtor or the UCC (collectively, the "Estate Professionals" and each an "Estate Professional"), the provisions of the this Final Order not constituting the allowance of any Estate Professional's fees or expenses or a waiver of the rights of the Prepetition Secured Lender to object to any requests by the Estate Professionals for allowance of any fees or expenses, the Prepetition Liens of and the Adequate Protection Liens and Superpriority Claim granted to the Prepetition Secured Lender, including pursuant to this Final Order, shall be subject to a carve-out (the "Carve-Out") for (a) compensation for services rendered and reimbursement of expenses incurred by an Estate Professional prior to a Termination Event (as defined below in Paragraph 9), which are approved by the Bankruptcy Court pursuant to sections 330 or 331 of the Bankruptcy Code, in an amount not to exceed, in each case, the specific line item amount (the "Professional Fee Line Items") for such Estate Professional as set forth in the Approved Budget, less any prepetition retainer or other

prepetition funds of the Debtor held or otherwise controlled by such Estate Professional (collectively, the “Retainer Funds”) regardless of the timing of the application of the Retainer Funds as set forth in the Approved Budget, and regardless of whether earned or to be paid in the budget week or subsequent to the entry of an order approving such fees, and under no circumstances for purposes of this Final Order exceeding the aggregate amount of the Professional Fee Line Items through the Subject Period as set forth in the Approved Budget; and provided further that, except as provided for in the Investigation Budget (as defined below), no portion of the Cash Collateral or Collateral may be used to (1) investigate, prepare for, commence or prosecute any action, counterclaim or objection with respect to claims, liens or security interests of the Prepetition Secured Lender, or (2) investigate, prepare for, prosecute, defend or otherwise contest any claim (as defined in section 101(5) of the Bankruptcy Code) or action against or otherwise adverse to the Prepetition Secured Lender; (b) compensate for services rendered and reimbursement of expenses incurred by an Estate Professional upon or after the occurrence of a Termination Event (as defined below in Paragraph 9) that has not been waived in writing by the Prepetition Secured Lender, which are approved by the Bankruptcy Court pursuant to sections 330 or 331 of the Bankruptcy Code, in an aggregate amount not to exceed Fifty Thousand Dollars (\$50,000.00) less any Retainer Funds held or otherwise controlled by such Estate Professionals (the “Post-Termination Carve Out”) regardless of the timing of the application of the Retainer Funds as set forth in the Approved Budget; provided that, if the Post-Termination Carve Out is insufficient to pay the aggregate amount due to the Estate Professionals for services rendered and expenses incurred subsequent to the Termination Event, then each of the Estate Professionals shall be entitled to share pro rata in the Post-

Termination Carve Out based on the outstanding amounts due to them for services rendered and expenses incurred subsequent to the Termination Event; and (c) remit fees payable to the United States Trustee pursuant to 28 U.S.C. § 1930 or to the Clerk of the Bankruptcy Court. Notwithstanding the foregoing, before the Challenge Deadline (defined below), the UCC and its advisors may, but are not required to, investigate the validity, enforceability, priority or amount of the Credit Obligations or the Prepetition Liens; provided that the aggregate fees and expenses for such investigation that may be paid from Cash Collateral shall not exceed \$10,000 (the “Investigation Budget”); and further provided that no portion of the Investigation Budget may be used to bring, assert, commence, continue, prosecute, or litigate any cause of action against the Prepetition Secured Lender, including without limitation any cause of action related to the validity, enforceability, priority or amount of the Credit Obligations or the Prepetition Liens. Prior to a Termination Event (as defined below in Paragraph 9), pursuant to the terms of this Final Order, the Debtor shall, on a weekly basis, utilize a portion of the Cash Collateral to fund into trust accounts maintained by each of Debtor’s bankruptcy counsel, Debtor’s special counsel, Debtor’s financial advisor and UCC’s counsel (collectively, the “Allowed Professional Fee Escrow Account”) an amount equal to 100% of the respective weekly amounts set forth in the Approved Budget for “Debtor’s BK Counsel to Escrow,” “Debtor’s FA to Escrow,” “Debtor’s Special Counsel” and “Unsecured Creditor’s Committee counsel to Escrow”, less the retainer coverage amount for each such professional in each week as set forth in the Approved Budget, with all such weekly amounts funded to the Allowed Professional Fee Escrow Account through existing retainers and additional cash payments permanently reducing the amount of the Carve-Out on a dollar-for-dollar basis. The Debtor may pay the amounts of the Professional Fee Line

Items from the Allowed Professional Fee Escrow Account in the ordinary course of business through a Termination Event (as defined below in Paragraph 9), subject to the need for Bankruptcy Court approval or compliance with approved interim compensation procedures.

8. **Liens and Superpriority Claim not Subject to 364(d).** The Adequate Protection Liens and the Superpriority Claim shall be subject to the Carve-Out and shall not be subordinated to any other lien under section 364(d) of the Bankruptcy Code or otherwise.

9. **Termination.** The Debtor's authorization to use Cash Collateral, and any and all obligations of the Prepetition Secured Lender under this Final Order, as set forth above, shall immediately cease upon the earliest occurrence of any Termination Event. As used herein, "Termination Event" shall mean any of the following: (a) such time as the Debtor makes payments which are not authorized by this Final Order unless such unauthorized payment(s) is waived in writing by the Prepetition Secured Lender; (b) the Debtor suffers an unfavorable variance of greater than 15% with respect to "Total Receipts," as set forth in the Approved Budget, which variance shall be measured on the Friday of each week and reported in the immediately following Weekly Report (as defined below); (c) this case is converted to a case under chapter 7 of the Bankruptcy Code; (d) the entry of any order materially modifying, reversing, revoking, staying, rescinding, vacating or amending this Final Order without the express prior written consent of the Prepetition Secured Lender; (e) a trustee or examiner is appointed for the Debtor pursuant to section 1104 of the Bankruptcy Code; (f) the assertion of any Challenge (as defined below) by any party in interest other than the UCC; or (g) upon three business days' written notice by the Prepetition Secured Lender to the Debtor, counsel for the UCC, and the United States Trustee, of the occurrence of any of the following: (i) failure by the

Debtor to deliver to the Prepetition Secured Lender any of the reporting requirements and financial information as set forth in Paragraph 10 below; or (ii) any other violation by the Debtor of this Final Order. For the avoidance of doubt, the expiration of the Subject Period, as an isolated event and in the absence of any other event that constitutes a Termination Event, shall not constitute a Termination Event under this Final Order. The Prepetition Secured Lender, in its sole discretion, may agree to extend any deadline or waive any requirement contained in this Paragraph 9, without further order of this Court; provided that any such extension or waiver shall be not be effective unless in writing by the Prepetition Secured Lender (including, without limitation, by email). Subject in all respects to the Carve-Out, upon termination pursuant to this Paragraph 9 of the Debtor's authorization to use Cash Collateral, (a) the Debtor shall immediately cease use of Cash Collateral without the prior written consent of the Prepetition Secured Lender, and (b) upon written notice to the Debtor, counsel for the UCC and the United States Trustee by the Prepetition Secured Lender, the Prepetition Secured Lender shall be entitled to seek relief from the automatic stay on an expedited basis, which motion for relief from stay shall be scheduled for hearing within seven calendar days thereof (subject to the Court's availability), to permit the Prepetition Secured Lender to exercise all remedies available to it with respect to the Collateral (including, but not limited to, sweeping the funds from any account of the Debtor held with the Prepetition Secured Lender, but subject in all respects to the Carve-Out and, if no other cash is available, to the provision for payment of accrued and unpaid wages and taxes to the extent included in the Approved Budget).

10. **Reporting and Inspection.** Upon reasonable notice, the Debtor shall provide the Prepetition Secured Lender, and its consultants, accountants, agents, representatives, employees,

or attorneys, and counsel for the UCC (subject to reasonable confidentiality limitations) access to: (a) all of the Debtor's books and records for the purpose of examining, inspecting, copying, and making extracts therefrom; (b) all of the Collateral for the purpose of inspecting same; (c) the Debtor's business premises for purposes of determining whether the Debtor is in compliance with the terms of this Final Order; and (d) the information contained in the Debtor's books and records related to its business operations. The Debtor shall cooperate, consult with, and provide to such consultants, accountants, agents, representatives, employees, or attorneys all such information as they may reasonably request for the purposes of determining or verifying compliance by the Debtor with the terms of this Final Order, examining and verifying the Debtor's financial reports or condition; and auditing or reviewing the Debtor's business operations or appraising and evaluating the Debtor's assets. The Debtor shall also provide the Prepetition Secured Lender and counsel for the UCC with copies of the following documents and other financial information (subject to reasonable confidentiality limitations):

- a. Cash flow projections of the Debtor as prepared in the ordinary course of business;
- b. All financial or operating reports, including bank statements for any and all deposit accounts maintained by or for the benefit of the Debtor required or requested by the Office of the United States Trustee;
- c. Any financial reports required to be filed with the Bankruptcy Court;
- d. A written report (the "Weekly Report") certified by an officer of the Debtor and verified by the financial advisor of the Debtor, to be provided to the Prepetition Secured Lender on or before 10:00 a.m. (Eastern) each Tuesday: (i) itemizing and cumulatively totaling all post-petition receipts and disbursements for the previous calendar week (i.e. Sunday through Saturday), (ii) setting forth a performance vs. budget comparison analysis (including with respect to sales and collections) for the previous calendar week, (iii) setting forth a performance vs. budget comparison analysis (including with respect to sales and collections) for the cumulative period beginning with the date of the entry of this Final Order through the

conclusion of the previous calendar week, and (iv) itemizing expenses incurred but not paid (and the terms thereof) during the previous calendar week; each to be in form and substance reasonably satisfactory to the Prepetition Secured Lender and based on a detailed template form agreed to by the Prepetition Secured Lender; and

- e. All financial and other information relating to causes of action under chapter 5 of the Bankruptcy Code and/or other applicable law.

The Debtor and Debtor's financial advisor shall make themselves available for a conference call with the Prepetition Secured Lender, no later than 3:00 p.m. (Eastern) each Tuesday (unless otherwise agreed to by the Prepetition Secured Lender in writing for any given week), in order to respond to any questions with respect to any of the deliveries set forth in this Paragraph 10 and the contents thereof.

11. **Objections to Credit Obligations and Lien Validity.** All parties in interest, excluding the Debtor, but including without limitation any statutory committee appointed, or that may be appointed, in this case, shall have until November 20, 2017 (the "Challenge Deadline"), to commence an adversary proceeding or contested matter (a) challenging the validity, enforceability, priority or amount of the Credit Obligations or the Prepetition Liens, and (b) asserting any claim or cause of action against the Prepetition Secured Lender, or its agents, whether having arisen under applicable federal or state law, or the Bankruptcy Code, whether having arisen in or in connection with the Obligations, or otherwise (any of the foregoing, a "Challenge"). If no such adversary proceeding or contested matter asserting a Challenge has been properly commenced on or before the Challenge Deadline; (i) the Credit Obligations shall constitute allowed claims for all purposes of this case; (ii) the Prepetition Liens shall be deemed legal, valid, binding, perfected, and otherwise unavoidable, first priority liens in the Prepetition Collateral; (iii) the Credit Obligations shall not be subject to any other or further challenge by

any party in interest; and (iv) all parties in interest shall be forever barred from asserting any Challenge. Notwithstanding the foregoing, the UCC shall have the limited right to object to the inclusion of post-petition interest and post-petition attorney fees as part of the Credit Obligations for purposes of the Prepetition Secured Lender's allowed claim, which limited right to object shall terminate and be of no further force and effect as of the expiration of the 30th calendar day following the delivery of written notice to the UCC's counsel of the final payment to the Prepetition Secured Lender in respect of its allowed claim for the Credit Obligations, which notice shall include an itemization of the payments received by the Prepetition Secured Lender after the Petition Date and the amount of the Prepetition Secured Lender's claim (including principal, interest and expenses).

12. **Perfection of Adequate Protection Liens.** The Prepetition Secured Lender shall not be required to file any financing statements, mortgages, or other instruments in any recording office in order to perfect the Adequate Protection Liens granted to it under this Final Order, which Adequate Protection Liens are hereby declared perfected, valid and enforceable as of the Petition Date. If the Prepetition Secured Lender, in its sole discretion, desires to file financing statements or mortgages, or take other steps to evidence the perfection of the Adequate Protection Liens, or evidence their interest in the Loan Documents and Prepetition Liens, all such actions shall be deemed to have been performed or filed as of the Petition Date and the filing officer shall accept a certified copy of this Final Order as an appropriate filing. At the request of the Prepetition Secured Lender, the Debtor shall execute and deliver such further documents and instruments as the Prepetition Secured Lender may reasonably deem necessary or desirable to

grant, evidence, and perfect all of the rights given or intended to be given to the Prepetition Secured Lender by this Final Order.

13. **Preservation of Adequate Protection Liens.** In the event that this Final Order or any authorization contained herein is reversed or modified on appeal, the Prepetition Secured Lender is entitled to the protection of section 364(e) of the Bankruptcy Code with respect to priorities, liens, and security interests granted under this Final Order, and any reversal, modification or reconsideration of this Final Order, whether on appeal or otherwise, shall not limit or affect the rights of the Prepetition Secured Lender in reliance upon this Final Order.

14. **Prohibition against Granting of Other Postpetition Liens or Adequate Protection to Other Parties.** The Debtor shall not obtain credit or incur indebtedness secured by security interests in property in which the Prepetition Secured Lender has an interest, unless the conditions of the granting of relief in such proceeding are that: (a) the Debtor obtains prior Court approval; and (b) either (i) all indebtedness properly due and owing to the Prepetition Secured Lender shall be paid in full, or (ii) the Prepetition Secured Lender shall have consented thereto previously in writing. In the event that any other party in interest seeks an order pursuant to sections 363 or 364 of the Bankruptcy Code or is otherwise granted or is to be granted adequate protection or assurance pursuant to sections 361, 362, 363, 364, or 365 of the Bankruptcy Code or under applicable law, the Debtor shall give the Prepetition Secured Lender notice of such grant or request within two business days thereafter.

15. **Survival.** The provisions of this Final Order shall remain in effect and continue in the Bankruptcy Case; and shall be binding on the Debtors and their successors and assigns, including any trustee or other fiduciary hereinafter appointed under chapter 11 or chapter 7 of the

Bankruptcy Code; and shall be binding on all parties in interest and their successors and assigns, including without limitation any statutory committee appointed, or that may be appointed, in this case; and shall be binding in the event of the confirmation of a chapter 11 plan by either or both of the Debtors.

16. **Automatic Stay.** The Automatic Stay is hereby modified to the extent necessary to permit all acts, actions and transfers, relating to perfection of interests contemplated herein.

17. **No Consent to 506(c) Charges.** Subject to the Carve-Out, the liens and security granted to the Prepetition Secured Lender in this Final Order as adequate protection for Diminution in Value of the Collateral shall have the highest administrative priority under section 507(b) of the Bankruptcy Code. Nothing in this Final Order or any other budget shall constitute the consent by the Prepetition Secured Lender to the imposition of any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, any amounts set forth in any budget) against the Prepetition Secured Lender, its claims or its collateral under section 506(c) of the Bankruptcy Code or otherwise.

18. **Waiver of 506(c) Charges.** The Debtors are deemed to have fully and finally waived any rights, whether arising under section 506(c) of the Bankruptcy Code or otherwise, to impose any costs or expense of administration or other charge, lien, assessment or claim (including, without limitation, any amounts set forth in the Approved Budget or any other budget) against the Prepetition Secured Lender, its claims or its collateral.

19. **Section 552(b) of the Bankruptcy Code.** The Prepetition Secured Lender is entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and all parties in interest, including without limitation the Debtor, the UCC and any other statutory committee

that may be appointed in this case, shall not assert that the “equities of the case” exception under section 552(b) of the Bankruptcy Code applies with respect to the Prepetition Secured Lender, the Credit Obligations, the Prepetition Liens, the Adequate Protections Liens and/or the Collateral, including without limitation any proceeds, product, offspring, or profits thereof.

20. **Lenders’ Reservation of Rights; No Waiver.** The Prepetition Secured Lender does not waive, and expressly reserves, any and all claims, defenses, rights and remedies it may have pursuant to any or all of the Loan Documents, the Bankruptcy Code and/or other applicable law against the Debtor and any officer, director, employee, agent or other representative thereof. In addition, the rights, claims, liens, security interests and priorities of the Prepetition Secured Lender arising under this Final Order are in addition to, and are not intended as a waiver or substitution for, the rights, obligations, claims, liens, security interests and priorities granted by the Debtor in its pre-petition capacity.

21. **Reservation of Rights by the United States.** Nothing herein shall impair any rights of setoff or recoupment of the United States, subject to any defenses of any other party.

22. **Prepetition Secured Lender’s Relationship with the Debtor.** In taking any actions reasonably related to this Final Order (including, without limitation, the exercise of any approval rights with respect to any budget), the Prepetition Secured Lender shall have no liability to any third party and shall not be deemed to be in control of the operations of the Debtor or to be acting as a “controlling person,” “responsible person” or “owner or operator” with respect to the operation or management of the Debtor (as such term, or any similar terms, are used in the Internal Revenue Code, the United States Comprehensive Environmental Response, Compensation and Liability Act as amended, or any similar federal or state statute), and the

Prepetition Secured Lender's relationship with the Debtor shall not constitute or be deemed to constitute a joint venture or partnership of any kind between the Prepetition Secured Lender and the Debtor.

23. **Effect of Modification of Order.** If any of the provisions of this Final Order are hereafter modified, vacated or stayed by subsequent order of this or any other Court, such stay, modification or vacatur shall not affect the validity and enforceability of any lien, priority, right, privilege or benefit authorized hereby with respect to the Credit Obligations. Notwithstanding any such stay, modification or vacatur, the Prepetition Secured Lender shall be entitled to all the rights, privileges and benefits, including, without limitation, the security interests and priorities granted herein, with respect to all of the Credit Obligations.

24. **Effectiveness.** Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024 or any other Bankruptcy Rule, or Rule 62(a) of the Federal Rules of Civil Procedure, this Final Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution of effectiveness of this Final Order as provided in such rules.

25. **Disputes.** Any disputes arising from the provisions of this Final Order shall be determined by the Court.

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APPROVED AS TO FORM AND SUBSTANCE BY:

/s/ Sean D. Malloy

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COUNSEL FOR THE UNITED STATES TRUSTEE

EXHIBIT A

Data Cooling Technology, LLC
Cash Flow Forecast
Scorecard as of 9/29

Week Ending	Cumulative Variance Since WE 9/8				10/6/17	10/13/17
	Wks 1 - 3					
	Budget	Actual	\$ Var	\$ Var		
9/29	9/29					
Invoicing - DCT		283,350			151,411	46,630
DCT Collections	292,037	11,362	(280,675)	(96%)		
Thermotech Collection	37,730	147,961	110,231	292%	238,367	23,031
TEI October Production	-	-	-	-	-	-
Proceeds from Sale of DCT Inventory	-	-	-	-	-	-
Proceeds from Sale of TEI	-	-	-	-	-	-
Proceeds from Sale of DCT Fixed Assets	-	-	-	-	-	-
Total Receipts	329,767	159,323	(170,444)	(52%)	238,367	23,031
Disbursements:						
Vendors - TEI	-	4,216	4,216	-	-	-
Production Payroll - TEI	-	3,822	3,822	-	-	19,526
Service Payroll	-	-	-	-	-	-
Thermotech Admin Payroll	103,984	86,724	(17,260)	(17%)	-	15,393
Admin Payroll	100,493	80,225	(20,268)	(20%)	-	31,191
Employee Expense Reports	-	5,541	5,541	-	-	-
Health Insurance	41,000	24,043	(16,957)	(41%)	-	-
Facility Costs - SB	41,000	47,537	6,537	16%	14,000	-
Facility Costs = TT	41,500	-	(41,500)	(100%)	41,500	-
Insurance	-	-	-	-	-	30,000
Sales Tax - For August Receipts	-	1,058	1,058	-	-	-
GST Tax - For August Shipments	-	-	-	-	-	-
Freight	-	-	-	-	-	-
Field Repair Costs	-	-	-	-	-	-
License Royalty	-	-	-	-	-	-
Other	40,000	13,454	(26,546)	(66%)	12,000	12,000
Operating Disbursements	367,977	266,620	(101,357)	(28%)	67,500	108,109
Other Disbursements:						
Utility Deposits	-	-	-	-	-	9,000
Principal Payment - Term	163,637	-	(163,637)	(100%)	-	-
Debtor's BK Counsel to Escrow	95,000	70,000	(25,000)	(26%)	50,000	25,000
Debtor's BK Counsel Retainer Coverage	-	-	-	-	(25,000)	-
Debtor's FA to Escrow	40,000	40,000	-	-	10,000	10,000
Debtor's FA Retainer Coverage	(40,000)	(40,000)	-	-	(10,000)	(10,000)
Debtor's Special Counsel	15,000	10,000	(5,000)	(33%)	10,000	-
Secured Creditors' Professional Fees	-	-	-	-	-	-
Unsecured Creditor's Comm Counsel to Escrow	5,000	-	(5,000)	(100%)	10,000	5,000
US Trustee Fee	-	-	-	-	-	-
IB Fee	-	-	-	-	-	-
Interest Expense - Term Loan	-	-	-	-	-	-
Total Disbursements	646,614	346,620	(299,994)	(46%)	112,500	147,109
Net Cash Flow	(316,847)	(187,297)	129,550	(41%)	125,867	(124,078)
Cumulative Net Cash Flow					(61,430.47)	(185,509)
Cash Balance - Starting	368,495	372,256	3,761	1%	184,959	310,826
Cash Balance - Ending	92,648	184,959	92,311	100%	310,826	186,747
KeyBank Term Loan Beginning Balance	1,933,328	1,933,328	-	-	1,933,328	1,933,328
Less Paydown	(163,637)	-	163,637	(100%)	-	-
KeyBank Term Loan Ending Balance	1,769,691	1,933,328	163,637	9%	1,933,328	1,933,328
TEI - Accounts Receivable		790,096			894,536	918,135