IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
CONEXANT SYSTEMS, INC., *et al.*,[1]	)	Case No. 13-10367 ( )
Debtors.	)	Joint Administration Requested

DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363(C), 363(E), 364 AND 507 AND FED. R. BANKR. P. 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING PURSUANT TO SECTION 364 OF THE BANKRUPTCY CODE, (II) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (III) GRANTING LIENS AND SUPER-PRIORITY CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES AND (V) SCHEDULING A FINAL HEARING PURSUANT TO FED. R. BANKR. P. 4001(B) AND (C)

Conexant Systems, Inc. and its debtor affiliates as debtors in possession in the above-captioned chapter 11 cases (collectively, the "***Debtors***" or "***Conexant***"),[2] respectfully represent:

Jurisdiction

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

2. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

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1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); Conexant Systems Worldwide, Inc. (0601); Conexant CF, LLC (6434). The Debtors' main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

2 A detailed description of the Debtors and their businesses, and the facts and circumstances supporting this motion and the Debtors' chapter 11 cases, are set forth in greater detail in the Declaration of Sailesh Chittipeddi in Support of First Day Pleadings (the "***First Day Declaration***"), filed contemporaneously with the Debtors' voluntary petitions for relief filed under chapter 11 of title 11 of the United States Code (the "***Bankruptcy Code***"), on February 28, 2013 (the "***Petition Date***").

3. The bases for the relief requested herein are sections 105, 361, 362, 363(c), 363(e), 364 and 507 of the Bankruptcy Code, Rules 2002, 4001, 6003, 6004 and 9014 of the Federal Rules of Bankruptcy Procedure (the "***Bankruptcy Rules***") and Rules 2002, 4001 and 9014 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "***Local Rules***").

Introduction

4. Conexant operates in a highly competitive marketplace that demands access to liquidity and flexibility to act quickly to satisfy customer demands and maintain operating stability. Conexant's customers are primarily large, multinational corporations that have many choices when it comes to choosing their semiconductor suppliers. And Conexant's chip suppliers and manufacturers are similarly large multinational corporations that have substantial market power and are not bound in most instances by long-term contracts. Thus, with both its customers and its suppliers, Conexant's success rests in large part in the confidence and belief that its counterparties have in Conexant's ability to serve as a long-term partner. Without inspiring confidence in its counterparties that it has sufficient access to liquidity, Conexant would without question be at a significant disadvantage.

5. For these and other reasons described herein, Conexant and its advisors worked to ensure that upon the commencement of these chapter 11 cases, Conexant would have in hand not only an agreement to right-size its highly leveraged balance sheet on an expedited basis, but also obtain a commitment — through debtor in possession financing that ultimately converts into equity in the reorganized Debtors — to provide necessary capital for operational purposes. With this background, the Debtors embarked upon discussions with Conexant's sole prepetition secured lender (the "***Secured Lender***") and other potential third party providers of financing to procure debtor in possession financing to effectuate the Debtors' restructuring.

6. These endeavors were successful. An affiliate of the Secured Lender has agreed to provide Conexant with a $15 million new-money, senior-secured credit facility (the "***DIP Financing***" or the "***DIP Facility***"), the terms of which the Debtors submit are reasonable following extensive arm's-length negotiations.[3] Although the Debtors, through their advisors, searched for alternative financing arrangements, the Secured Lender indicated an unwillingness to be "primed." In the face of this, as well as timing and execution risk associated with any third party financing, the Debtors believe the DIP Financing is the best and only financing available under the circumstances.

7. To implement its restructuring and continue to retain and inspire confidence in its business partners, access to liquidity is critical. The DIP Financing will provide $15 million in incremental liquidity that the Debtors believe is necessary to operations and successfully emergence from chapter 11 on an expedited basis. In short, to ensure the Debtors have access to liquidity and inspire confidence in the marketplace in demonstrating the Debtors have the funding and financial support necessary to implement the Plan and emerge from these chapter 11 cases as a serious competitor in the semiconductor marketplace, the Debtors submit the DIP Financing is necessary and should be approved.

Relief Requested

8. By this motion, the Debtors request entry of interim (the "***Interim Order***") a copy of which is attached hereto as **Exhibit A** and final orders (the "***Final Order***" and, together with the Interim Order, the "***DIP Orders***"), authorizing the Debtors enter into the $15 million Senior Secured Super-Priority Debtor in Possession Credit Agreement (substantially in the form

[3] Contemporaneously herewith, the Debtors have filed a pre-negotiated plan of reorganization that is supported by the Secured Lender (the "***Plan***").

annexed as **Exhibit B** attached hereto and incorporated herein by reference, the "***DIP Credit Agreement***")[4] and use cash collateral. In support of this motion, the Debtors submit the Declaration of Shawn Hassel, a Managing Director of Alvarez & Marsal North America, LLC ("***A&M***"), the Debtors' proposed financial advisor, filed contemporaneously herewith (the "***Hassel Declaration***"). More specifically, the Debtors seek authority to:

a. permit the Debtors, pursuant to the Interim Order to borrow up to $5 million under the DIP Facility and $15 million on a final basis;

b. grant first-priority senior priming security interests in and liens upon (collectively, the "***DIP Liens***") all prepetition and postpetition assets of the Debtors (collectively, the "***DIP Collateral***") to the DIP Lender (defined herein), as provided for by section 364(c) and (d) of the Bankruptcy Code (subject to certain exceptions as specified in the DIP Credit Agreement);

c. grant super-priority administrative claims (the "***Superpriority Claim***") to the DIP Lender pursuant to section 364(c) of the Bankruptcy Code, subject to the Carve-Out (defined herein);

d. use cash collateral (as such term is defined in section 363 of the Bankruptcy Code) of the Secured Lender (the "***Cash Collateral***");

e. vacate the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement and effectuate the terms and provisions of the DIP Credit Agreement, the Interim Order and the Final Order;

f. waive any applicable stay, including under Bankruptcy Rule 6004, to provide for immediate effectiveness of the Interim Order; and

g. pursuant to Bankruptcy Rule 4001, set a date for a hearing to consider entry of the Final Order within 30 days of entry of the Interim Order, authorizing and approving the transactions described herein on a final basis.

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[4] Specifically, the Debtors seek authority to enter into the DIP Credit Agreement and the postpetition financing made available hereby, among Conexant Systems, Inc. (the "***Borrower***"); and the other credit parties on the signature pages to the DIP Credit Agreement (collectively, the "***Credit Parties***" and with the Borrower, the "***Borrowers***"); and QP SFM Capital Holdings Ltd. as administrative agent and the Lender (in such capacity, the "***DIP Lender***").

Concise Statement Pursuant to
Bankruptcy Rule 4001(c) Summarizing Terms of the Proposed DIP Financing

9. Pursuant to Bankruptcy Rule 4001(c), the Debtors submit this concise statement of the material terms of the DIP Financing, as specified in the DIP Credit Agreement and the Interim Order, substantially in the form attached hereto as **Exhibit A**.[5]

Provision	Summary Description
Amount of Borrowing *See* Annex 1 to DIP Credit Agreement, Annex A to DIP Credit Agreement (definition of "Commitments"	$15 million debtor-in-possession credit facility, comprised a super-senior secured delayed-draw term loan in the amount of $15 million.
Interest Rate and Margins DIP Credit Agreement at § 1.6(a).	The sum of Adjusted LIBOR plus 7.00%.
Default Interest and Fees DIP Credit Agreement at § 1.6(d)	Interest Rate + 2%
Fees DIP Credit Agreement at §§ 2.1(h), 13.3.	All costs and expenses (including reasonable legal fees) required to be paid to the DIP Lender in connection with negotiation, preparation and filing and/or recordation of the Loan Documents.
Maturity Annex A to DIP Credit Agreement (definition of "Maturity Date" and "Scheduled Maturity Date).	The Maturity Date is the earliest of: (i) 120 days after the Closing Date; (ii) the effective date of the Plan; and (iii) consummation of any sale of all or substantially all of the assets of the Borrower and it subsidiaries pursuant to section 363 of the Bankruptcy Code.
Mandatory Prepayment DIP Credit Agreement at § 1.3(b)	Upon receipt by the Debtors of Net Cash Proceeds in excess of $150,000 in the aggregate arising from an Asset Sale or Property Loss Event, the Debtors shall promptly prepay the Term Loan in an amount equal to 100% of the Net Cash Proceeds.
Events of Default DIP Credit Agreement at § 8.1(b).	In addition to standard and customary events of default, any event that occurred that permits the Consenting Secured Lender to terminate its obligations under the Restructuring Support Agreement filed contemporaneously herewith.
Priority of DIP Facility Liens and Effect on Existing Liens DIP Credit Agreement at ¶ 3.18;	Subject to the Carve-Out, the granting of junior liens on all prepetition assets of the of the Debtors to the extent such assets are subjected to valid, fully perfected and unavoidable liens in favor of third parties as of the Petition Date pursuant to section

[5] Capitalized terms used but not otherwise defined in this concise statement shall have the meanings ascribed to such terms in the DIP Credit Agreement. This concise statement is qualified in its entirety by reference to the provisions of the DIP Credit Agreement and the Interim Order, as applicable. To the extent of any inconsistency between this concise statement and the provisions of the DIP Credit Agreement and the Interim Order, the Interim Order shall govern.

Provision	Summary Description
Interim Order at ¶ 9.	364(c)(3) of the Bankruptcy Code; and valid, binding, continuing, enforceable, fully perfected and unavoidable first-priority senior priming security interests in and liens upon (collectively, the "***DIP Facility Liens***") on all other prepetition and postpetition assets of the Debtors including those assets securing the Senior Secured Notes pursuant to section 364(d) of the Bankruptcy Code (collectively, the "***DIP Collateral***").
Super-priority Administrative Claims Interim Order at ¶ 7.	The claim for repayment of the DIP Obligations under the DIP Credit Agreement, subject only to the Carve-Out have priority over any and all administrative expenses, including, without limitation, the kind specified in sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 of the Bankruptcy Code or otherwise and no other superpriority claims shall be granted or allowed in the these chapter 11 cases but for those set forth in the Interim Order.
DIP Budget[6] Annex A to DIP Credit Agreement (definition of "Budget").	The 13-week Budget, including the Initial Budget which update shall be acceptable to the Lenders in their sole discretion in accordance with section (e) of Annex D of the DIP Credit Agreement. Notwithstanding anything to the contrary contained herein, each Lender's approval of the Budget is given solely in its capacity as a Lender under the DIP Credit Agreement, and such approval does not constitute approval of the Budget for any other purpose, including without limitation, any other contractual arrangement between such Lender and the Debtors
Carve-Out Interim Order at ¶ 8.	The DIP Liens, Superpriority Claims, the adequate protection liens and claims of the DIP Lender as provided for in the Interim Order shall be subject to the following: (i) unpaid fees of the Clerk of the Bankruptcy Court and the U.S. Trustee pursuant to 28 U.S.C. § 1930(a); (ii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid fees, disbursements, costs and expenses (collectively, the "***Professional Fees***") incurred by professionals or professional firms (collectively, the "***Professional Persons***") retained by (x) the Debtors pursuant to Bankruptcy Code sections 327 and 363 and (y) any committee appointed in these Chapter 11 Cases pursuant to Bankruptcy Code 1102 (a "***Committee***") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice (as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; and (iii) after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order or otherwise, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed $500,000 (the "***Carve-Out***").

6 A 13-week budget with respect to the DIP Financing is attached hereto as **Exhibit 1** to **Exhibit B**.

Provisions to be Highlighted Pursuant to Local Rule 4001-2(a)(i)

10. The DIP Credit Agreement includes certain provisions the Debtors are required to highlight pursuant to Local Rule 4001-2(a)(i). As discussed in detail herein, the Debtors believe these provisions are reasonable in light of the facts and circumstances of these chapter 11 cases and should be approved.

a. **Local Rule 4001-2(a)(i)(B) – *Validity, Perfection and Amount of Prepetition Obligations*,** Interim Order at ¶ 4. As part of the Interim Order, the Debtors agree and stipulate that the Prepetition Secured Notes Indenture is a valid and binding agreement, and the Liens related to the Senior Secured Notes (as defined in the Prepetition Secured Notes Indenture) granted pursuant to the Indenture constitute valid, binding, enforceable and perfected Liens. Additionally, the Debtors have waived, discharged and released any right they may have to challenge any of the indebtedness pursuant to the Senior Secured Notes or the security for those obligations.

b. **Local Rule 4001-2(a)(i)(B) – *Committee Challenge Period*,** Interim Order at ¶ 21. All non-debtor parties in interest (including any trustee or Committee appointed or elected in the Cases prior to the Investigation Termination Date (as defined herein)) shall have until the earlier of (i) seventy-five (75) days from the date of the Interim Order or (ii) sixty (60) days from the date a Committee is first appointed to investigate the validity, perfection, and enforceability of the Liens of the Secured Lender and the claims of the Secured Lender (and to assert any claims or causes of action against any of the Secured Lender as described in paragraph 21 of the Interim Order).

c. **Local Rule 4001-2(a)(i)(D) – *Waiver of Section 506(c) Claims*,** Interim Order at ¶ 11. Subject to entry of the Final Order, with the exception of the Carve-Out, neither the DIP Collateral, Cash Collateral or Senior Secured Notes Collateral shall be subject to surcharge, pursuant to sections 105, 506(c) or 552 of the Bankruptcy Code or otherwise, by the Debtors or any other party in interest without the prior written consent of the DIP Lender, the Prepetition Indenture Trustee or the Prepetition Noteholders, as applicable.

d. **Local Rule 4001-2(a)(i)(D) – *Liens on Avoidance Actions*,** Interim Order at ¶ 7. Subject to entry of the Final Order, fully perfected and unavoidable first-priority senior priming security interests in and liens upon avoidance actions under Chapter 5 of the Bankruptcy Code and/or the proceeds thereof pursuant to sections 502(d), 544, 545, 547, 548, 550 and/or 553 of the Bankruptcy Code and the proceeds thereof.

e. **Local Rule 4001-2(a)(i)(F) – *Treatment of Committee Professionals*,** Interim Order at ¶ 8. The Committee's professional fees are included in the Carve-Out. As discussed above, each of the DIP Liens and Superpriority Claims are subject and subordinate to the Carve-Out.

The Debtors' Outstanding Prepetition Indebtedness

A. The Senior Secured Notes

11. Conexant issued $175 million of senior secured notes (the "***Senior Secured Notes***") pursuant to the Indenture dated March 10, 2010 (the "***Indenture***"). The parties to the Indenture include Conexant Systems, Inc. and certain of its subsidiaries as guarantors (each, a "***Subsidiary Guarantor***")[7] and the Bank of New York Mellon Trust Company, N.A. as Trustee and as Collateral Trustee (the "***Trustee***" and "***Collateral Trustee***"). As of February 25, 2013, indebtedness outstanding under the Indenture on account of the Senior Secured Notes totaled approximately $193.64 million, including accrued interest and fees.

12. The Senior Secured Notes are secured by the Debtors' inventory, equipment, goods, documents, instruments, chattel paper, letters of credit, letter-of-credit rights, securities collateral, investment property, intellectual property, general intangibles, deposit accounts and the proceeds and products of each of the foregoing categories of collateral except for certain

[7] The Subsidiary Guarantors under the indenture are each of: Conexant, Inc.; Brooktree Broadband Holding, Inc.; and Conexant Systems Worldwide, Inc.

"Excluded Assets" (as defined in the Indenture). As contemplated in the Indenture, "Excluded Assets" includes Receivables and all cash (other than proceeds of the Collateral).[8]

13. During the Debtors' efforts to obtain debtor in possession financing, the Secured Lender argued that the Excluded Assets constituted traceable proceeds of the Debtors' Inventory, on which the Secured Lender has a perfected, senior-secured lien.[9] *See* N.Y. U.C.C. Law § 9-102 (McKinney);[10] N.Y. U.C.C. Law § 9-315(b)(2) (McKinney)*; see also In re Pasco Sales Co., Inc.*, 354 N.Y.S.2d 402, 405 (N.Y. Sup. 1974) (holding that a perfected security interest in collateral entitles the creditor to proceeds of the collateral); *see also American Nat. Bank v. Cloud*, 201 Cal. App. 3d 766, 775 (1988) (holding that obligations to the seller incurred by its purchaser, such as accounts receivable, are also proceeds and liens on underlying collateral attach to the proceeds thereof); *Bank of New York vs. Margiotta*, 416 N.Y.S. 2d 493, 495 (Dist. Ct. 1979) ("a security interest continues in any identifiable proceeds of the collateral covered by the secure agreement").

14. Importantly, this position complicated the possibility of third party financing and ensured in all circumstances that any third party financing would be the source of dispute absent the Secured Lender's express consent. Notwithstanding the Secured Lender's position, and to avoid litigation risk and administrative burdens associated with any challenge to the Secured Lender's claimed lien on "Excluded Assets," the Debtors assumed — for purposes of negotiating with the Secured Lender on the terms of the Plan — that the Secured Lender did not in fact have

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8 *See* Indenture, Art. I, §1.1, "Excluded Assets."

9 *See* Indenture, Art. I, §1.1, "Collateral."

10 See Indenture, Art. XII, § 12.9 (The "Indenture . . . shall be governed by . . . the laws of the state of New York.")

a lien on the Excluded Assets. As a result, and in settlement of this potential dispute, the Plan contemplates a distribution to unsecured creditors of $2.0 million.

The Debtors' Liquidity Needs

15. As discussed in the First Day Declaration, as a result of the shrinking demand for the Debtors' products and its burdensome and expensive debt load, the Debtors have experienced significant, consistent losses since the first quarter of 2011.

16. Decreased earnings and revenues have translated into a sharp decline in performance, placing stress on business operations and ultimately leading to the Debtors' inability to satisfy the semi-annual $9.8 million interest payment due under the Indenture in September 2012, for which the grace period expired in October 2012. These circumstances have placed a heavy strain on the Debtors' relationships with specialized third-party vendors and customers that are vital to the Debtors' operations.

17. In the face of these chapter 11 cases, absent an ability to demonstrate that the Debtors have the means apart from cash-on-hand available to operate in the ordinary course and procure goods and services that are vital to ongoing business operations, vendors and suppliers may seek alternative sources of distribution, resulting in disruption to the Debtors' supply chain. The vendor and customer community in Conexant's industry is highly competitive and the Debtors' customers and suppliers are extremely cautious to provide goods and services when receipt of payment is uncertain. Any disruption in the Debtors' supply chain at this critical juncture would cause a severe reduction in the Debtors' cash on hand.

18. Immediate access to the DIP Facility and the use of cash collateral will enable the Debtors to allay concerns of the Debtors' suppliers and customers and enable the Debtors to carry on with business as usual. Absent access to liquidity, the Debtors' ability to operate and ultimately restructure as a going concern will be jeopardized, all to the detriment of the Debtors'

stakeholders and the business partners that Conexant deals with on a day-to-day basis. As a result, the Debtors have an immediate need to secure the DIP Financing to ensure that working capital is available on an interim basis and throughout the pendency of these chapter 11 cases.

The Debtors' Efforts to Obtain Postpetition Financing[11]

19. Beginning in January 2013, following attempts to effectuate an out-of-court restructuring or sale of substantially all of the Debtors' assets, the Debtors — through A&M — initiated a process to identify potential sources of funding. A&M sought to procure potential sources of financing that could provide the Debtors with approximately $15 million, which the Debtors estimated as necessary to continue operations until emergence of these chapter 11 cases. With increased customer and vendor pressures, A&M sought postpetition financing that would be provided quickly and consensually.

20. A&M contacted eight (8) parties in addition to the Prepetition Secured Lender, which included banks and funds that specialize in debtor in possession financing. In response to questions and to be candid at the outset, the Debtors made clear that the Secured Lender was unwilling to be primed consensually. Largely, as a result of a potential contested priming fight, a compressed timeline, and that the Debtors' inventory is overseas, none of the parties approached by A&M expressed an interest in providing postpetition financing.

21. After hard-fought negotiations, the Prepetition Secured Lender provided a post-petition delayed draw term loan lending facility and required only limited due diligence because of their familiarity with the Debtors' businesses. The Prepetition Secured Lender agreed with

[11] For a more detailed discussion of the Debtors' efforts to obtain postpetition financing, see the Hassel Declaration, attached hereto as **Exhibit B**.

the Debtors request for $15 million of liquidity as being appropriate and necessary to maintain the Debtors' operations through these chapter 11 cases.

Development of the DIP Budget and the Debtors' Liquidity Needs[12]

22. To best assess the Debtors' funding needs during these chapter 11 cases, the Debtors, with the assistance of their advisors, analyzed their cash needs to determine what is necessary to maintain their operations in chapter 11 and work toward a successful reorganization. The Debtors developed a 13-week cash flow forecast that considers the savings derived the filings of these cases, including potential lease rejections and the Debtors' ability to maintain customary payment terms with key suppliers.

23. Based on the Debtors' financial projections, the Debtors concluded that cash on hand alone would be insufficient to fund operations and the Debtors' business plan throughout the pendency of these chapter 11 cases. Thus, to provide the Debtors with appropriate and necessary financing, obtaining debtor-in-possession financing was critical to ensure that operations would continue uninterrupted during these chapter 11 cases.

24. Utilizing this cash flow forecast to project their cash needs during these chapter 11 cases, the Debtors believe that access to approximately $5 million in liquidity is necessary for operations on an interim basis. The Debtors believe vendors may tighten credit terms or stop shipments, which would result in a severe reduction to the Debtors' cash on hand. Therefore, without approval of the relief requested herein, the Debtors believe they may face significant liquidity constraints in the coming weeks.

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12 For a more detailed discussion of the Debtors' liquidity needs and development of the DIP Budget, see the Hassel Declaration, attached hereto as **Exhibit B**.

Supporting Authority

A. Financing Under Section 364 of the Bankruptcy Code

25. Pursuant to section 364(c) of the Bankruptcy Code, a court may authorize a debtor to incur debt that is: (a) entitled to a superpriority administrative expense status; (b) secured by a lien on otherwise unencumbered property; or (c) secured by a junior lien on encumbered property if the debtor cannot obtain postpetition credit on an unsecured basis, as an administrative expense priority or secured solely by junior liens on the debtor's assets. *See* 11 U.S.C. § 364(c);[13] *see also Pearl-Phil GMT (Far East) Ltd. v. Caldor Corp.*, 266 B.R. 575, 584 (S.D.N.Y. 2001) (authorizing superpriority administrative expenses where debtor could not obtain credit as an administrative expense).

26. Additionally, section 364(d)(1) of the Bankruptcy Code provides that a court may authorize a debtor to incur postpetition debt on a senior or "priming" basis if (a) the debtor is unable to obtain credit otherwise and (b) there is "adequate protection" of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted. *See* 11 U.S.C. § 364(d)(1).

27. Courts in this jurisdiction and others have fashioned guidelines in applying these statutory requirements. Generally, courts advocate using a "holistic approach" to evaluate

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[13] Specifically, section 364(c) of the Bankruptcy Code provides, in pertinent part, that:

> If the trustee [or debtor in possession] is unable to obtain unsecured credit allowable under section 503(b)(1) of this title as an administrative expense, the court, after notice and a hearing, may authorize the obtaining of credit or the incurring of debt – (1) with priority over any or all administrative expenses of the kind specified in section 503(b) or 507(b) of this title; (2) secured by a junior lien on property of the estate that is not otherwise subject to a lien; or (3) secured by a junior lien on property of the estate that is subject to a lien.

11 U.S.C. § 364(c).

superpriority postpetition financing agreements, focusing on the transaction as a whole. As one court has noted:

> Obtaining credit should be permitted not only because it is not available elsewhere, which could suggest the unsoundness of the basis for use of the funds generated by credit, but also because the credit acquired is of significant benefit to the debtor's estate and . . . the terms of the proposed loan are within the bounds of reason, irrespective of the inability of the debtor to obtain comparable credit elsewhere.

In re Aqua Assocs., 123 B.R. 192, 196 (Bankr. E.D. Pa. 1991).

28. More specifically, in evaluating a debtor's proposed postpetition financing, courts consider whether the postpetition financing (a) is necessary to preserve the assets of the estate and is necessary, essential and appropriate for continued operation of the Debtors' business, (b) is in the best interests of the Debtors' creditors and estates, (c) is an exercise of a debtor's sound and reasonable business judgment, (d) was negotiated in good faith and at arm's length between the debtor, on the one hand, and the agents and the lenders on the other and (e) contains terms that are fair, reasonable and adequate given the circumstances of the debtor and the proposed postpetition lender. *In re Farmland Indus., Inc.*, 294 B.R. 855, 862-79 (Bankr. W.D. Mo. 2003); see also *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990); *In re Barbara K. Enters., Inc.*, No. 08-11474, 2008 WL 2439649, at *10 (Bankr. S.D.N.Y. June 16, 2008).

29. The Debtors submit that entry into the DIP Facility is in the best interests of the Debtors' creditors, is necessary to preserve the value of estate assets and is an exercise of the Debtors' sound and reasonable business judgment.

i. Entry into the DIP Facility is in the Best Interests of the Debtors' Creditors and Estates, is Necessary to Preserve Estate Assets and is an Exercise of the Debtors' Sound and Reasonable Business Judgment

31. A debtor's decision to enter into a postpetition lending facility under section 364 of the Bankruptcy Code is governed by the business judgment standard. *See, e.g., Trans World Airlines, Inc. v. Travellers Int'l AG* (*In re Trans World Airlines, Inc.*), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment."); *Ames Dep't Stores*, 115 B.R. at 38 (noting that financing decisions under section 364 of the Bankruptcy Code must reflect a debtor's business judgment); *Barbara K. Enters.*, 2008 WL 2439649, at *14 (explaining that courts defer to a debtor's business judgment "so long as a request for financing does not 'leverage the bankruptcy process' and unfairly cede control of the reorganization to one party in interest.").

32. Generally, the business judgment standard requires that, absent evidence to the contrary, a debtor in possession is afforded discretion to act with regard to business decision-making. *See In re Simasko Prod. Co.*, 47 B.R. 444, 449 (Bankr. D. Colo. 1985) ("[D]iscretion to act with regard to business planning activities is at the heart of the debtor's power.") (citations omitted).

33. Specifically, to determine whether the business judgment standard is met, a court is "required to examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs.*, 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs.*, 14 B.R. 506, 513-14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's] authority under the [Bankruptcy] Code.") (citation omitted).

34. The Debtors' decision to enter into the proposed DIP Facility satisfies this standard. This decision is the culmination of an intense, several month-long process targeted at procuring the best available financing under the circumstances. And while this is the only financing available under the circumstances, the Debtors negotiated the DIP Financing on an arm's-length basis that the Debtors submit is reasonable and appropriate. Moreover, it is critical that the Debtors assure their customers that they will operate in the ordinary course of business and have the resources in place to do so.

35. Therefore, entry into the DIP Facility and securing the financing available thereunder is critical to the preservation of estate assets and is in the best interest of the Debtors' creditors and all parties in interest. Thus, entry into the DIP Facility is an exercise of the Debtors' sound business judgment.

ii. The Terms of the DIP Facility are Fair, Reasonable and Appropriate in Light of the Debtors' Needs and the Current Market Environment

36. It is well-recognized in this jurisdiction and others that the appropriateness of a proposed postpetition financing facility must be considered in light of current market conditions. *See, e.g., In re Snowshoe Co. Inc.*, 789 F.2d 1085, 1088 (4th Cir. 1986) (noting that a debtor is not required to seek credit from every possible lender before determining such credit is unavailable). Indeed, courts often recognize that where there are few lenders likely, able and willing to extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [a debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc.*, 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd*, 99 B.R. 117 (N.D. Ga. 1989); *see also In re Garland Corp.*, 6 B.R. 456, 461 (B.A.P. 1st Cir. 1980) (authorizing secured credit under section 364(c)(2), after notice and a hearing, upon showing that unsecured credit was unobtainable); *In re Stanley Hotel, Inc.*, 15 B.R. 660, 663 (D. Colo. 1981) (finding refusal of two national banks to

grant unsecured loans was sufficient to support conclusion that requirements of section 364 requirement had been met); *Ames*, 115 B.R. at 37-39 (holding that debtor must show that it made reasonable efforts to seek other sources of financing under section 364(a) and (b)).

37. Rather, a debtor must demonstrate that it made a reasonable effort to seek credit from other sources available under sections 364(a) and 364(b) of the Bankruptcy Code. *See Snowshoe*, 789 F.2d at 1088; *see also In re Plabell Rubber Prods., Inc.*, 137 B.R. 897, 899-900 (Bankr. N.D. Ohio 1992).

38. The Debtors' efforts to obtain alternative postpetition financing made clear that there is no ready market for the Debtors to obtain financing on any terms other than a senior secured, superpriority basis. As discussed above and in the Hassel Declaration attached hereto as **Exhibit C**, the DIP Financing was the only available financing under the circumstances. Indeed, discussions with other potential lenders were stalled because of diligence requirements and time constraints or because third-parties were simply uninterested in the costs and risk — as were the Debtors — attendant to a priming fight over the Secured Lender's objection. Accordingly, the Debtors submit that the terms of the DIP Credit Agreement are reasonable and represent the best source of financing available to the Debtors under the circumstances.

39. Further, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland*, 294 B.R. at 886; *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (recognizing a debtor may have to enter into hard bargains to acquire funds for its reorganization). Here, despite the unavailability of alternative postpetition financing, the Debtors, with the assistance of A&M, conducted hard-fought negotiations to

ensure that the terms of the DIP Financing were appropriate under the circumstances, with the end result being that the terms of the DIP Financing are comparable to financings approved over the past few months. Hassel Decl. at ¶ 13.

a. The Scope of the Carve-Out is Appropriate

40. The proposed DIP Facility subjects the security interests and administrative expense claims of the DIP Lender to the Carve-Out. Similar carve-outs for professional fees have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel. *See Ames*, 115 B.R. at 40. The DIP Facility does not directly or indirectly deprive the Debtors' estates or other parties in interest of possible rights and powers by restricting the services for which professionals may be paid in these cases. *See Ames*, 115 B.R. at 38 (observing that courts insist on carve-outs for professionals representing parties-in-interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of these chapter 11 cases by ensuring that assets remain for the payment of U.S. Trustee fees and professional fees of the Debtors and a committee of unsecured creditors, notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facility.

b. The Payment of Fees to the DIP Lender is Appropriate

41. The fees and charges to be paid to the DIP Lender, as expressly provided for in section 1.6 of the DIP Credit Agreement, are reasonable and appropriate under the circumstances. Courts routinely authorize similar lender incentives beyond the explicit liens and rights specified in section 364 of the Bankruptcy Code. *See In re Defender Drug Stores, Inc.*, 145 B.R. 312, 316 (9th Cir. BAP 1992) (approving financing facility pursuant to section 364 of the Bankruptcy Code that included a lender "enhancement fee").

B. The DIP Facility was Negotiated in Good Faith and Should be Afforded the Protection of Section 364(e) of the Bankruptcy Code

42. Pursuant to section 364(e) of the Bankruptcy Code, any reversal or modification on appeal of an authorization to obtain credit or incur debt or a grant of priority or a lien under section 364 of the Bankruptcy Code shall not affect the validity of that debt incurred or priority or lien granted as long as the entity that extended credit "extended such credit in good faith." *See* 11 U.S.C. § 364(e).

43. The terms of the DIP Facility were negotiated in good faith and at arm's-length between the Debtors and the DIP Lender, and the DIP Obligations will be extended by the DIP Lender in good faith (as such term is used in section 364(e) of the Bankruptcy Code). No consideration is being provided to any party in connection with the DIP Financing other than as set forth herein. Moreover, the DIP Facility has been extended in express reliance upon the protections afforded by section 364(e) of the Bankruptcy Code and the DIP Lender should be entitled to the full protection of section 364(e) of the Bankruptcy Code in the event that the Interim Order or any provision thereof is vacated, reversed or modified on appeal or otherwise. *See* 11 U.S.C. § 364(e).

C. The Debtors' Proposed Grant of Adequate Protection to Use Cash Collateral is Appropriate

44. As discussed above, the DIP Financing contemplates providing the DIP Lender with priming liens on the liens granted to the Secured Lender pursuant to section 364(d) of the Bankruptcy Code. Accordingly, the Debtors are required to show that the interests of the Secured Lender are "adequately protected." 11 U.S.C. § 364(d). Additionally, pursuant to section 363(c) of the Bankruptcy Code, the Debtors may only use cash collateral of the Secured Lenders subject to the consent of those parties or the grant of adequate protection. 11 U.S.C. § 363(c)(2).

45. What constitutes adequate protection is decided on a case-by-case basis and it can come in various forms, including payment of adequate protection fees, payment of interest, granting of replacement liens and administrative claims. *See In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case"); *see also In re Realty Southwest Assocs.*, 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted); *see also In re Continental Airlines Inc.*, 154 B.R. 176, 180-181 (Bankr. D. Del. 1993).

46. In this case, access to the DIP Financing – which necessitates granting the DIP Lender's liens on a priming basis under section 364(d) of the Bankruptcy Code – is critical to the Debtors' ability to continue operations. As a result of such proposed priming, the Debtors intend to provide the DIP Lender with the Adequate Protection Obligations, which include: (i) liens in all DIP Collateral and Cash Collateral; (ii) for the extent of any diminution in value of their interests in the Prepetition Security Interests, superpriority administrative claims. Interim Order, ¶ 15.

47. The Debtors believe that the proposed Adequate Protection Obligations are necessary and appropriate to ensure that the Debtors can continue to use Cash Collateral and access necessary liquidity under the DIP Financing. Accordingly, the Adequate Protection Obligations proposed herein and in the DIP Orders is fair and reasonable and is sufficient to

satisfy the requirements of sections 363(c) and 364(d) of the Bankruptcy Code. *See* 11 U.S.C. §§ 363(c), 364(d).

D. Approval of the DIP Facility on an Interim Basis is Necessary to Prevent Immediate and Irreparable Harm.

48. Bankruptcy Rule 4001(c)(2) governs the procedures for obtaining authorization to obtain postpetition financing and provides, in relevant part:

> The court may commence a final hearing on a motion for authority to obtain credit no earlier than 14 days after service of the motion. If the motion so requests, the court may conduct a hearing before such 14 day period expires, but the court may authorize the obtaining of credit only to the extent necessary to avoid immediate and irreparable harm to the estate pending a final hearing.

Fed. R. Bankr. Proc. 4001(c)(2).

49. In examining requests for interim relief under the immediate and irreparable harm standard, courts apply the same business judgment standard applicable to other business decisions. *See, e.g.*, *Ames Dep't Stores*, 115 B.R. at 36; *Simasko*, 47 B.R. at 449. After the 14-day period, the request for financing is not limited to those amounts necessary to prevent the destruction of the debtor's business, and the debtor is entitled to borrow those amounts that it believes are prudent to the operation of its business. *Ames Dept. Stores* at 36.

50. Immediate and irreparable harm would result if the relief requested herein is not granted on an interim basis. As described in detail herein, the Debtors have an immediate need to obtain access to incremental liquidity. The Debtors' relationships with their employees, customers and suppliers are paramount to the Debtors' success in the competitive semiconductor industry. The Debtors must be able to communicate to their key stakeholders located throughout the world that Conexant will continue to operate in the ordinary course, satisfy any critical payment obligations and continually satisfy other general working capital and operational needs, and that necessitates access to capital.

51. Accordingly, the Debtors believe that absent access to liquidity under the DIP Facility, the Debtors' vendors may cease to provide goods and services to the Debtors, which would be crippling to the Debtors' businesses. Thus, availability of sufficient working capital and liquidity — and the ability to message to key stakeholders that the funding is available — is imperative to preserve and maintain the value of the Debtors' estates.

52. The crucial importance of a debtor's ability to secure postpetition financing to prevent immediate and irreparable harm to its estate has been repeatedly recognized in this district. *See, e.g., In re Friendly Ice Cream Corp.*, Case No. 11-13167 (KG) (Bankr. D. Del. Oct. 6, 2011); *In re Nebraska Book Company, Inc.*, Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011); *In re Appleseed's Intermediate Holdings LLC*, Case No. 11-10160 (KG) (Bankr. D. Del. Jan. 20, 2011); *In re Local Insight Media Holdings, Inc.*, Case No. 10-13677 (KG) (Bankr. D. Del. Nov. 19, 2010); *In re U.S. Concrete, Inc.*, Case No. 10-11407 (PJW) (Bankr. D. Del. April 30, 2010); *In re Atrium Corporation*, Case No. 10-10150 (BLS) (Bankr. D. Del. Jan. 21, 2010).

E. Modification of the Automatic Stay Provided Under Section 362 of the Bankruptcy Code is Appropriate Under the Circumstances.

53. The Interim Order proposes that the automatic stay imposed under section 362(a) of the Bankruptcy Code be lifted to allow the DIP Lender to file the Interim Order or such financing statements, mortgages, deeds of trust, notices of lien, or similar instruments or otherwise confirm perfection of such liens, security interests and mortgages. Interim Order, ¶ 6. The Interim Order also proposes that, upon five business days written notice to the Debtors, the Debtors' counsel and the Committee's counsel, the automatic stay imposed under section 362(a) of the Bankruptcy Code be lifted to allow the DIP Lender to exercise remedies following a default under the DIP Facility. Interim Order, ¶ 10.

54. Stay modification provisions of this sort are ordinary and usual features of debtor in possession financing facilities and, in the Debtors' business judgment, are reasonable under the present circumstances. Accordingly, the Court should modify the automatic stay to the extent contemplated under the DIP Credit Agreement and the proposed DIP Orders.

Request For Final Hearing

55. Pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2) and Local Rule 4001-2(c), the Debtors requests that the Court set a date for the final hearing that is as soon as practicable, but in no event later than 35 days following the Petition Date, and fix the time and date prior to the final hearing for parties to file objections to this motion.

Waiver of Bankruptcy Rules Regarding Notice and Stay of an Order

56. To implement the foregoing successfully, the debtors seek a waiver of the notice requirements under Bankruptcy Rule 6004(a) and any stay of an order granting the relief requested herein pursuant to Bankruptcy Rule 6004(h), 7062, 9014 or otherwise.

Notice

57. The Debtors have provided notice of this motion to: (a) the Office of the United States Trustee for the District of Delaware; (b) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (c) counsel to the Debtors' prepetition secured lender and debtor in possession lender; (d) the agent for the Debtors' prepetition secured notes; (e) counsel to each of the prepetition equity holders; (f) the Delaware Secretary of State; (g) the Delaware Secretary of Treasury; (h) the Delaware State Attorney General; (i) the Office of the United States Attorney General for the State of Delaware; (j) the Internal Revenue Service; and (k) the Securities and Exchange Commission. In light of the nature of the relief requested in this motion, the Debtors respectfully submit that no further notice is necessary.

No Prior Request

58. No prior motion for the relief requested herein has been made to this or any other court.

[*Remainder of Page Intentionally Left Blank*]

WHEREFORE, for the reasons set forth herein, the First Day Declaration and in the Hassel Declaration, the Debtors respectfully request entry of the DIP Orders, (a) authorizing the Debtors to (i) enter into and perform under the DIP Credit Agreement and (ii) use Cash Collateral, (b) granting the Adequate Protection Obligations, (c) setting a date for a hearing to consider entry of the Final Order no later than 35 days following the Petition Date and (d) granting such other and further relief as may be appropriate.

Dated: February 28, 2013
Wilmington, Delaware

/s/ Domenic E. Pacitti

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Proposed Co-Counsel to the Debtors and Debtors in Possession

Exhibit A

Proposed Interim Order

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
CONEXANT SYSTEMS, INC., *et al.*,[1]	)	Case No. 13-10367 ( )
Debtors.	)	Joint Administration Requested

INTERIM ORDER PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 363(C), 363(E), 364 AND 507 AND FED. R. BANKR. P. 2002, 4001 AND 9014 (I) AUTHORIZING THE DEBTORS TO OBTAIN POSTPETITION FINANCING PURSUANT TO SECTION 364 OF THE BANKRUPTCY CODE, (II) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (III) GRANTING LIENS AND SUPER-PRIORITY CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO THE PREPETITION SECURED PARTIES AND (V) SCHEDULING A FINAL HEARING PURSUANT TO FED. R. BANKR. P. 4001(B) AND (C)

Upon the motion dated February 28, 2013 (the "DIP Motion") of Conexant Systems, Inc. ("Conexant") and its affiliated debtors, each as a debtor and debtor in possession (collectively with Conexant, the "Debtors") in the above-captioned cases (the "Chapter 11 Cases"), pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), and 364(e) of title 11 of the United States Code (the "Bankruptcy Code"), Rules 2002, 4001, and 6004 of the Federal Rules of Bankruptcy Procedure (the "Bankruptcy Rules") and the Local Bankruptcy Rules (the "Local Rules") of the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court"), seeking, among other things:[2]

---

1 The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Brooktree Broadband Holding, Inc. (5436); Conexant CF, LLC (6434); Conexant, Inc. (8218); Conexant Systems Worldwide, Inc. (0601). The Debtors' main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

2 Capitalized terms used but not otherwise defined herein shall have the meanings set forth in the DIP Motion.

(a) authorization for Conexant, in its capacity as borrower (the "Borrower"), to obtain postpetition financing and for each of the other Debtors to guarantee unconditionally (the "Guarantors"), on a joint and several basis, the Borrower's obligations in connection with the DIP Facility (as defined below), consisting of a senior secured superpriority delayed draw term loan facility in an aggregate principal amount of up to $15,000,000 (the "DIP Facility" and the loans thereunder, the "DIP Loans"), subject to the terms and conditions hereof, and as set forth in the DIP Documents (as defined below);

(b) authorization for the Debtors to enter into that certain Senior Secured Superpriority Debtor-In-Possession Credit Agreement among the Borrower, the Guarantors, and QP SFM Capital Holdings Ltd. as lender (in such capacity, the "DIP Lender") substantially in the form attached hereto as Exhibit A (as amended, restated or otherwise modified from time to time in accordance with the terms thereof, the "DIP Credit Agreement" and, together with all agreements, documents, and instruments delivered or executed in connection therewith, the "DIP Documents"), and to perform such other and further acts as may be required in connection with the DIP Documents;

(c) authorization for the Debtors to use the DIP Loans, and the proceeds thereof, and Cash Collateral (as defined below) to provide working capital for, and for other general corporate purposes of, the Debtors, including for payments authorized by order of the Bankruptcy Court and for interest, fees and expenses in connection with the DIP Loans and any adequate protection obligations as set forth herein;

(d) the granting of adequate protection to the holders (collectively, the "Prepetition Noteholders") of the 11.25% Senior Secured Notes due 2015 (the "Prepetition Secured Notes") issued pursuant to that certain Indenture (as amended, restated, supplemented or otherwise

modified, the "Prepetition Secured Notes Indenture" and, together with all other loan and security documents executed in connection therewith, the "Prepetition Indenture Documents") dated as of March 10, 2010 by and among Conexant and certain of its subsidiaries and The Bank of New York Mellon Trust Company, N.A. as Trustee and Collateral Trustee (in such capacity, the "Prepetition Indenture Trustee"), whose liens and security interests are being primed by the DIP Loans;

(e) authorization for the Debtors to use Cash Collateral (as defined below) in which the Prepetition Noteholders and the Prepetition Indenture Trustee (collectively, the "Adequate Protection Parties") are granted an interest hereunder;

(f) the granting of valid, enforceable, non-avoidable and fully perfected first priority priming liens on and senior security interests in all of the property, assets and other interests in property and assets of the Debtors, whether such property is presently owned or after-acquired, and all other "property of the estate" (within the meaning of the Bankruptcy Code) of the Debtors, of any kind or nature whatsoever, real or personal, tangible, intangible or mixed, now existing or hereafter acquired or created, whether existing prior to or arising after the Petition Date (as defined below), including, subject to entry of the Final Order, proceeds of Avoidance Actions (as defined below), subject only to the Carve-Out (as defined below) on the terms and conditions set forth herein and in the DIP Documents;

(g) the granting of superpriority administrative expense claims to the DIP Lender pursuant to Bankruptcy Code section 364(c)(1) with respect to the DIP Obligations (as defined below) over any and all administrative expenses of any kind or nature including, without limitation, the kinds specified in or arising or ordered under sections 105(a), 326, 328, 330, 331, 503(b), 506(c) (subject to entry of a Final Order), 507, 546(c) (subject to entry of a Final Order),

726, 1113 and 1114, subject and subordinate only to the payment of the Carve-Out on the terms and conditions set forth herein and in the DIP Documents;

(h) upon entry of the Final Order, the limitation of the Debtors' and the estates' right to surcharge against or recover from the DIP Collateral (as defined below) or the Senior Secured Notes Collateral pursuant to Bankruptcy Code section 506(c), 552(b), 105(a) or any similar principle of law;

(i) pursuant to Bankruptcy Rule 4001, that an interim hearing (the "Interim Hearing") on the DIP Motion be held before this Court to consider entry of this order (this "Interim Order"), among other things, (1) authorizing the Borrower, on an interim basis, to borrow from the DIP Lender under the DIP Documents up to an aggregate principal amount not to exceed $5 million (subject to any limitations of borrowing under the DIP Documents and in accordance with the Budget (as defined in the DIP Credit Agreement)), (2) authorizing the Guarantors to guaranty the DIP Obligations, and (3) granting the adequate protection described in this Interim Order; and

(j) that this Court schedule a final hearing (the "Final Hearing") to be held within thirty (30) days of entry of the Interim Order or as soon thereafter as permitted by the Court to consider entry of a final order (the "Final Order") authorizing the balance of DIP Financing under the DIP Documents on a final basis, as set forth in the DIP Motion and the DIP Documents filed with the Court.

Due and appropriate notice of the DIP Motion, the relief requested therein and the Interim Hearing having been served by the Debtors on, among others: (i) the Office of the United States Trustee for the District of Delaware (the "United States Trustee"); (ii) the Securities and Exchange Commission; (iii) the Internal Revenue Service; (iv) those creditors holding the thirty

(30) largest unsecured claims against the Debtors' estates; (v) the DIP Lender; (vi) the Prepetition Indenture Trustee; and (vii) the Prepetition Noteholders in compliance with Bankruptcy Rules 4001(b) and (c) and the Local Rules; the Interim Hearing having been held by this Court on [DATE], 2013; and upon the record made by the Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

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

1. *Disposition.* The DIP Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the DIP Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservation of rights included therein, are hereby denied and overruled. This Interim Order shall become effective immediately upon entry.

2. *Jurisdiction.* This Court has core jurisdiction over the Chapter 11 Cases, the DIP Motion, and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory and rule predicates for the relief granted herein are Bankruptcy Code sections 105, 107(b), 361, 362, 363 and 364 and Bankruptcy Rules 2002, 4001, 6003, 6004, 9013, and 9018 and the Local Rules.

3. *Notice.* Under the circumstances, the notice given by the Debtors of the DIP Motion, the relief requested therein, and the Interim Hearing constitutes due and sufficient notice thereof and complies with Bankruptcy Rules 4001(b) and (c) and the Local Rules, and no further notice of the relief sought at the Interim Hearing and the relief granted herein is necessary or required.

4. *Debtors' Stipulations.* Without prejudice to the rights of any other party (but subject in all respects to the limitations thereon contained in paragraph 21 below), the Debtors admit, stipulate, and agree that:

(a) As of the date of the commencement of the Chapter 11 Cases (the "Petition Date"), the Debtors were party to or otherwise obligated under the Prepetition Secured Notes Indenture, without defense, counterclaim or offset of any kind, and were indebted and liable to the Prepetition Noteholders for the Prepetition Secured Notes in the aggregate principal amount of $175,000,000, exclusive of accrued and unpaid interest, premium, if any, and certain fees, costs, expenses, charges and all other obligations incurred in connection therewith (including, without limitation, attorneys' fees, related expenses and disbursements) as provided by the Prepetition Secured Notes Indenture (collectively, the "Prepetition Secured Debt").

(b) The Prepetition Secured Debt constitutes the legal, valid and binding obligations of the Debtors as set forth in the Prepetition Secured Notes Indenture, enforceable in accordance with the terms of the Prepetition Secured Notes Indenture and documents related thereto.

(c) No portion of the Prepetition Secured Debt or any payment made to the Prepetition Indenture Trustee or the Prepetition Noteholders or applied to obligations owing under the Prepetition Secured Notes Indenture prior to the Petition Date is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or "claim" (as such term is defined in the Bankruptcy Code), or otherwise, of any kind pursuant to the Bankruptcy Code or other applicable law.

(d) Each Debtor hereby forever waives and releases any and all "claims" (as such term is defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights against the Adequate Protection Parties, whether arising at law or in equity, including any recharacterization, subordination, avoidance, lender liability or

other claim arising under or pursuant to the Bankruptcy Code or under any other applicable state or federal law.

(e) The Prepetition Secured Debt is secured by the Senior Secured Notes Collateral (as defined in the DIP Credit Agreement). The security interests granted to the Prepetition Indenture Trustee, for the benefit of the Prepetition Noteholders, on the Senior Secured Notes Collateral (collectively, the "Prepetition Security Interests") pursuant to the Prepetition Indenture Documents are (i) valid, binding, perfected and enforceable liens and security interests in the real and personal property described in the Prepetition Indenture Documents, (ii) not, pursuant to the Bankruptcy Code or other applicable law, subject to avoidance, recharacterization, recovery, subordination, attachment, offset, counterclaim, defense or "claim" (as such term is defined in the Bankruptcy Code) of any kind, and (iii) subject to the Carve-Out, DIP Liens and Superpriority Claims (as defined below).

5. *Findings Regarding the DIP Facility.*

Based on the record at the Interim Hearing:

(a) Good cause has been shown for the entry of this Interim Order.

(b) The Debtors have an immediate need to obtain the DIP Loans and to use the Cash Collateral to, among other things: (i) permit the orderly continuation of their businesses; (ii) maintain business relationships with vendors, suppliers, carriers, and customers of the Debtors; (iii) make; and (iv) pay the costs of administration of their estates and satisfy other working capital and general corporate purposes of the Debtors. The ability of the Debtors to obtain sufficient working capital and liquidity through the incurrence of the new indebtedness for borrowed money and other financial

accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to the Debtors' successful reorganization.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lender under the DIP Documents and are unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors are also unable to obtain secured credit allowable under Bankruptcy Code sections 364(c)(1), 364(c)(2), and 364(c)(3) for the purposes set forth in the DIP Documents without the Debtors granting to the DIP Lender, subject to the Carve-Out as provided for herein, the DIP Liens (defined below) and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Interim Order and the DIP Documents.

(d) The terms of the DIP Facility, the DIP Documents and the use of Cash Collateral are fair and reasonable, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The DIP Facility has been negotiated in good faith and at arm's length among the Debtors, the DIP Lender, and all of the Debtors' obligations and indebtedness arising under, in respect of, or in connection with the DIP Facility and the DIP Documents including, without limitation, all DIP Loans made to and guarantees issued by the Debtors pursuant to the DIP Documents and all other obligations under the DIP Documents (collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Lender in good faith as that term is used in Bankruptcy Code section 364(e) and in express reliance upon the protections offered by Bankruptcy Code section 364(e),

and the DIP Obligations, the DIP Liens and the Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed, or modified on appeal or otherwise.

(f) The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Facility and authorization of the use of the Senior Secured Notes Collateral and the Cash Collateral in accordance with this Interim Order and the DIP Documents are, therefore, in the best interests of the Debtors' estates and are consistent with the Debtors' fiduciary duties.

6. *Authorization of the DIP Facility and the DIP Documents.*

(a) The Debtors are hereby expressly authorized and empowered to execute and deliver and, on such execution and delivery, perform under the DIP Documents, including the DIP Credit Agreement, which is hereby approved and incorporated herein by reference.

(b) Upon entry of the Interim Order, the Borrower is hereby authorized to borrow, and the Guarantors are hereby authorized to guaranty, borrowings up to an aggregate principal amount of $5 million (plus interest, fees and other expenses and amounts provided for in the DIP Credit Agreement or any other DIP Document), subject to and in accordance with the terms of this Interim Order and the DIP Credit Agreement.

(c) In accordance with the terms of this Interim Order and the DIP Credit Agreement, proceeds of the DIP Loans shall be used solely for the purposes permitted under the DIP Credit Agreement, this Interim Order and in accordance with the Budget

(as defined in the DIP Credit Agreement), plus permitted variances as set forth in the DIP Documents.

(d) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized, and the automatic stay imposed by Bankruptcy Code section 362 is hereby lifted to the extent necessary, to perform all acts and to make, execute and deliver all instruments and documents (including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage contemplated thereby), and to pay all fees that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Facility including, without limitation:

(i) the execution, delivery and performance of the DIP Documents, including, without limitation, the DIP Credit Agreement, any security and pledge agreement, and any mortgage contemplated thereby;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents for, among other things, the purpose of adding additional entities as DIP Lenders, in each case in such form as the Debtors and the DIP Lender may reasonably agree, it being understood that no further approval of the Court shall be required for amendments, waivers, consents or other modifications to and under the DIP Documents or the DIP Obligations that do not shorten the maturity of the extensions of credit thereunder or increase the commitments or the rate of interest payable thereunder provided that the Debtors provide counsel to the Committee (as defined below) and the United States Trustee with written notice of any such amendment, waiver, consent or modification;

(iii) the non-refundable payment to the DIP Lender of the fees referred to in the DIP Credit Agreement, and reasonable and documented costs and expenses in accordance with the DIP Credit Agreement, including, without limitation, fees and expenses of counsel, consultants and advisors retained as provided for in the DIP Credit Agreement, whether incurred before or after the Petition Date, which such fees and expenses shall not be subject to the approval of the Court, nor shall any recipient of any such payment be required to file with respect thereto any interim or final fee application with the Court; *provided*, however, that the Debtors shall send copies of such invoices to the U.S. Trustee and any Committee within two (2) business days from receipt thereof, and the U.S. Trustee and any Committee shall have ten (10) days from receipt thereof to object in writing to the reasonableness of such invoices. To the extent that the U.S. Trustee or any Committee so objects to any such invoices, the Debtors shall remit payment on account of the portion of such invoices to which there has been no objection, and payment of the allegedly unreasonable portion of such invoices will be subject to review by the Bankruptcy Court; *provided, however*, if applicable, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine;

(iv) make the Adequate Protection Payments provided for in this Interim Order; and

(v) the performance of all other acts required under or in connection with the DIP Documents.

(e) Upon execution and delivery of the DIP Credit Agreement and the other DIP Documents, such DIP Documents shall constitute valid, binding and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of this Interim Order for all purposes during the Chapter 11 Cases, any subsequently converted Chapter 11 Case of any Debtor to a case under chapter 7 of the Bankruptcy Code or after the dismissal of any Chapter 11 Case. No obligation, payment, transfer or grant of security under the DIP Credit Agreement, the other DIP Documents or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including without limitation, under Bankruptcy Code sections 502(d), 548 or 549 or under any applicable state Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act or similar statute or common law), or subject to any defense, reduction, setoff, recoupment or counterclaim.

(f) The Guarantors hereby are authorized and directed to jointly, severally and unconditionally guarantee in full all of the DIP Obligations of the Borrower.

7. *Superpriority Claims*. Pursuant to Bankruptcy Code section 364(c)(1), all of the DIP Obligations shall constitute allowed senior administrative expense claims against each of the Debtors (the "Superpriority Claims") (without the need to file any proof of claim) with priority over any and all administrative expenses, adequate protection claims, diminution claims (including all Adequate Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without

limitation, all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) and 507(b), and over any and all administrative expenses or other claims arising under sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, 1113, or 1114 or otherwise, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for the purposes of Bankruptcy Code section 1129(a)(9)(A) be considered administrative expenses allowed under Bankruptcy Code section 503(b) and which shall be payable from and have recourse to all prepetition and postpetition property of the Debtors and all proceeds thereof, including, without limitation, subject to entry of a Final Order, any proceeds or property recovered in connection with the pursuit of claims or causes of action arising under chapter 5 of the Bankruptcy Code, if any (the "Avoidance Actions"); subject only to the payment of the Carve-Out to the extent specifically provided for herein. Unless otherwise ordered by the Court, except as set forth in this Interim Order, no other superpriority claims shall be granted or allowed in these Chapter 11 Cases.

8. *Carve-Out.* "Carve-Out" means: (i) all fees required to be paid to the Clerk of the Bankruptcy Court and to the Office of the United States Trustee under 28 U.S.C. § 1930(a) plus interest pursuant to 31 U.S.C. § 3717 (without regard to the notice set forth in (ii) below) as determined by agreement of the U.S. Trustee or by final order of the Court; (ii) to the extent allowed at any time, whether by interim order, procedural order or otherwise, all unpaid fees, disbursements, costs and expenses (collectively, the "Professional Fees") incurred by professionals or professional firms (collectively, the "Professional Persons") retained by (x) the Debtors pursuant to Bankruptcy Code sections 327 and 363 and (y) any committee appointed in these Chapter 11 Cases pursuant to Bankruptcy Code 1102 (a "Committee") at any time before or on the first business day following delivery by the DIP Lender of a Carve-Out Trigger Notice

(as defined below), whether allowed by the Bankruptcy Court prior to or after delivery of a Carve-Out Trigger Notice; and (iv) after the first business day following delivery by the DIP Lender of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order or otherwise, the payment of Professional Fees of Professional Persons in an aggregate amount not to exceed $500,000 (the "Post Carve-Out Trigger Notice Cap"). "Carve-Out Trigger Notice" means written notice delivered by the DIP Lender to the Debtors and their lead counsel, the United States Trustee, and lead counsel to any Committee appointed in these Chapter 11 Cases, which notice may be delivered following the occurrence of a Default or an Event of Default (in each case, as defined in the DIP Credit Agreement) under the DIP Documents, stating that the Post Carve-Out Trigger Notice Cap has been invoked. For the avoidance of doubt and notwithstanding anything to the contrary herein, in the DIP Documents or in the Prepetition Indenture Documents, the Carve-Out shall be senior to all liens and claims securing the DIP Obligations, the Adequate Protection Obligations and the Prepetition Secured Debt.

9. *DIP Liens*. As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by the DIP Lender of, or over, any DIP Collateral (as defined below), the following security interests and liens are hereby granted by the Debtors to the DIP Lender (all property identified in clauses (a), (b) and (c) below being collectively referred to as the "DIP Collateral"), subject to the payment of the Carve-Out (all such liens and security interests granted to the the DIP Lender, pursuant to this Interim Order and the DIP Documents, the "DIP Liens"):

(a) First Lien on Cash Balances and Unencumbered Property. Pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable, fully-perfected first priority senior security interest in and lien upon all prepetition and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, "Other Assets"), including without limitation, any unencumbered cash of the Debtors (whether maintained with the DIP Lender or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, equity interests (other than Excluded Equity, as such term is defined in the DIP Credit Agreement), and the proceeds of all the foregoing. Subject only to and effective upon entry of the Final Order, Other Assets shall also include any proceeds or property recovered in connection with the pursuit of the Avoidance Actions.

(b) Liens Priming Prepetition Noteholders' Liens. Pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable, fully-perfected first priority senior priming security interest in and lien upon all prepetition and postpetition property of the Debtors (including, without limitation, inventory, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, equity interests, and the proceeds of all the foregoing), whether now existing or hereafter acquired, that is subject to any existing lien presently securing the Prepetition Secured

Debt. Such security interests and liens shall be senior in all respects to the interests in such property of the Adequate Protection Parties arising from current and future liens of the Adequate Protection Parties (including, without limitation, adequate protection liens granted hereunder), but shall be junior to any valid, perfected, enforceable and unavoidable security interests and liens of other parties, if any, on such property existing immediately prior to the Petition Date which were senior to the liens securing the Prepetition Secured Debt, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Adequate Protection Parties may become subject subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b).

(c) Liens Junior to Certain Other Liens. Pursuant to Bankruptcy Code section 364(c)(3), a valid, binding, continuing, enforceable, fully-perfected security interest in and lien upon all prepetition and postpetition property of the Debtors (other than (1) the property described in clauses (a) or (b) of this paragraph 10, as to which the liens and security interests in favor of the DIP Lender will be as described in such clauses, and (2) Excluded Equity, as such term is defined in the DIP Credit Agreement), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date that are senior to the liens securing the Prepetition Secured Debt or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b) that are senior to the liens securing the Prepetition Secured Debt, which security interests and liens in favor of the DIP Lender are junior to such valid, perfected and unavoidable liens.

(d) Liens Senior to Certain Other Liens. Other than with respect to the Carve-Out, the quarterly fees payable to the U.S. Trustee, and any valid, perfected, and non-avoidable prepetition lien held by, or granted to, any other party, the DIP Liens and the Adequate Protection Liens (as defined below) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551, (ii) any liens arising after the Petition Date including, without limitation, any liens or security interests granted in favor of any federal, state, municipal or other governmental unit, commission, board or court for any liability of the Debtors, or (iii) any intercompany or affiliate liens of the Debtors.

10. *Protection of DIP Lender's Rights.*

(a) All DIP Collateral shall be free and clear of all liens, claims and encumbrances, except for those liens, claims and encumbrances expressly permitted under the DIP Documents or this Interim Order.

(b) Until all DIP Obligations (including any non-contingent claim for indemnification by the DIP Lender) shall have been indefeasibly paid in full in cash or otherwise satisfied in full (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been paid) and the commitments under the DIP Documents have terminated, the Adequate Protection Parties shall (i) take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Prepetition Secured Notes Indenture or this Interim Order, or otherwise exercise remedies against any DIP Collateral, (ii) be deemed to have consented to any release of DIP Collateral authorized under the DIP Documents and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of

lien or similar instruments, or otherwise take any action to perfect their security interests in the DIP Collateral unless, solely as to this clause (iii), the DIP Lender files financing statements or other documents to perfect the liens granted pursuant to this Interim Order, or as may be required by applicable state law to continue the perfection of valid and unavoidable liens or security interests in effect as of the Petition Date.

(c) The automatic stay provisions of Bankruptcy Code section 362 are vacated and modified to the extent necessary to permit the DIP Lender to exercise (i) immediately upon the occurrence of an Event of Default (subject to applicable grace periods) or the Maturity Date (as defined in the DIP Credit Agreement), all rights and remedies under the DIP Documents other than those rights and remedies against the DIP Collateral as provided in clause (ii) below and (ii) upon the occurrence and during the continuance of an Event of Default (subject to any applicable grace periods) and the giving of five (5) business days' prior written notice to counsel to the Debtors, any Committee, the United States Trustee, and the Prepetition Indenture Trustee to the extent provided for in any DIP Document, all rights and remedies against the DIP Collateral provided for in any DIP Document (including without limitation, to the extent applicable, the right to set off against any accounts maintained by the Debtors with the DIP Lender or any affiliate thereof),provided that, upon the receipt of any such notice, the Borrower may only make disbursements with respect to the Carve-Out, but may not disburse any other amounts. In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default has occurred and is continuing, and the Debtors and the Adequate Protection Parties hereby each waive their right to seek relief, including, without limitation, under Bankruptcy

Code section 105, to the extent such relief would in any way impair or restrict the rights and remedies of the DIP Agent or the DIP Lender set forth in this Interim Order or the DIP Documents. In no event shall the DIP Lender, or the Adequate Protection Parties be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral, the Cash Collateral or the Senior Secured Notes Collateral. The delay or failure to exercise rights and remedies under the DIP Documents or this Interim Order by the DIP Lender shall not constitute a waiver of the DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents.

11. *Limitation on Charging Expenses Against Collateral.* Solely upon entry of the Final Order and subject to the terms thereof, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in bankruptcy or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Cash Collateral or the Senior Secured Notes Collateral pursuant to Bankruptcy Code sections 506(c) or any similar principle of law without the prior written consent of the DIP Lender or the Prepetition Indenture Trustee, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Lender, the Prepetition Indenture Trustee, or the Prepetition Noteholders.

12. Solely upon entry of the Final Order and subject to the terms thereof, and in light of their agreement to subordinate their liens and superpriority claims to the Carve-Out, the DIP Lenders and the Adequate Protection Parties shall be entitled to all benefits of Bankruptcy Code section 552(b) and the "equities of the case" exception under Bankruptcy Code section 552(b)

shall not apply to such parties with respect to the proceeds, products, offspring, or profits of any of their collateral.

13. *Cash Collateral.* Effective upon entry of this Interim Order, to secure any claim arising from (a) the Adequate Protection Obligations and (b) the failure to make any Adequate Protection Payments required hereunder, the Prepetition Indenture Trustee is hereby granted, on behalf of itself and the Prepetition Noteholders, a replacement security interest in and lien upon all cash collateral as defined in the Bankruptcy Code ("Cash Collateral"), subject and subordinate only to (i) the Carve-Out and (ii) the liens securing the DIP Obligations.

14. *Use of Cash Collateral.* The Debtors are hereby authorized to use all Cash Collateral of the Adequate Protection Parties, but solely to the extent, and for the purposes, set forth in this Interim Order and in accordance with the Budget (plus permitted variances as set forth in the DIP Documents), including, but not limited to, payment of Professional Fees and to make Adequate Protection Payments provided for in this Interim Order, from the date of this Interim Order through and including the date of the Final Hearing.

15. *Adequate Protection.* The Adequate Protection Parties are entitled, pursuant to Bankruptcy Code sections 361, 363(e) and 364(d)(1), to adequate protection of their interests in the Senior Secured Notes Collateral for and equal in amount to the aggregate diminution in the value (each such diminution, a "Diminution in Value") of the Adequate Protection Parties' security interests in the Senior Secured Notes Collateral (which Diminution in Value shall be calculated in accordance with Bankruptcy Code section 506(a)) as a result of the Debtors' sale, lease or use of any Senior Secured Notes Collateral, the priming of the Adequate Protection Parties' security interests and liens in the Senior Secured Notes Collateral by the DIP Lender pursuant to the DIP Documents and this Interim Order, and the imposition of the automatic stay

pursuant to Bankruptcy Code section 362. As adequate protection, the Adequate Protection Parties are hereby granted the following (collectively, the "Adequate Protection Obligations"):

(a) Adequate Protection Liens. As security for and solely to the extent of any Diminution in Value of the Prepetition Security Interests, the Prepetition Indenture Trustee (for itself and the benefit of the Prepetition Noteholders) is hereby granted, effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements, a replacement security interest in and lien upon all DIP Collateral including, for the avoidance of doubt, all Cash Collateral (together, the "Adequate Protection Liens"), subject and subordinate only to (i) the Carve-Out and (ii) the liens securing the DIP Obligations.

(b) Section 507(b) Claims. To the extent of any Diminution in Value of the Prepetition Security Interests, the Adequate Protection Parties are hereby granted, subject to the payment of the Carve-Out, allowed superpriority administrative expense claims (the "Adequate Protection Parties' Superpriority Claims") as provided for in Bankruptcy Code section 507(b), immediately junior to the claims under Bankruptcy Code section 364(c)(1) held by the the DIP Lender, provided that the Adequate Protection Parties shall not receive or retain any payments, property or other amounts in respect of the Adequate Protection Parties' Superpriority Claims under Bankruptcy Code section 507(b) granted hereunder or under the Prepetition Secured Notes Indenture unless and until the DIP Obligations have indefeasibly been paid in cash in full or as otherwise agreed by the DIP Lender or as provided in the DIP Documents.

(c) Fees and Expenses. The Prepetition Noteholders shall receive from the Debtors current cash payments of all reasonable and documented fees and expenses payable to the Prepetition Noteholders under the Prepetition Indenture Documents, including, but not limited to, reasonable and documented fees and expenses of counsel and financial advisors to the Prepetition Noteholders promptly upon receipt of invoices therefor (subject in all respects to applicable privilege or work product doctrines) and without the necessity of filing motions or fee applications, including such amounts arising before and after the Petition Date; *provided, however*, that the Debtors shall send copies of such invoices to the U.S. Trustee and any Committee within two (2) business days from receipt thereof, and the U.S. Trustee and any Committee shall have ten (10) days from receipt thereof to object in writing to the reasonableness of such invoices. To the extent that the U.S. Trustee or any Committee so objects to any such invoices, the Debtors shall remit payment on account of the portion of such invoices to which there has been no objection, and payment of the allegedly unreasonable portion of such invoices will be subject to review by the Bankruptcy Court; *provided*, however, if applicable, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. All amounts paid as Adequate Protection (the "Adequate Protection Payments") are deemed permitted uses and expenditures for purposes of the DIP Facility and are permitted uses of Cash Collateral.

(d) Financial Reporting. The Debtors shall provide the Prepetition Indenture Trustee and the Prepetition Noteholders with financial and other reporting substantially in compliance with the DIP Credit Agreement and any reporting described herein and in the DIP Documents.

16. *Additional Liens.* All intercompany/affiliate liens of the Debtors, if any (other than any liens securing the DIP Obligations), will be contractually subordinated to the DIP Obligations and to the Adequate Protection Obligations on terms satisfactory to the DIP Lender.

17. *Reservation of Rights of Adequate Protection Parties.* Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Adequate Protection Parties. However, any Adequate Protection Party may request further or different adequate protection, and the Debtors or any other party may contest any such request; provided that any such further or different adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Lender granted under this Interim Order and the DIP Documents. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any Adequate Protection Party or the DIP Lender.

18. *Perfection of the DIP Liens and Adequate Protection Liens.*

(a) Subject to the provisions of paragraph 11(b) above, the Debtors, the DIP Lender and the Prepetition Indenture Trustee are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control

over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Lender and/or the Prepetition Indenture Trustee shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge or dispute or subordination, at the time and on the date of entry of this Interim Order. Upon the request of the DIP Lender and/or the Prepetition Indenture Trustee, without any further consent of any party, each Debtor is authorized to take, execute, deliver and file such instruments (in each case without representation or warranty of any kind) to enable the DIP Lender and/or the Prepetition Indenture Trustee to further validate, perfect, preserve and enforce the DIP Liens and the Adequate Protection Liens. The Debtors shall execute and deliver to the DIP Lender and the Prepetition Indenture Trustee all such agreements, financing statements, instruments and other documents as the DIP Lender and/or the Prepetition Indenture Trustee may reasonably request to more fully evidence, confirm, validate, perfect, preserve and enforce the DIP Liens and the Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Lender or the Prepetition Indenture Trustee, as the case may be, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements,

mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.

(c) Subject to entry of the Final Order, any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign or otherwise transfer any such leasehold interests, or the proceeds thereof, or other postpetition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting postpetition liens, in any leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lender in accordance with the terms of the DIP Documents and this Interim Order or in favor of the Adequate Protection Parties in accordance with the terms of the Prepetition Indenture Documents and this Interim Order.

19. *Preservation of Rights Granted Under this Interim Order.*

(a) Subject to the terms of this Interim Order, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Lender or the Adequate Protection Parties shall be granted or allowed while any portion of the DIP Loans (or any refinancing thereof) or the commitments thereunder or the DIP Obligations or the Adequate Protection Obligations remain outstanding, and the DIP Liens and the Adequate Protection Liens shall not be (i) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under

Bankruptcy Code section 551 or (ii) subordinated to or made *pari passu* with any other lien or security interest, whether under Bankruptcy Code section 364(d) or otherwise.

(b) Subject to the terms of this Interim Order, unless all DIP Obligations shall have indefeasibly been paid in cash in full or satisfied in a manner otherwise agreed to by the DIP Lender, and the Prepetition Secured Debt and Adequate Protection Obligations shall have been indefeasibly paid in cash in full, unless otherwise agreed to by the Prepetition Noteholders, the Debtors shall not seek, and it shall constitute an Event of Default and terminate the right of the Debtors to use Cash Collateral if any of the Debtors seek, or if there is entered, (i) any modification or extension of this Interim Order without the prior written consent of the DIP Lender (or, to the extent the DIP Obligations shall have been indefeasibly paid in cash in full or satisfied in a manner otherwise agreed to by the DIP Lender, the Prepetition Indenture Trustee and the Prepetition Noteholders), and no such consent shall be implied by any other action, inaction or acquiescence, (ii) an order converting or dismissing any of the Chapter 11 Cases, (iii) an order appointing a chapter 11 trustee in any of the Chapter 11 Cases or (iv) an order appointing an examiner with enlarged powers in any of the Chapter 11 Cases.

(c) If an order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise is at any time entered, such order shall provide (in accordance with Bankruptcy Code sections 105 and 349) that (i) the Superpriority Claims, DIP Liens and Adequate Protection Liens granted to the DIP Lender and, as applicable, the Adequate Protection Parties pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Obligations shall have been

indefeasibly paid in cash in full (or, with respect to the DIP Obligations, otherwise satisfied in a manner agreed to by the DIP Lender) and that such Superpriority Claims, DIP Liens and Adequate Protection Liens, shall, notwithstanding such dismissal, remain binding on all parties in interest and (ii) this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in (i) above.

(d) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations. Notwithstanding any such reversal, stay, modification or vacation, any use of Cash Collateral, or DIP Obligations or Adequate Protection Obligations incurred by the Debtors (to the DIP Lender or the Adequate Protection Parties) prior to the actual receipt of written notice by the DIP Lender and the Prepetition Indenture Trustee, as applicable, of the effective date of such reversal, stay, modification or vacation of the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Credit Agreement with respect to any DIP Obligations or Adequate Protection Obligations incurred by the Debtors to the DIP Lender or the Adequate Protection Parties prior to the actual receipt of written notice by the DIP Lender or the Prepetition Indenture Trustee as applicable, of the effective date of such reversal, stay, modification or vacation which shall be governed in all respects by the original provisions of this Interim Order, and the DIP Lender and the Adequate Protection Parties shall be entitled to all the rights, remedies, privileges and benefits granted in Bankruptcy Code section 364(e), this Interim

Order and pursuant to the DIP Documents, with respect to all uses of Cash Collateral, DIP Obligations and Adequate Protection Obligations.

(e) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Obligations and all other rights and remedies of the DIP Lender and the Adequate Protection Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission, (ii) the entry of an order approving the sale of any DIP Collateral pursuant to section 363(b) of the Bankruptcy Code or (iii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code. The DIP Obligations, the DIP Liens, the Superpriority Claims and the Adequate Protection Obligations and all other rights and remedies of the DIP Lender, or the Adequate Protection Parties granted by the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations and the Adequate Protection Obligations are indefeasibly paid in cash in full.

20. *Limitation on Use of DIP Facility Proceeds and Collateral.* Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, Cash

Collateral, Senior Secured Notes Collateral, DIP Collateral, portion of the proceeds of the DIP Loans or part of the Carve-Out may be used for any of the following (each, a "Lender Claim") without the prior written consent of each affected party: (a) to object, contest or raise any defense to the validity, perfection, priority, extent or enforceability of any amount due under any DIP Document or Prepetition Indenture Document, or the liens or claims granted under this Interim Order, any DIP Document, or any Prepetition Indenture Document; (b) to assert any claim or cause of action against the DIP Lender, the Prepetition Indenture Trustee, or any Prepetition Noteholder or their respective agents, affiliates, representatives, attorneys or advisors; (c) except to contest the occurrence or continuation of an Event of Default as set forth in paragraph 11(c), to prevent, hinder or otherwise delay the DIP Lender's or the Prepetition Indenture Trustee's assertions, enforcement or realization on the Senior Secured Notes Collateral, the Cash Collateral or the DIP Collateral in accordance with the DIP Documents, the Prepetition Indenture Documents or this Interim Order; (d) to assert or prosecute any action for preferences, fraudulent conveyances, other avoidance power claims or any other claims, counterclaims or causes of action, objections, contests or defenses against the Prepetition Indenture Trustee or any Prepetition Noteholder or their respective affiliates, representatives, attorneys or advisors in connection with matters related to the Prepetition Indenture Documents, the Prepetition Secured Debt, the Prepetition Security Interests, or the Senior Secured Notes Collateral; or (e) to seek to modify any of the rights granted to the DIP Lender, or the Adequate Protection Parties under this Interim Order, the DIP Documents or the Prepetition Indenture Documents, provided that advisors to the Committee may investigate the viability of any Lender Claims at an expense not to exceed $25,000, subject to entry of the Final Order.

21. *Effect of Stipulations on Third Parties.*

(a) Each stipulation, admission and agreement contained in paragraph 4 of this Interim Order shall be binding upon the Debtors and any successor thereto (including without limitation any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) in all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Lender Claims as of the date of the entry of this Interim Order. Each stipulation and admission contained in paragraph 4 of this Interim Order shall be binding upon all other parties in interest, including, without limitation, any Committee, under all circumstances and for all purposes, unless, and solely to the extent that, the Committee or another party in interest, subject to the limitations contained herein, and subject to obtaining applicable legal standing, timely and properly files an adversary proceeding or contested matter asserting a Lender Claim with respect to any of the stipulations or admissions set forth in this Interim Order by no later than the earlier of the date that is (i) seventy-five (75) days from the date of this Interim Order or (ii) with respect to any Lender Claim asserted by any Committee, sixty (60) days (or such later date as has been agreed to, in writing, by the Prepetition Noteholder in its sole discretion) after the appointment of the Committee (the "Challenge Period"); provided, however, that the Challenge Period may be extended (a) as has been agreed to, in writing, by the Prepetition Indenture Trustee in its sole discretion or (b) by an order of the Bankruptcy Court, for cause shown, after notice and a hearing and there is a final order in favor of the plaintiff granting such plaintiff relief with respect to a Lender Claim; provided, further, that any purported Lender Claim shall set forth with specificity the basis for such claims

and any Lender Claim not so specified prior to the expiration of the Challenge Period shall be forever deemed waived, released and barred.

(b) The success of any particular Lender Claim shall not alter the binding effect on each party in interest of any stipulation or admission not subject to such Lender Claim. Except to the extent (but only to the extent) a timely and properly filed adversary proceeding or contested matter asserting a Lender Claim is successful, (i) the Prepetition Secured Debt shall constitute allowed claims, not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaims, defenses or "claims" (as such term is defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or other applicable law, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, (ii) the Prepetition Security Interests shall be deemed to have been, as of the Petition Date, legal, valid, binding perfected and enforceable liens and security interests not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaims, defenses or "claims" (as such term is defined in the Bankruptcy Code) of any kind, and (iii) the Prepetition Secured Debt and the Prepetition Security Interests shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors' estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors).

(c) Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including any Committee, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation,

Lender Claims with respect to the Prepetition Indenture Documents or the Prepetition Secured Debt.

22. *Interim Order Governs.* In the event of any inconsistency between the provisions of this Interim Order and the DIP Documents, the provisions of this Interim Order shall govern.

23. *Binding Effect; Successors and Assigns.* Subject in all respects to paragraph 21, the DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including without limitation, the the DIP Lender, the Adequate Protection Parties, any Committee appointed in these Chapter 11 Cases, and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104, or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Lender, and the Adequate Protection Parties, provided, however, that except to the extent expressly set forth in this Interim Order, the Adequate Protection Parties shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreement, a promissory note or otherwise), to permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Lender and the Adequate Protection Parties shall not (i) be deemed to be in control of the operations of the Debtors, or (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates.

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

25. *Final Hearing*. The Final Hearing is scheduled for [DATE] at [TIME], prevailing Eastern time, before this Court. The Debtors shall promptly transmit copies of this Interim Order (which shall constitute adequate notice of the Final Hearing) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court and to any Committee after the same has been appointed, or Committee counsel, if the same shall have been appointed. Any party-in-interest objecting to the relief sought at the Final Hearing shall serve and file a written objection; which shall be served upon (a) the Debtors, 4000 MacArthur Blvd., Newport Beach, California 92660, Attn: Dennis Gallagher, Esq.; (b) proposed counsel for the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Joshua A. Sussberg, Esq.; (c) proposed co-counsel for the Debtors, Klehr Harrison Harvey Branzburg LLP, 919 N. Market Street, Suite 1000, Wilmington, Delaware 19801, Attn: Domenic E. Pacitti, Esq.; (d) counsel to the Prepetition Noteholders, Akin Gump Strauss Hauer & Feld LLP, One Bryant Park, New York, New York 10036, Attn: Michael S. Stamer, Esq.; (e) co-counsel to the Prepetition Noteholders, Pepper Hamilton LLP, Attn: David Stratton & David Fournier, Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, DE 19801; (f) counsel to certain of the prepetition equity holders, DLA Piper, 203 North LaSalle Street, Suite 1900, Chicago, Illinois 60601, Attn: Chris L. Dickerson, Esq.; (g) counsel to any statutory

committee appointed in these Chapter 11 Cases; (h) the office of the United States Trustee for the District of Delaware, Caleb Boggs Federal Building, 844 King Street, Suite 2207, Lockbox 35, Wilmington, Delaware 19801, Attn: Tiiara N. A. Patton, Trial Attorney; (i) the entities listed on the Consolidated List of Creditors Holding the 30 Largest Unsecured Claims filed pursuant to Bankruptcy Rule 1007(d); (j) state and federal taxing authorities; (k) the Securities and Exchange Commission; (l) the United States Attorney's Office; and (m) the Delaware Attorney General; in each case to allow actual receipt by the foregoing no later than [DATE] at [TIME], prevailing Eastern time.

Dated: _____, 2013
Wilmington, Delaware

_____
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

The DIP Credit Agreement

$15,000,000

SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT Dated as of March [__], 2013

among CONEXANT SYSTEMS, INC.,

a Debtor and Debtor in Possession,

as the Borrower,

THE OTHER CREDIT PARTIES SIGNATORY HERETO,
each a Debtor and Debtor in Possession,
as Credit Parties,

and

QP SFM CAPITAL HOLDINGS LTD.,
as the Lender

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This SENIOR SECURED SUPER-PRIORITY DEBTOR IN POSSESSION CREDIT AGREEMENT (this "Agreement"), dated as of March [__], 2013, by and among CONEXANT SYSTEMS, INC., a Delaware corporation, as a debtor and debtor in possession under chapter 11 of the Bankruptcy Code (as defined below) (the "Borrower"); the other Credit Parties signatory hereto, each as a debtor and debtor in possession under chapter 11 of the Bankruptcy Code; and QP SFM CAPITAL HOLDINGS LTD., as Lender (including any successor or assignee to the extent permitted under Section 11.1, the "Lender");

WHEREAS, on [__], 2013, (the "Petition Date"), the Borrower and each of the other Credit Parties filed a voluntary petition for relief (collectively, the "Cases") under chapter 11 of the Bankruptcy Code with the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, the Borrower and the other Credit Parties are continuing to operate their respective businesses and manage their respective properties as debtors and debtors in possession under sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, the Borrower has requested that the Lender provide senior secured super-priority term loan facilities of up to $15,000,000 in order to fund the continued operation of the Credit Parties businesses as debtors and debtors in possession under the Bankruptcy Code;

WHEREAS, the Lender is willing to make available to the Borrower such post-petition loans and other extensions of credit upon the terms and subject to the conditions set forth herein;

WHEREAS, each of the Guarantors has agreed to guaranty the obligations of the Borrower hereunder, and each of the Credit Parties has agreed to secure its obligations to the Lender hereunder with, inter alia, security interests in, and liens on, all of its property and assets, whether real or personal, tangible or intangible which constitute Collateral, now existing or hereafter acquired or arising, all as more fully provided herein; and

WHEREAS, capitalized terms used in this Agreement shall have the meanings ascribed to them in Annex A and, for purposes of this Agreement and the other Loan Documents, the rules of construction set forth in Annex A shall govern. All Annexes, Schedules, Exhibits and other attachments (collectively, "Appendices") hereto, or expressly identified to this Agreement, are incorporated herein by reference, and taken together with this Agreement, shall constitute but a single agreement. These Recitals shall be construed as part of the Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual covenants hereinafter contained, and for other good and valuable consideration, the parties hereto agree as follows:

1. AMOUNT AND TERMS OF CREDIT

1.1 Credit Facilities.

(a) Term Loan.

(i) The Lender agrees, upon the terms and subject to the conditions herein set forth, to make term loans (each a "Term Loan" and collectively, the "Term Loans") to the Borrower at any time and from time to time during the period commencing on the date hereof and ending on the Maturity Date in an aggregate principal amount not to exceed the Commitment, in each case, in accordance with the terms of the Budget.

(b) [Reserved].

(c) The aggregate outstanding principal balance of the Term Loans shall be due and payable in full in immediately available funds on the Maturity Date, if not sooner paid in full. No payment with respect to the Term Loans may be reborrowed.

(d) [Reserved].

(e) The Term Loans shall, upon the request of the Lender pursuant to Section 1.10, be evidenced by promissory notes substantially in the form of Exhibit 1.1 (each a "Note" and collectively the "Notes"), and, upon such request as provided in Section 1.10, the Borrower shall execute and deliver each Note to the Lender. Each Note shall represent the obligation of the Borrower to pay the amount of the Term Loans, together with interest thereon as prescribed in Section 1.6.

1.2 Procedure for Loan Borrowing. The Borrower shall have given the Lender written notice by E-Fax or e-mail substantially in the form of Exhibit 1.2 (a "Notice of Borrowing") (which notice must be received by the Lender prior to 12:00 P.M., New York City time, three (3) Business Days prior to the requested Borrowing Date), specifying (a) the amount to be borrowed, (b) the requested Borrowing Date and (c) instructions for remittance of the applicable Term Loans to be borrowed. The Term Loans will be made available to the Borrower at such account as is designated in writing to the Lender by the Borrower.

1.3 Prepayments and Commitment Reduction.

(a) Voluntary Prepayments. The Borrower may at any time on at least three (3) Business Days' prior written notice to the Lender, voluntarily prepay all or part of the Term Loans without premium or penalty; provided that any such prepayment shall be in a minimum amount of $500,000 and integral multiples of $500,000 in excess of such amount (or, if less, the outstanding amount of the Term Loans or any other amount approved by the Lender); provided, further, that any such prepayment shall be applied as directed by the Borrower.

(b) Mandatory Prepayments.

(i) Except as provided under Section 1.3(c), upon receipt by any Credit Party of Net Cash Proceeds in excess of $150,000 in the aggregate arising from an Asset Sale or Property Loss Event, the Borrower shall promptly (no later than three Business Days after the date on which such Net Cash Proceeds are received) prepay the Term Loans in an amount equal to 100% of such Net Cash Proceeds; provided, however, that such prepayment obligation may be waived by the Lender in its sole discretion.

(ii) Upon receipt by any Credit Party of any Net Cash Proceeds from any issuance of Indebtedness (other than Debt permitted under Section 6.3 hereof), the Borrower shall promptly (no later than three Business Days after the date on which such Net Cash Proceeds are received) prepay the Term Loans in an amount equal to 100% of such cash proceeds.

(c) Application of Net Cash Proceeds. Any Net Cash Proceeds or cash proceeds described in clauses (b)(i) or (ii) received by the Borrower or any other Credit Party or the Lender under any Loan Document (except as otherwise expressly provided herein or therein) shall be applied pursuant to Section 1.4.

(d) [Reserved].

(e) Mandatory Commitment Reduction. The Commitment shall automatically and permanently terminate on the Maturity Date.

(f) No Implied Consent. Nothing in this Section 1.3 shall be construed to constitute the Lender's consent to any transaction that is not permitted by other provisions of this Agreement or the other Loan Documents.

1.4 Priority and Application of Payments. So long as no Event of Default has occurred and is continuing, payments matching specific scheduled or required payments then due shall be applied to those scheduled or required payments. As to any other payment and as to all payments made when an Event of Default has occurred and is continuing or following the Maturity Date, the Borrower hereby irrevocably waives the right to direct the application of any and all payments received from or on behalf of the Borrower, and the Borrower and each Secured Party hereby irrevocably agrees that the Lender shall have the continuing exclusive right to apply any and all such payments against the Obligations as follows: first, to reimbursable costs and expenses of the Lender then due and payable pursuant to any of the Loan Documents; second, to interest then due and payable on the Term Loans; third, to prepay the remaining principal amount of the Term Loans, until the Term Loans shall have been paid in full; and fourth, to all other Obligations then due and payable to the Lender.

1.5 Use of Proceeds. The Borrower shall utilize the proceeds of the Term Loans solely (i) to pay interest, fees and expenses in connection with this Term Loan and the Cases, make critical vendor payments, provide working capital for, and for other general corporate purpose of, the Credit Parties, and to make any other payments permitted by the Bankruptcy Code or the Interim Order or Final Order, in each case in accordance with the Budget and (ii) to pay the costs and expenses of the Lender in accordance with the Budget.

1.6 Interest and Applicable Margins.

(a) The Borrower shall pay interest to the Lender on the principal amount of Term Loans outstanding (if any), in arrears on each applicable Interest Payment Date, at Adjusted LIBOR plus 7.00%.

(b) If any payment on any Obligation becomes due and payable on a day other than a Business Day, the maturity thereof will be extended to the next succeeding Business Day and,

with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

(c) All computations of interest shall be made by the Lender on the basis of a 360 day year, in each case, for the actual number of days occurring in the period for which such interest is payable. Each determination by the Lender of interest rates hereunder shall be presumptive evidence of the correctness of such rates.

(d) So long as an Event of Default has occurred and is continuing, (i) the interest rates applicable to the Obligations shall be increased by two percentage points (2%) per annum above the rates of interest otherwise applicable to the Obligations hereunder (the "Default Rate"), and (ii) all other outstanding Obligations shall bear interest at the Default Rate. Interest at the Default Rate shall accrue from the initial date of such Event of Default until that Event of Default is cured or waived and shall be payable upon demand.

(e) Notwithstanding anything to the contrary set forth in this Section 1.6, if a court of competent jurisdiction determines in a final order that the rate of interest payable hereunder exceeds the highest rate of interest permissible under law (the "Maximum Lawful Rate"), then so long as the Maximum Lawful Rate would be so exceeded, the rate of interest payable hereunder shall be equal to the Maximum Lawful Rate; provided, however, that if at any time thereafter the rate of interest payable hereunder is less than the Maximum Lawful Rate, the Borrower shall continue to pay interest hereunder at the Maximum Lawful Rate until such time as the total interest received by the Lender is equal to the total interest that would have been received had the interest rate payable hereunder been (but for the operation of this paragraph) the interest rate payable since the Closing Date as otherwise provided in this Agreement. In no event shall the total interest received by the Lender pursuant to the terms hereof exceed the amount that the Lender could lawfully have received had the interest due hereunder been calculated for the full term hereof at the Maximum Lawful Rate.

1.7 Cash Management Systems. On or prior to the date that is 30 Business Days after the Closing Date (or such longer period as the Lender may agree), the Borrower will establish and will maintain until the Termination Date, the cash management systems described in Annex B (the "Cash Management Systems").

1.8 [Reserved].

1.9 Receipt of Payments. The Borrower shall make each payment under this Agreement not later than 2:00 p.m. (New York time) on the day when due in immediately available funds in Dollars to the Collection Account. For purposes of computing interest as of any date, all payments shall be deemed received on the Business Day on which immediately available funds therefor are received in the Collection Account prior to 2:00 p.m. New York time on the applicable date; provided that any payment which is received in the Collection Account later than 2:00 p.m. New York time shall be deemed received on such date for purposes of determining whether an Event of Default has occurred (provided, that such amounts shall be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon).

1.10 Loan Account and Accounting. The Lender shall maintain a loan account (the "Loan Account") on its books to record the Term Loans, all payments made by the Borrower with respect to the Term Loans, and all other debits and credits as provided in this Agreement with respect to the Term Loans or any other Obligations with respect to the Term Loans. All entries in the Loan Account shall be made in accordance with the Lender's customary accounting practices as in effect from time to time. The balance in the Loan Account, as recorded on the Lender's most recent printout or other written statement, shall, absent manifest error, be presumptive evidence of the amounts due and owing to the Lender by the Borrower; provided, that any failure to so record or any error in so recording shall not limit or otherwise affect the Borrower's duty to pay the Obligations with respect to the Term Loans. The Lender shall render to the Borrower a monthly accounting of transactions with respect to the Term Loans setting forth the balance of the Loan Account for the immediately preceding month. The Lender may elect, by notice to the Borrower, to have the Term Loans be evidenced by a Note issued to the Lender. If no such Note is requested, the Lender may rely on the Loan Account as evidence of the amount of Obligations with respect to the Term Loan from time to time owing to it. Unless the Borrower notifies the Lender in writing of any objection to any such accounting (specifically describing the basis for such objection), within thirty (30) days after the date thereof, each and every such accounting shall be presumptive evidence of all matters reflected therein. Only those items expressly objected to in such notice shall be deemed to be disputed by the Borrower.

1.11 Indemnity. Each Credit Party that is a signatory hereto shall jointly and severally indemnify and hold harmless each of the Lender and its Affiliates, and each such Person's respective officers, directors, employees, advisors, agents and representatives (each, an "Indemnified Person"), from and against any and all suits, actions, proceedings, claims, damages, losses, liabilities, reasonable and documented out-of-pocket costs and expenses (including attorneys fees and disbursements of one counsel for the Lender (and any special or local counsel) and other costs of investigation or defense, including those incurred upon any appeal) that may be instituted or asserted against or incurred by any such Indemnified Person as the result of the financing contemplated hereby or the use or the proposed use of proceeds thereof under this Agreement and the other Loan Documents and the administration of such credit, and in connection with or arising out of the transactions contemplated hereunder and thereunder and any actions or failures to act in connection therewith, including any and all Environmental Liabilities and legal costs and expenses arising out of or incurred in connection with disputes between or among any parties to any of the Loan Documents, and associated with Electronic Transmissions or E-Systems as well as failures caused by the Borrower's equipment, software, services or otherwise used in connection therewith (collectively, "Indemnified Liabilities"); provided, that no such Credit Party shall be liable for any indemnification to an Indemnified Person to the extent that any such Indemnified Liability results from any Indemnified Person's gross negligence or willful misconduct as determined by a final and non-appealable order of a court of competent jurisdiction. NEITHER THE LENDER NOR ANY SUCCESSOR, ASSIGNEE OR THIRD PARTY BENEFICIARY OF THE LENDER SHALL BE RESPONSIBLE OR LIABLE TO ANY CREDIT PARTY OR ANY OTHER PERSON ASSERTING CLAIMS DERIVATIVELY THROUGH SUCH CREDIT PARTY, ANY OF SUCH CREDIT PARTY'S SUBSIDIARIES OR ANY OTHER PERSON, FOR INDIRECT, PUNITIVE, EXEMPLARY, SPECIAL OR CONSEQUENTIAL DAMAGES.

1.12 Access.

(a) Each Credit Party shall, during normal business hours, from time to time upon reasonable prior notice as frequently as Lender reasonably determines to be appropriate: (i) provide the Lender and any of its officers, employees and agents access to its officers and employees, and with prior notice and the opportunity to be present, counsel or other advisors of each Credit Party; (ii) permit the Lender, and any of its officers, employees and agents, to inspect, audit and make extracts from any Credit Party's Books and Records (subject to requirements under any confidentiality agreements, if applicable); and (iii) permit the Lender, and any of its officers, employees and agents, to have access to properties, facilities and to the Collateral and to inspect, audit, review, evaluate, conduct field examinations and make test verifications and counts of the Accounts, Inventory and other Collateral of any Credit Party (subject to requirements under any confidentiality agreements, if applicable). Each Credit Party shall make available to the Lender and its counsel reasonably promptly originals or copies of all Books and Records (subject to requirements under any confidentiality agreements, if applicable) that the Lender may reasonably request. Each Credit Party shall deliver any document or instrument necessary for the Lender, as it may from time to time request, to obtain records from any service bureau or other Person that maintains records for such Credit Party and shall maintain supporting documentation on media, including computer tapes and discs owned by such Credit Party.

(b) If an Event of Default has occurred and is continuing, each such Credit Party shall provide such access as set forth in clause (a) above to the Lender at all times and without advance notice. Furthermore, the Borrower shall provide the Lender with access, with prior notice and opportunity for the Borrower to be present, to its suppliers, service providers (including independent public accountants) and customers.

1.13 Taxes.

(a) All payments made by the Borrower to the Lender under or in connection with this Agreement shall be made without any setoff or other counterclaim, and shall be free and clear of and without deduction or withholding for or on account of any present or future Taxes now or hereafter imposed by any Governmental Authority or other authority, except to the extent that any such deduction or withholding is compelled by law. As used herein, the term "Taxes" shall include all income, excise and other taxes of whatever nature (other than Excluded Taxes) as well as all levies, imposts, remittances, duties, charges, or fees of whatever nature. If the Borrower is compelled by law to make any deductions or withholdings on account of any Taxes (including any foreign withholding), the Borrower will:

(i) pay such additional amounts (including, without limitation, any penalties, interest or expenses) as may be necessary in order that the net amount received by the Lender after such deductions or withholdings (including any required deduction or withholding on such additional amounts) shall equal the amount the Lender would have received had no such deductions or withholdings been made; and

(ii) pay to the relevant authorities the full amount required to be so withheld or deducted (including with respect to such additional amounts); and

(iii) promptly forward to the Lender an official receipt or other documentation satisfactory to the Lender evidencing such payment to such authorities.

If any Taxes otherwise payable by the Borrower pursuant to the foregoing are directly asserted against the Lender, the Lender may pay such taxes and the Borrower promptly shall reimburse such the Lender to the full extent otherwise required under this Section 1.13.

(b) In addition, the Borrower shall pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made by the Borrower hereunder or under any other Loan Documents or from the execution, delivery or registration of, performing under, or otherwise with respect to, this Agreement or the other Loan Documents (hereinafter referred to as "Other Taxes").

(c) The Borrower shall indemnify the Lender for and hold it harmless against the full amount of any Indemnified Taxes and Other Taxes (including, without limitation, taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 1.13(c)) imposed on or paid or remitted by the Lender and any liability (including penalties, interest and reasonable expenses) arising therefrom or with respect thereto. This indemnification shall be made within 30 days from the date the Lender makes written demand therefor with appropriate supporting documentation.

(d) Within 30 days after the date of any payment of Taxes imposed in connection with this Agreement, the Borrower shall furnish to the Lender, at its address referred to in Section 13.10, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Lender. In the case of any payment hereunder or any other documents to be delivered hereunder by or on behalf of the Borrower through an account or branch outside the United States or by or on behalf of the Borrower by a payor that is not a United States person, if the Borrower determines that no Taxes are payable in respect thereof, the Borrower shall furnish, or shall cause such payor to furnish, to the Lender, at such address, an opinion of counsel reasonably acceptable to the Lender stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms "United States" and "United States person" shall have the meanings specified in Section 7701 of the IRC.

(e) If the Lender is entitled to an exemption from or reduction of withholding Tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement, the Lender shall deliver to the Borrower, to the extent the Lender is legally entitled to do so, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as may reasonably be requested by the Borrower to permit such payments to be made without such withholding Tax or at a reduced rate; provided that the Lender shall not have any obligation under this paragraph (e) with respect to any withholding Tax imposed by any jurisdiction other than the United States if in the reasonable judgment of the Lender such compliance would subject the Lender to any material unreimbursed cost or expense or would otherwise be prejudicial to the Lender in any material respect.

(f) If a payment made to the Lender hereunder or under any Loan Documents would be subject to U.S. federal withholding Tax imposed by FATCA if the Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IRC, as applicable), the Lender shall deliver to the Borrower at the time or times prescribed by law and at such time or times reasonably requested by the Borrower such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IRC) and such additional documentation reasonably requested by the Borrower as may be necessary for the Borrower to comply with its obligations under FATCA and to determine that the Lender has complied with the Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. If any form or document referred to in this subsection (f) (other than FATCA documentation) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the Closing Date by IRS Form W-8BEN or W-8ECI or the related certificate described above, that the Lender reasonably considers to be confidential, the Lender shall give notice thereof to the Borrower and shall not be obligated to include in such form or document such confidential information, except directly to a governmental authority or other Person subject to a reasonable confidentiality agreement. In addition, upon the written request of the Borrower, the Lender shall provide any other certification, identification, information, documentation or other reporting requirement if (i) delivery thereof is required by a change in the law, regulation, administrative practice or any applicable tax treaty as a precondition to exemption from or a reduction in the rate of deduction or withholding; (ii) the Lender is legally entitled to make delivery of such item; and (iii) delivery of such item will not result in material

additional costs unless the Borrower shall have agreed in writing to indemnify Lender for such costs.

(g) If the Lender claims any additional amounts payable pursuant to this Section 1.13, the Lender agrees to use reasonable efforts (consistent with its internal policy and legal and regulatory restrictions) to change the jurisdiction of its Funding Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the judgment of the Lender, be otherwise disadvantageous to the Lender.

(h) If the Lender determines, in its sole discretion, that it has actually and finally received a refund of any Taxes paid or reimbursed by the Borrower pursuant to subsection (a) or (c) above in respect of payments under this Agreement or the other Loan Documents, the Lender shall pay to the Borrower, with reasonable promptness following the date on which it actually receives such refund, an amount equal to such refund, net of all out-of-pocket expenses in securing such refund; provided, that the Borrower, upon the request of the Lender, agrees to repay the amount paid (with interest and penalties) over to the Lender in the event the Lender is required to repay such amount to such governmental authority. This Section 1.13(h) shall not be construed to require the Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrower or any other person.

1.14 363 Sale Amendment . If (a) any 363 Triggering Event has occurred and is continuing pursuant to the terms of the Restructuring Support Agreement and (b) the Consenting Secured Lender has commenced a 363 Sale pursuant to Section 5.2(b) of the Restructuring Support Agreement, the parties hereto shall in good faith negotiate and enter into a written amendment of this Agreement (the "363 Sale Amendment") in form and substance acceptable to the Lender in its sole discretion, which 363 Sale Amendment shall include, without limitation, additional milestones relating to the 363 Sale auction process and additional Events of Default based on the occurrence of any default under the applicable asset purchase agreement.

2. CONDITIONS PRECEDENT

2.1 Conditions to Closing. This Agreement, including the obligation of the Lender to make the Term Loans, shall not become effective until the date (the "Closing Date") on which each of the following conditions precedent is satisfied or duly waived in writing in accordance with Section 13.2:

(a) Commencement of the Cases. The Cases shall have been commenced in the Bankruptcy Court and all of the First Day Orders and all related pleadings to be entered at the time of commencement of the Cases or shortly thereafter shall be reasonably satisfactory in form and substance to the Lender.

(b) DIP Motion. Not later than the Petition Date, the Credit Parties shall have filed a motion to the Bankruptcy Court, in form and substance satisfactory to the Lender, seeking approval of the Loan Documents.

(c) Interim Order. Not later than [___], 2013, the Interim Order shall have been entered by the Bankruptcy Court. The Interim Order shall have been entered on such prior

notice to such parties as may be satisfactory to the Lender (it being agreed that the notice of the DIP Motion is satisfactory notice).

(d) Compliance with Interim Order. The Credit Parties shall be in compliance in all respects with the Interim Order or, to the extent it has been entered, the Final Order. The Interim Order or, to the extent it has been entered, the Final Order shall be in full force and effect and shall not have been reversed, modified, amended, stayed, or vacated except the consent of the Lender.

(e) Loan Documents. Subject to Section 5.15, this Agreement, the Loan Documents, such documents, instruments, agreements and legal opinions listed on Annex C, shall have been executed and delivered by all parties thereto.

(f) Financial Statements, Budgets and Reports. The Lender shall have received (i) the Initial Budget, which Initial Budget shall be in form and substance satisfactory to the Lender (it being understood that the Initial Budget attached hereto is satisfactory to the Lender) and (ii) an unaudited consolidated balance sheet for each month through the month ending January 2013 and the related statements of income, cash flow and stockholders' equity for each such month.

(g) Approvals. The Lender shall have received (i) satisfactory evidence that the Credit Parties have obtained all required consents and approvals of all Persons, including all requisite Governmental Authorities, to the execution and delivery of this Agreement and the other Loan Documents and such consents and approvals shall be in full force and effect, (ii) satisfactory evidence that the Credit Parties have obtained all material governmental and third party approvals or waivers necessary in connection with the performance and consummation of this Agreement and the other Loan Documents and the continuing operations of the Borrower and its Subsidiaries shall have been obtained and be in full force and effect, or (iii) an officer's certificate in form and substance reasonably satisfactory to the Lender affirming that no such consents or approvals are required.

(h) Payment of Costs and Expenses. All costs and expenses (including, without limitation, reasonable legal fees) required to be paid to the Lender under the Loan Documents shall have been paid to the extent due.

(i) [Reserved].

(j) Cash Management Order. A cash management order encompassing cash management arrangements satisfactory to the Lender shall be in full force and effect.

(k) [Reserved].

(l) No Material Adverse Effect. Since June 29, 2012, there shall not have been any Material Adverse Effect.

(m) No Action, Suit, Litigation. Other than the Cases, there shall exist no action, suit, investigation, litigation, or proceeding pending (or, to the knowledge of the Borrower or any other Credit Party, threatened) in any court or before any arbitrator or governmental instrumentality, which could reasonably be expected to result in a Material Adverse Effect.

(n) [Reserved].

(o) [Reserved].

(p) Lien Searches. The Lender shall have received UCC and other lien searches (including tax liens and judgments) conducted in the jurisdictions in which the Borrower and the Guarantors are incorporated satisfactory to the Lender (dated as of a date reasonably satisfactory to the Lender). The Lender shall hold perfected security interests in and Liens (having the priority provided for herein and in the Interim Order or, to the extent it has been entered, the Final Order) upon the Collateral.

(q) [Reserved].

(r) Restructuring Support Agreement. The applicable parties shall have entered into the Restructuring Support Agreement.

2.2 Conditions to Borrowing all Term Loans. The Lender shall not be obligated to make Term Loans requested to be made by it pursuant to Section 1.1(a) unless each of the following conditions precedent is satisfied or provided for in a manner reasonably satisfactory to the Lender, or duly waived in writing in accordance with Section 13.2:

(a) Orders. The Interim Order, and, if the Final Order has been entered, the Final Order, as the case may be, shall have been entered by the Bankruptcy Court and shall not have been vacated, stayed, reversed, rescinded, modified or amended without the Lender's consent and shall otherwise be in full force and effect.

(b) Notice of Borrowing. The Lender shall have received a Notice of Borrowing.

(c) Budget. Such borrowing shall be made in compliance with the most recently delivered Budget in effect at such time.

(d) Representations and Warranties. All representations and warranties in this Agreement or any other Loan Document shall be true and correct in all material respects (without duplication of any materiality qualifications set forth therein), as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects (without duplication of any materiality qualifications set forth therein) as of such earlier date.

(e) No Default. No Default or Event of Default under this Agreement or any other Loan Document shall exist or shall arise immediately thereafter.

(f) No Violation of Law or Injunction. The consummation of the transactions contemplated hereby shall not, after giving effect to such transactions, (i) violate any applicable law, statute, rule or regulation or (ii) conflict with, or result in a default or event of default under, any Material Contract entered into or assumed after the commencement of the Cases.

The acceptance by the Borrower of the proceeds of any Term Loan upon the request of the Borrower shall be deemed to constitute, as of the date thereof, a representation and warranty by the Borrower that the conditions in this Section 2.2 have been satisfied.

3. REPRESENTATIONS AND WARRANTIES

To induce the Lender to make the Term Loans, the Credit Parties executing this Agreement, jointly and severally, make the following representations and warranties to the Lender with respect to all Credit Parties, each and all of which shall survive the execution and delivery of this Agreement.

3.1 Corporate Existence; Compliance with Law. Each Credit Party (a) is a corporation, limited partnership or limited liability company duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization set forth in Disclosure Schedule 3.1; (b) is duly qualified to conduct business and is in good standing in each other jurisdiction where its ownership or lease of property or the conduct of its business requires such qualification, except where the failure to be so qualified would not result in losses or liabilities which could reasonably be expected to have a Material Adverse Effect; (c) subject to the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), has the requisite power and authority to own, pledge, mortgage or otherwise encumber and operate its properties, to lease the property it operates under lease and to conduct its business as now conducted or proposed to be conducted, except where the failure to do so would not result in losses or liabilities which could reasonably be expected to have a Material Adverse Effect; (d) has all licenses, permits, consents or approvals from or by, and has made all filings with, and has given all notices to, all Governmental Authorities having jurisdiction, to the extent required for such ownership, operation and conduct, except where the failure to do so would not result in losses or liabilities which could reasonably be expected to have a Material Adverse Effect; and (e) is in compliance with all applicable provisions of law, except where the failure to comply, individually or in the aggregate, could not reasonably be expected to have a Material Adverse Effect.

3.2 Executive Offices, Collateral Locations, FEIN. As of the Closing Date, each Credit Party's name as it appears in official filings in its state of incorporation or organization, state of incorporation or organization, organization type, organization number, if any, issued by its state of incorporation or organization, and the location as of the Closing Date of each Credit Party's chief executive office, principal place of business and location and the warehouses and premises at which any Collateral (except for Collateral in transit or out for repair) valued in excess of $500,000 is located as of the Closing Date are set forth in Disclosure Schedule 3.2, and none of such Collateral has been kept at any location other than the locations listed on Disclosure Schedule 3.2 within four (4) months preceding the Closing Date (or since its acquisition if less than four (4) months prior to the Closing Date). In addition, Disclosure Schedule 3.2 lists the federal employer identification number and organizational number of each Credit Party as of the Closing Date.

3.3 Corporate Power, Authorization, Enforceable Obligations. Upon the entry by the Bankruptcy Court of the Interim Order (or the Final Order, when applicable), the execution, delivery and performance by each Credit Party of the Loan Documents to which it is a party and

the creation of all Liens provided for therein: (a) are within such Person's corporate, limited partnership or limited liability company power, as applicable; (b) have been duly authorized by all necessary corporate or limited liability company action; (c) do not contravene any provision of such Person's charter, bylaws or operating agreement as applicable; (d) do not violate any law or regulation, or any order or decree of any court or Governmental Authority to which such Credit Party is subject; (e) do not conflict with or result in the breach or termination of, constitute a default under or accelerate or permit the acceleration of any performance required by, any material lease, material agreement or other material instrument entered into or assumed by such Person after the commencement of the Cases to which such Person is a party or by which such Person or any of its property is bound; (f) do not result in the creation or imposition of any Lien upon any of the property of such Person other than those in favor of Lender, pursuant to the Loan Documents and the Interim Order and the Final Order; and (g) do not require the consent or approval of any Governmental Authority or any other Person, except (i) those referred to in Section 2.1(g) all of which which will have been duly obtained, made or complied with on or prior to the Closing Date (such consents and approvals to be in form and substance reasonably satisfactory to the Lender), (ii) any consents, notices or approvals pursuant to the Federal Assignment of Claims Act of 1940 or any applicable state, county or municipal law restricting the assignment of any Accounts for which the Account Debtor is the United States government or a political subdivision thereof or any state, county or municipality or department, agency or instrumentality thereof and (iii) those of the Bankruptcy Court. Each of the Loan Documents have been duly executed and delivered by each Credit Party that is a party thereto and, subject to the entry of the Interim Order (or the Final Order, when applicable), each such Loan Document shall constitute a legal, valid and binding obligation of such Credit Party enforceable against it in accordance with its terms, except as enforceability may be limited by applicable bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally or by equitable principles relating to enforceability.

3.4 Financial Statements and Projections. Except for the Projections, all Financial Statements concerning the Borrower and its Subsidiaries that are referred to below have been prepared in accordance with GAAP consistently applied throughout the periods covered (except as disclosed therein and except, with respect to unaudited Financial Statements, for the absence of footnotes and normal year-end audit adjustments) and present fairly in all material respects the consolidated financial position of the Borrower and its Subsidiaries as at the dates thereof and the consolidated results of their operations and cash flows for the periods then ended.

(a) Financial Statements. The following Financial Statements have been delivered on the date hereof:

(i) The unaudited consolidated balance sheet at September 30, 2012 of the Borrower and its Subsidiaries and the related consolidated statements of operations, cash flows and shareowners (deficit) equity for the Fiscal Year then ended.

(ii) The unaudited consolidated balance sheet at June 29, 2012 of the Borrower and its Subsidiaries and the related consolidated statements of operations and cash flows for the three (3) months then ended.

(b) Projections. The Projections delivered to Lender prior to the date hereof are based on assumptions believed by the Borrower to be reasonable at the time such Projections were delivered in light of conditions and facts known to the Borrower as of the date thereof (it being understood that projections by their nature are inherently uncertain, the Projections are not a guaranty of future performance, and actual results may differ materially from the Projections).

3.5 Material Adverse Effect; Burdensome Restrictions; Default. Since the date of the Borrower's Form 10-Q for the three-month period ended June 29, 2012, no event has occurred, that alone or together with other events, could reasonably be expected to have a Material Adverse Effect.

3.6 Ownership of Property; Real Estate; Liens.

(a) Each Credit Party warrants that it has good legal and valid title to, or legal and valid leasehold interests in, or right to use, all of its real and personal property material to its business, except for minor defects in title that do not interfere with its ability to conduct its business at such properties or to utilize such properties for their intended purpose as currently conducted.

(b) The real estate listed in Part 1 of Disclosure Schedule 3.6 constitutes all of the real property owned by any Credit Party (together with any real property owned thereafter by any Credit Party in fee title, "Owned Real Estate"). The leases and other agreements listed in Part 2 of Disclosure Schedule 3.6 (as updated from time to time) constitute all of the Material Real Estate Contracts. Each Credit Party owns good fee simple title to all of its Owned Real Estate except for minor defects in title that do not interfere with its ability to conduct its business at such properties for their intended purpose as currently conducted. The Borrower and each Credit Party has valid and enforceable leasehold interests in all of its material leased real estate (such material leased real estate of the Credit Parties, together with the Owned Real Estate, being herein collectively referred to as "Real Estate"). There are no purchase options, rights of first refusal or similar contractual rights that exist with respect to the Owned Real Estate, except as disclosed in Part 1 of Disclosure Schedule 3.6. None of the properties and assets of any Credit Party are subject to any Liens other than Liens permitted by Section 6.7. All material permits required to have been issued or appropriate to enable the Owned Real Estate to be lawfully occupied and used for all of the purposes for which it is currently occupied and used have been lawfully issued and are in full force and effect, except for such permits of which the failure of the Credit Parties to hold or maintain would not reasonably be expected to have a Material Adverse Effect.

3.7 Labor Matters. No strikes are pending against any Credit Party, except those that, in the aggregate, could not reasonably be expected to have a Material Adverse Effect on the operations of such Credit Party.

3.8 Ventures, Subsidiaries and Affiliates; Outstanding Stock and Indebtedness. Except as set forth in Disclosure Schedule 3.8, no Credit Party has any Subsidiaries, is engaged in any joint venture or partnership with any other Person. As of the Closing Date, all of the issued and outstanding Stock of each Credit Party (other than the Borrower) is owned by each of the Stockholders and in the amounts set forth in Disclosure Schedule 3.8. Except as set forth in

Disclosure Schedule 3.8, there are no outstanding rights to purchase, options, warrants or similar rights or agreements pursuant to which any Credit Party (other than the Borrower) may be required to issue, sell, repurchase or redeem any of its Stock or other equity securities or any Stock or other equity securities of its Subsidiaries.

3.9 Government Regulation. No Credit Party is required to register as an investment company as such term is defined in the Investment Company Act of 1940. The making of the Term Loans by Lender to the Borrower, the application of the proceeds thereof and repayment thereof will not violate any provision of any such statute or any rule, regulation or order issued by the Commission, the violation of which would reasonably be expected to result in a Material Adverse Effect.

3.10 Margin Regulations. No Credit Party is engaged, nor will it engage, principally or as one of its important activities, in the business of extending credit for the purpose of purchasing or carrying any margin stock as such terms are defined in Regulation U of the Federal Reserve Board as now and from time to time hereafter in effect (such securities being referred to herein as "Margin Stock"). None of the proceeds of the Term Loans or other extensions of credit under this Agreement will be used, directly or indirectly, for the purpose of purchasing or carrying any Margin Stock, for the purpose of reducing or retiring any Indebtedness that was originally incurred to purchase or carry any Margin Stock or for any other purpose that might cause any of the Term Loans or other extensions of credit under this Agreement to be considered a purpose credit within the meaning of Regulations T, U or X of the Federal Reserve Board.

3.11 Taxes. Except as provided on Disclosure Schedule 3.11, (and except as otherwise permitted by the Bankruptcy Court and the Bankruptcy Code) all Federal and other material tax returns, reports and statements, including information returns, required by any Governmental Authority to be filed by any Credit Party have been filed with the appropriate Governmental Authority, all such returns, reports and statements are true and correct and, subject to the automatic stay, all Charges due and payable by such Credit Party (whether or not shown on any returns, reports or statements) have been or will be timely paid prior to the date on which any fine, penalty, interest or late charge may be added thereto for nonpayment thereof, excluding Charges or other amounts being contested in accordance with Section 5.2(b). Proper and accurate amounts have been withheld by each Credit Party from amounts paid to its respective employees for all periods in compliance in all material respects with all applicable federal, state, local and foreign laws and such withholdings have been or will be timely paid, subject to the automatic stay, to the respective Governmental Authorities.

3.12 Compliance with ERISA. Each employee benefit plan (as defined under ERISA) of each Credit Party is in full compliance with all applicable requirements of ERISA and the IRC, as amended, no steps have been taken to terminate any such plan and no contribution failure has occurred with respect to any such plan sufficient to give rise to a lien under ERISA, except in each case as could not be reasonably expected to result in a Material Adverse Effect. Except as set forth on Schedule 3.12, no such employee benefit plan is a Title IV Plan or a Multiemployer Plan. No condition exists or event or transaction has occurred with respect to any such plan which might result in the incurrence by any Credit Party of any liability, fine or penalty which would reasonably be expected to result in a Material Adverse Effect.

3.13 No Litigation. Other than the Cases, no unstayed action, claim, lawsuit, demand, investigation or proceeding is now pending or, to the knowledge of any officer of such Credit Party, threatened in writing against any Credit Party, before any Governmental Authority or before any arbitrator or panel of arbitrators (collectively, "Litigation") that, individually or in the aggregate, (a) challenges any Credit Party's right or power to enter into or perform any of its obligations under the Loan Documents to which it is a party, or the validity or enforceability of any Loan Document or any action taken thereunder (excluding the filing of an objection by any party in interest to this Agreement or the transactions contemplated hereunder) or (b) could reasonably be expected to have a Material Adverse Effect.

3.14 Intellectual Property. Except as would not reasonably be expected to result in a Material Adverse Effect, each Credit Party owns or has rights to use all Intellectual Property necessary to continue to conduct its business as now conducted by it or presently proposed to be conducted by it, and each U.S. registered Patent, U.S. registered Trademark, U.S. registered Copyright and U.S. License that, in the case of U.S. Licenses, is necessary in the conduct of the Credit Parties' business and is materially difficult to replace, and in each case, in effect on the Closing Date is listed, together with application or registration numbers, as applicable, in Disclosure Schedule 3.14. To the knowledge of each Credit Party, each Credit Party conducts its business and affairs without infringement of or interference with any Intellectual Property of any other Person in any material respect and, except as set forth in Schedule 3.14, no material claim or litigation regarding any of the foregoing is pending or threatened other than, in each case, as cannot reasonably be expected to affect the Loan Documents and the transactions contemplated herein and would not, in the aggregate, reasonably be expected to have a Material Adverse Effect.

3.15 Full Disclosure. No information contained in this Agreement, any of the other Loan Documents, Financial Statements or Collateral Reports or other written reports from time to time prepared by any Credit Party and delivered hereunder or any written statement prepared by any Credit Party and furnished by or on behalf of any Credit Party to the Lender pursuant to the terms of this Agreement (other than any Projections and other forward looking statements) contains or will contain, when taken as a whole, any untrue statement of a material fact or omits or will omit to state a material fact, when taken as a whole, necessary to make the statements contained herein or therein not misleading in light of the circumstances under which they were made and as of the date when made. Projections from time to time delivered hereunder are or will be based upon the estimates and assumptions stated therein, all of which the Borrower believed at the time of delivery to be reasonable in light of the conditions and facts known to the Borrower as of such delivery date (it being understood that projections by their nature are inherently uncertain, such Projections are not a guaranty of future performance and actual results may differ materially from those set forth in such Projections).

3.16 Insurance. Part 1 of Disclosure Schedule 3.16 lists all insurance policies of any nature maintained, as of the Closing Date, for current occurrences by each Credit Party, as well as a summary of the scope and term of each such policy. Part 2 of Disclosure Schedule 3.16 identifies those insurance policies which relate to the Collateral.

3.17 Deposit Accounts. Disclosure Schedule 3.17 (as updated from time to time) lists all banks and other financial institutions at which any Credit Party maintains deposit or other

accounts in the United States, and such Schedule correctly identifies the name, address and telephone number of each depository, the name in which the account is held and the complete account number therefor.

3.18 Secured, Super-Priority Obligations.

(a) Subject to the Carve-Out, on and after the Closing Date, the provisions of the Loan Documents and the Interim Order and, to the extent entered, the Final Order are effective to create in favor of the Lender legal, valid and perfected Liens on and security interests (having the priority provided for herein and in the Interim Order and, to the extent entered, the Final Order) in all right, title and interest in the Collateral, enforceable against each Credit Party that owns an interest in such Collateral.

(b) All Obligations shall at all times:

(i) Pursuant to subsection 364(c)(1) of the Bankruptcy Code, be entitled to joint and several Super-Priority Claims in the Cases having priority over all administrative expenses of any kind specified in sections 503(b) and 507(b) of the Bankruptcy Code;

(ii) Pursuant to subsection 364(c)(2) of the Bankruptcy Code, be secured by a perfected first priority Lien on the Collateral to the extent that such Collateral is not subject to valid, perfected and non-avoidable Liens as of the commencement of the Cases;

(iii) pursuant to Bankruptcy Code section 364(c)(3), be secured by a perfected junior Lien on all Collateral, to the extent that such Collateral is subject to valid, perfected and non-avoidable Liens in favor of third parties in existence at the time of the commencement of the Cases (other than property that is subject to the existing Liens that secure the obligations under the Senior Secured Notes, which Liens shall be primed by the Liens securing the obligations under the Loan Documents in accordance with the terms of this Agreement) (the "Existing Liens"); and

(iv) pursuant to Bankruptcy Code section 364(d), be secured by a perfected first-priority priming Lien on the Senior Secured Notes Collateral (the "Primed Liens"), all of which Primed Liens shall be primed by and made subject and subordinate with respect to the Senior Secured Notes Collateral to the perfected first priority senior Liens to be granted to the Lender, which senior priming Liens in favor of the Lender shall also prime any Liens granted after the commencement of the Cases to provide adequate protection in respect of any of the Primed Liens;

subject in each case only to the Carve-Out. Notwithstanding the foregoing, no portion of the Carve-Out or proceeds of the Term Loans may be used in connection with the investigation (including, without limitation, discovery proceedings), initiation or prosecution of any claims, causes of action, objections or other litigation against the Lender, including, but not limited to, (i) with respect to raising any defense to the validity, perfection, priority, extent, or enforceability of the obligations under the Loan Documents including the Liens with respect thereto and (ii) with respect to pursuing any potential claims against the Lender (or its predecessors-in-interest, agents, affiliates, representatives, attorneys, or advisors) asserting or alleging any claims including, but not limited to, "lender liability"-type claims or causes of action, causes of actions

under chapter 5 of the Bankruptcy Code (including under section 502(d) of the Bankruptcy Code), or any other claims or causes of action under, or in any way otherwise relating to, the Loan Documents or the Loans.

(c) The Interim Order, or if the Final Order has been entered, the Final Order and the transactions contemplated hereby and thereby, are in full force and effect and have not been vacated, reversed, modified, amended or stayed in any manner without the prior written consent of the Lender.

4. FINANCIAL STATEMENTS AND INFORMATION

4.1 Reports and Notices.

(a) The Borrower hereby agrees that from and after the Closing Date and until the Termination Date, it shall deliver to the Lender, as required, the Financial Statements, notices, Projections, Budgets and other information at the times, to the Persons and in the manner set forth in Annex D.

(b) The Borrower hereby agrees that from and after the Closing Date and until the Termination Date, it shall deliver to the Lender, as required, the various Collateral Reports at the times, to the Persons and in the manner set forth in Annex E.

5. AFFIRMATIVE COVENANTS

Each Credit Party agrees that from and after the Closing Date and until the Termination Date:

5.1 Maintenance of Existence and Conduct of Business. Except as otherwise required by the Bankruptcy Code, each Credit Party shall (a) except as otherwise permitted by Section 6.1 or Section 6.8, do or cause to be done all things to preserve and keep in full force and effect its legal existence, all rights, permits, licenses, approvals and privileges necessary in the conduct of its business, and its material rights and franchises, except as would not reasonably be expected to have, either individually or in the aggregate, a Material Adverse Effect and (b) at all times maintain, preserve and protect in all material respects all of its assets and properties (including all Collateral) used or useful and necessary in the conduct of its business, and keep the same in good repair, working order and condition (taking into consideration ordinary wear and tear and subject to any Property Loss Event) and from time to time make, or cause to be made, all necessary or appropriate repairs, replacements and improvements thereto consistent with industry practices except where the failure to do so would not reasonably be expected to have a Material Adverse Effect or except as otherwise permitted in the applicable Loan Documents; and (d) transact business only in such corporate and trade names as are set forth in Disclosure Schedule 5.1.

5.2 Payment of Charges.

(a) Unless payment thereof is precluded by the Cases and subject to Section 5.2(b), each Credit Party shall pay and discharge or cause to be paid and discharged promptly all Charges (which in the case of contractual obligations, relating only to obligations arising after

the Petition Date), except where the failure to pay or discharge such Charges could not reasonably be expected to result in a Material Adverse Effect.

(b) Each Credit Party may in good faith contest, by appropriate proceedings, the validity or amount of any Charges, Taxes or claims described in Section 5.2(a); provided, that (i) adequate reserves with respect to such contest are maintained on the books of such Credit Party, in accordance with GAAP; (ii) no Lien shall be imposed to secure payment of such Charges that is superior to any of the Liens securing payment of the Obligations and such contest is maintained and prosecuted continuously and with diligence and operates to suspend collection or enforcement of such Charges (except in the case of where the failure to pay or discharge such Charges could not reasonably be expected to result in a Material Adverse Effect); (iii) none of the Collateral becomes subject to forfeiture or loss as a result of such contest; and (iv) such Credit Party shall promptly pay or discharge such contested Charges, Taxes or claims and all additional charges, interest, penalties and expenses and shall deliver to the Lender evidence reasonably acceptable to the Lender of such compliance, payment or discharge, if such contest is terminated or discontinued adversely to such Credit Party or the conditions set forth in this Section 5.2(b)) are no longer met.

5.3 Books and Records. Each Credit Party shall keep its Books and Records with respect to its business activities in which proper entries, reflecting all financial transactions, are made in accordance with GAAP. Upon reasonable request of the Lender, each Credit Party shall deliver any requested Chattel Paper or Instrument having an individual value in excess of $100,000 to the Lender (in each case, accompanied by instruments of transfer executed in blank), and shall, if requested by the Lender, mark any Chattel Paper or Instrument that has not been delivered to the Lender with a legend that provides that the writing and the obligations evidenced or secured thereby are subject to the security interest of the Lender.

5.4 Insurance; Damage to or Destruction of Collateral.

(a) The Credit Parties shall, at their sole cost and expense, maintain or cause to be maintained, insurance at all times against such risks as is customary for companies of the same or similar size in the same or similar business and industry or as otherwise required in the Collateral Documents. Such policies of insurance as in effect on the Closing Date are described, collectively, in Part 1 and Part 2 of Disclosure Schedule 3.16. The policies of insurance (or the loss payable and additional insured endorsements delivered to the Lender) described in Part 2 of Disclosure Schedule 3.16, which lists those policies as in effect on the Closing Date relating to the Collateral, shall contain provisions pursuant to which the insurer agrees to endeavor to provide thirty (30) days prior written notice to the Lender in the event of any non-renewal, cancellation or material adverse amendment of any such insurance policy (or ten days prior written notice in the case of cancellation for non-payment of premiums). If any Credit Party at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required hereunder or to pay all premiums relating thereto, the Lender may, upon at least five Business Days prior written notice to the Borrower, at any time or times thereafter obtain and maintain such policies of insurance and pay such premiums. The Lender shall have no obligation to obtain insurance for any Credit Party or pay any premiums therefor. By doing so, the Lender shall not be deemed to have waived any Default or Event of Default arising from any Credit Party's failure to maintain such insurance or pay any premiums therefor. All sums so disbursed,

including attorneys fees, court costs and other charges related thereto, shall be payable within five Business Days upon demand by the Borrower to the Lender and shall be additional Obligations hereunder secured by the Collateral. Borrower may later cancel any such insurance purchased by the Lender, but only after providing the Lender with evidence that there has been obtained insurance as required hereunder.

(b) The Borrower on behalf of each Credit Party shall, within the time set forth in Section 5.15, deliver to the Lender, in form and substance reasonably satisfactory to the Lender, with respect to the insurance policies required to be maintained hereunder, endorsements to (i) all risk property and business interruption insurance naming the Lender, as lender loss payee as its interests may appear; provided, that, with respect to business interruption insurance and subject to Section 1.3(b), so long as no Event of Default has occurred or is continuing, the Lender shall promptly release to the Borrower any insurance proceeds received in connection with such business interruption insurance or Property Loss Event, and (ii) all general liability and other liability policies naming the Lender, as an additional insured as its interests may appear. The Borrower on behalf of each Credit Party irrevocably makes, constitutes and appoints the Lender (and all officers, employees or agents designated by the Lender) as the Borrower's and each Credit Party's true and lawful agent and attorney-in-fact for the purpose of making, settling and adjusting claims under such All Risk property policies of insurance, endorsing the name of the Borrower or such Credit Party on any check or other item of payment for the proceeds of such All Risk property policies of insurance and for making all determinations and decisions with respect to such All Risk property policies of insurance; provided, that such power of attorney shall only be exercised so long as an Event of Default has occurred and is continuing. The Lender shall have no duty to exercise any rights or powers granted to them pursuant to the foregoing power-of-attorney. The Borrower shall promptly notify the Lender of any loss, damage, or destruction to the Collateral in the amount of $500,000 or more, whether or not covered by insurance. All Net Cash Proceeds from insurance required under the Loan Documents shall be applied in accordance with Section 1.3.

5.5 Compliance with Laws. Each Credit Party shall comply with all federal, state, local and foreign laws and regulations applicable to it, including labor laws and Environmental Laws and Environmental Permits applicable to it, in each case, except where the failure to do so would not reasonably be expected to result in a Material Adverse Effect.

5.6 Intellectual Property. Each Credit Party shall own or have rights to use all material Intellectual Property necessary to conduct its business. Each Credit Party shall do or cause to be done all things necessary to preserve and keep in full force and effect at all times all material registered Patents, Trademarks, trade names, Copyrights and service marks necessary in the conduct of its business. Each Credit Party shall conduct its business and affairs without infringement of or interference with any Intellectual Property of any other Person in any manner which would reasonably be expected to result in a Material Adverse Effect.

5.7 Environmental Matters. Except as otherwise required by the Bankruptcy Code, such Credit Party, each Credit Party shall and shall cause each Person within its control to: conduct its operations and keep and maintain its Real Estate in compliance with all Environmental Laws and Environmental Permits other than noncompliance that could not reasonably be expected to have a Material Adverse Effect.

5.8 Milestones. The Credit Parties shall satisfy the Milestones on or prior to the dates set forth on Annex F.

5.9 Further Assurances. Each Credit Party executing this Agreement agrees that it shall, at such Credit Party's expense and upon the reasonable request of the Lender, duly execute and deliver, or cause to be duly executed and delivered, to the Lender such further instruments and do and cause to be done such further acts as may be necessary in the reasonable opinion of the Lender, to carry out more effectively the provisions and purposes of this Agreement and each Loan Document.

5.10 Additional Guaranties and Collateral Documents. The Credit Parties shall take any actions requested by the Lender to maintain, ensure, protect, evidence and/or demonstrate that the Liens and security interests granted by the applicable Collateral Documents, the Interim Order or, to the extent entered, the Final Order with the priority set forth in the Interim Order (or the Final Order, when applicable) in the Collateral are valid, perfected and enforceable under the Code or as otherwise required by the Collateral Documents, including (a) executing additional security agreements, mortgages, control agreements and other agreements or documents, (b) delivering such certificates, instruments, Stock, other debt Securities and other documents representing all Collateral required to be pledged and delivered under the Collateral Documents and (c) delivering opinions, surveys, appraisals and certificates.

5.11 Financial Consultant. The Borrower shall continue to retain, on terms and conditions reasonably acceptable to the Lender and at the sole cost and expense of the Borrower, Alvarez and Marsal [(it being agreed and understood that the terms and conditions set forth in the Alvarez and Marsal engagement letters in effect on the Closing Date are reasonably acceptable to the Lender)] or such other business consultant as is reasonably acceptable to the Lender (the "Consultant") to, among other things, advise the Borrower in connection with the management and operation of its business and to assist the Borrower with preparation of the Budget and the other financial and collateral reporting required to be delivered to the Lender pursuant to this Agreement. The Borrower shall cause the Consultant to consult with the Lender on a regular basis as requested by the Lender. In the event the Consultant ceases for any reason to act in that capacity, the Borrower shall engage a successor Consultant reasonably acceptable to the Lender within thirty days (or such later date agreed to by the Lender) of such event.

5.12 ERISA/Labor Matters.

The Credit Parties shall furnish the Lender each of the following:

(a) promptly after the filing or receiving thereof, copies of all material reports and notices which any Credit Party files under ERISA with respect to any Title IV Plan with the IRS or the PBGC or the U.S. Department of Labor or which any Credit Party receives from such corporation or any other government agency, in each case other than in the ordinary course of business; and

(b) promptly after the date that any Credit Party (i) commences or terminates negotiations with any collective bargaining agent for the purpose of materially changing any collective bargaining agreement; (ii) reaches an agreement with any collective bargaining agent

prior to ratification for the purpose of materially changing any collective bargaining agreement; (iii) ratifies any agreement reached with a collective bargaining agent for the purpose of materially changing any collective bargaining agreement; or (iv) becomes subject to a cooling off period under the auspices of the National Mediation Board, notification of the commencement or termination of such negotiations, a copy of such agreement or notice of such ratification or a cooling off period, as the case may be.

5.13 Use of Proceeds. The proceeds of the Term Loans will be used by the Borrower and the other Credit Parties, (i) to pay interest, fees and expenses in connection with this Term Loan and the Cases (including, without limitation, payment of professional fees), make critical vendor payments, provide working capital for, and for other general corporate purpose of, the Credit Parties, and to make any other payments permitted by the Bankruptcy Code or the Interim Order or Final Order, in each case in accordance with the Budget and (ii) to pay the costs and expenses of the Lender in accordance with the Budget.

5.14 Cash Management Systems. From and after the date set forth in Section 1.7, the Borrower will establish and will maintain the Cash Management Systems until the Termination Date.

5.15 Post-Closing Requirements. Within fifteen (15) Business Days (or such later date as the Lender may agree to in its sole discretion) after the Closing Date deliver such endorsements and insurance certificates required to be delivered under Section 2.1(e) and Section 5.4(b).

6. NEGATIVE COVENANTS

Each Credit Party agrees that from and after the Closing Date until the Termination Date:

6.1 Mergers, Subsidiaries, Etc. No Credit Party or a Subsidiary of a Credit Party will merge into or consolidate with any other Person, or permit any other Person to merge into or consolidate with it, or sell, transfer, or otherwise dispose of (in one transaction or in a series of transactions) the Stock of any of its Subsidiaries (in each case, whether now owned or hereafter acquired), or otherwise liquidate or dissolve, except that, (i) a Credit Party may merge into or consolidate with another Credit Party so long as (a) no Default or Event of Default exists and (b) to the extent involving the Borrower, the Borrower is the surviving entity in any transaction involving such Person and (ii) any Subsidiary of a Credit Party that is not a Credit Party may merge, consolidate, transfer, liquidate or dissolve with or into any other Subsidiary of a Credit Party, provided, that to the extent involving a Credit Party, the Credit Party is the surviving entity.

6.2 Investments; Term Loans and Advances. No Credit Party or a Subsidiary of a Credit Party will make any Investment in any Person, except for:

(i) any Investment (x) in a Credit Party, (y) by a Subsidiary of a Credit Party that is not a Credit Party in another Subsidiary that is not a Credit Party and (z) by a Credit Party in any Subsidiary that is not a Credit Party, provided that with respect to this subclause (z), such Investment must be permitted under the Budget;

(ii) travel, relocation expenses and other ordinary course of business advances to officers and employees consistent with past practice;

(iii) without limiting clause (i), other Investments not in excess of $50,000;

(iv) hold Investments comprised of notes payable, or stock or other securities issued by Account Debtors to such Credit Party or the Subsidiary of any Credit Party pursuant to negotiated agreements with respect to settlement of such Account Debtor's Accounts in the ordinary course of business, consistent with past practices;

(v) cash or Investments in the form of Permitted Investments;

(vi) (x) endorsements for collection or deposit in the ordinary course of business, (y) extensions of trade credit (other than to Affiliates of the Borrower) arising or acquired in the ordinary course of business and (z) Investments received in the settlements in the ordinary course of business of such extensions of trade credit;

(vii) Investments constituting payment intangibles, chattel paper, Accounts, notes receivable and other items arising or acquired in the ordinary course of business;

(viii) lease, utility and other similar deposits in the ordinary course of business that do not constitute prepayments of payables; and

(ix) existing Investments outstanding on the Petition Date and set forth on Disclosure Schedule 6.2.

6.3 Indebtedness.

(a) No Credit Party or a Subsidiary of a Credit Party will create, incur, assume or suffer to exist any Indebtedness except:

(i) Indebtedness secured by purchase money security interests and Capital Leases (including in the form of sale-leaseback, synthetic lease or similar transactions) to the extent such Indebtedness was incurred to finance the acquisition or construction of any fixed or capital assets; provided, that (x) the amount of such Indebtedness does not exceed 100% of the purchase price or construction cost (including any capitalized interest and issuance fees) of the subject asset and (y) such Indebtedness in incurred to the extent permitted by the Budget;

(ii) the Term Loans and the other Obligations;

(iii) existing Indebtedness outstanding on the Petition Date described in Disclosure Schedule 6.3;

(iv) Indebtedness consisting of intercompany loans and advances made among Credit Parties;

(v) Indebtedness in respect of any overdrafts and related liabilities arising from treasury, depository and cash management services or in connection with any automated clearing house transfers of funds (but subject to compliance with Section 5.14);

(vi) Indebtedness consisting of take-or-pay obligations contained in supply agreements entered into in the ordinary course of business and consistent with past practices;

(vii) Indebtedness to credit card processors in connection with credit card processing services incurred in the ordinary course of business and consistent with past practices;

(viii) Indebtedness arising in the ordinary course of business, providing netting services with respect to intercompany Indebtedness permitted to be incurred and outstanding pursuant to this Agreement so long as such Indebtedness does not remain outstanding for more than three (3) Business Days from the date of its incurrence;

(ix) Indebtedness consisting of the financing of insurance premiums in the ordinary course of business;

(x) Indebtedness consisting of letters of credit described in Disclosure Schedule 6.3 and any replacements or refinancings thereof;

(xi) surety bonds, performance bonds or similar obligations in the ordinary course of business and consistent with past practices; and

(xii) other unsecured Indebtedness incurred subsequent to the Closing Date in an aggregate amount not to exceed $100,000 outstanding at any time.

(b) No Credit Party shall, directly or indirectly, voluntarily repay, redeem, purchase, defease or otherwise satisfy any Indebtedness, except for payments included in the Budget or otherwise approved by the Bankruptcy Court with the consent of the Lender.

6.4 Affiliate Transactions. No Credit Party or a Subsidiary of a Credit Party will sell or transfer any property or assets to, or otherwise engage in any other transactions with any of its Affiliates other than the Credit Parties, other than (a) on terms and conditions no less favorable to such Credit Party than could be obtained on an arm's length basis from unrelated third parties, (b) reasonable and customary fees and compensation paid to, and indemnity provided on behalf of, officers, directors or employees of such Credit Party or Subsidiary, (c) Investments permitted pursuant to Section 6.2 and (d) any dividends, other distributions or payments permitted by Section 6.13.

6.5 Capital Structure and Business. No Credit Party or a Subsidiary of a Credit Party will amend, modify or waive any of its rights under (a) any agreement relating to any Material Indebtedness, (b) its Organizational Documents or (c) any Material Contract, in each case to the extent any such amendment, modification or waiver is materially adverse to the Lender. No Credit Party or a Subsidiary of a Credit Party will terminate any Material Contract without the prior consent of the Lender.

6.6 Formation of New Entities; Investments in Joint Ventures. No Credit Party or a Subsidiary of a Credit Party will, nor will it seek Bankruptcy Court approval to, (a) form or acquire any Subsidiary or (b) make any Investment in a joint venture.

6.7 Liens. No Credit Party or a Subsidiary of a Credit Party will, nor will it seek Bankruptcy Court approval to, create, incur, assume or permit to exist any Lien on any property or assets, except:

(a) Permitted Liens;

(b) Liens created by the Loan Documents in favor of the Lender;

(c) Liens in existence on the date hereof and summarized on Disclosure Schedule 6.7;

(d) Liens created after the date hereof in connection with Capital Leases or purchase money Indebtedness, in each case, permitted in Section 6.3(a)(i); provided, that such Liens attach only to the assets (and the proceeds thereof) subject to such purchase money debt or Capital Lease and such Indebtedness is incurred within one hundred eighty (180) days following such purchase and does not exceed 100% of the purchase price of the subject assets;

(e) other Liens securing Indebtedness permitted by Section 6.3(a)(v), 6.3(a)(viii) and 6.3(a)(x) (limited in the case of Indebtedness permitted under Section 6.3(a)(x) to assets securing such Indebtedness on the Petition Date);

(f) [reserved];

(g) any interest or title of a licensor, lessor or sublessor granted to others, but only to the extent permitted by any of the Collateral Documents;

(h) Liens or deposits in favor of credit card processors securing obligations in connection with credit card processing services incurred in the ordinary course of business and consistent with past practices;

(i) [reserved];

(j) other Liens, other than Liens securing Indebtedness, so long as the value of the property subject to such Liens, and the obligations secured thereby, do not exceed, in the aggregate, $100,000 at any one time outstanding;

(k) Liens created after the Closing Date in connection with operating leases (which in no event constitute Indebtedness) in the ordinary course of business and consistent with past practices; provided, that such Liens attach only to such lease or the assets subject to such lease (including other assets integral to the use thereof);

(l) deposits securing Indebtedness permitted by Section 6.3(a)(ix);

(m) the Carve-Out, solely to the extent set forth in the Interim Order and, to the extent entered, the Final Order; and

(n) Adequate Protection Obligations.

6.8 Sale of Stock and Assets. No Credit Party or a Subsidiary of a Credit Party will, nor will it seek Bankruptcy Court approval to, sell, transfer, lease or dispose of any assets (any such disposition being an "Asset Sale", it being agreed that collections of accounts receivables and use or disposition of cash or Cash Equivalents shall not be deemed an Asset Sale) other than:

(a) sales and other disposition of inventory in the ordinary course of business;

(b) sales or dispositions of damaged, obsolete, uneconomical or worn out equipment no longer used or useful in the business of the Credit Parties;

(c) [reserved];

(d) sales or dispositions of assets (x) among the Credit Parties, (y) between a Subsidiary of a Credit Party that is not a Credit Party and another Subsidiary that is not a Credit Party and (z) between a Credit Party in any Subsidiary that is not a Credit Party, provided that with respect to this subclause (z), such disposition must be permitted under the Budget;

(e) sales or dispositions of other assets in arm's-length transactions at Fair Market Value in an aggregate amount not to exceed $100,000 in the aggregate;

(f) any Property Loss Event; and

(g) transactions pursuant to Sections 6.1, 6.2 or 6.7 to the extent they would constitute a sale or a disposition.

The foregoing limitations are not intended to prevent any Credit Party or Subsidiary of a Credit Party from rejecting unexpired leases or executor contracts pursuant to Section 365 of the Bankruptcy Code in connection with the Cases.

6.9 ERISA. No Credit Party or a Subsidiary of a Credit Party shall, or shall cause or permit any ERISA Affiliate to, cause or permit to occur (i) an event that results in the imposition of a Lien under Section 430 of the IRC or Section 303 or 4068 of ERISA or (ii) an ERISA Event (other than the Cases) to the extent such ERISA Event would reasonably be expected to result in taxes, penalties and other liability in excess of $100,000 in the aggregate.

6.10 Financial Covenants. No Credit Party or a Subsidiary of a Credit Party will breach or fail to comply with any of the Financial Covenants.

6.11 Line of Business. No Credit Party or a Subsidiary of a Credit Party will engage in any line of business different from the business conducted by the Credit Parties on the Closing Date.

6.12 Sale-Leasebacks. No Credit Party or a Subsidiary of a Credit Party will engage in any sale-leaseback, synthetic lease or similar transaction involving any of its assets.

6.13 Restricted Payments. No Credit Party or a Subsidiary of a Credit Party will make, directly or indirectly, any Restricted Payment, except

(a) payments of principal of and interest on intercompany loans and advances between Credit Parties to the extent permitted by Section 6.3; and

(b) dividends and distributions by Subsidiaries of the Borrower on a pro rata basis.

6.14 Change of Corporate Name or Location; Change of Fiscal Year. No Credit Party shall (a) change its name as it appears in official filings in the state of its incorporation or other organization, (b) change, from such locations as set forth on Disclosure Schedule 6.14, its chief executive office, principal place of business, corporate offices or warehouses, maintenance facilities or other locations at which Collateral (except for Collateral in transit or out for repair) with book value in excess of $500,000, individually or in the aggregate, is held or stored, or the location of its records concerning such Collateral, (c) change the type of entity that it is, (d) change its organization identification number, if any, issued by its state of incorporation or other organization, or (e) change its state of incorporation or organization, in each case, without at least fifteen (15) days prior written notice to the Lender (or such shorter time as permitted by Lender in its sole discretion); provided, that in the case of clauses (b) or (e), any such new location shall be in the continental United States. No Credit Party shall change its fiscal year.

6.15 No Impairment of Intercompany Transfers. No Credit Party will directly or indirectly enter into or become contractually bound by any agreement, instrument, indenture or other obligation (other than this Agreement and the other Loan Documents) that could directly or indirectly restrict, prohibit or require the consent of any Person with respect to the payment of dividends or distributions by a Subsidiary or a Credit Party, the making or repayment of intercompany loans by a Subsidiary of a Credit Party to the Credit Party or the transfer of assets between and among the Credit Parties and their Subsidiaries; other than (a) prohibitions or restrictions existing on the Closing Date and listed on Disclosure Schedule 6.15, and any extension or renewal thereof on terms no less favorable to such Credit Party and (b) prohibitions or restrictions imposed by law or by this Agreement or any of the other Loan Documents, (c) customary restrictions and conditions contained in agreements relating to the sale of a subsidiary or any asset pending such sale, provided such restrictions and conditions apply only to the subsidiary or asset that is to be sold and such sale is permitted hereunder, (d) prohibitions or restrictions imposed by any agreement related to secured Indebtedness or other obligations permitted by this Agreement if such restriction or condition applies only to property secured or financed by such Indebtedness or other obligations and (e) the foregoing shall not apply to (A) customary provisions in leases, licenses and other contracts relating to the use and occupancy of premises and facilities restricting the assignment thereof or (B) customary provisions restricting licensing, sublicensing or assignments of a contract or subletting or assignment of leases governing leasehold interests of the Credit Parties and their Subsidiaries.

6.16 Limitation on Negative Pledge Clauses. No Credit Party will, nor will it seek approval to, directly or indirectly, enter into, incur or permit to exist any agreement or other arrangement that prohibits, restricts or imposes any condition upon the ability of any Credit Party or any Subsidiary to create, incur, assume or permit to exist any Lien to secure its Obligations under the Loan Documents; provided that (i) the foregoing shall not apply to restrictions and

conditions imposed by law or by this Agreement or any of the other Loan Documents, (ii) the foregoing shall not apply to restrictions and conditions existing on the date hereof identified on Disclosure Schedule 6.16 (but shall apply to any amendment or modification expanding the scope or duration of, any such restriction or condition), (iii) the foregoing shall not apply to customary restrictions and conditions contained in agreements relating to the sale of a Subsidiary or any asset pending such sale, provided such restrictions and conditions apply only to the Subsidiary or asset that is to be sold and such sale is permitted hereunder, (iv) the foregoing shall not apply to prohibitions or restrictions imposed by any agreement related to secured Indebtedness or other obligations permitted by this Agreement if such restriction or condition applies only to property secured or financed by such Indebtedness or other obligations and (v) the foregoing shall not apply to customary provisions in leases, licenses and other contracts relating to the use and occupancy of airport premises and facilities restricting the assignment thereof.

6.17 No Speculative Transactions. No Credit Party will, nor will it seek approval to engage in any transaction involving commodity options, futures contracts or similar transactions, except solely to hedge in the ordinary course of business.

6.18 Expenditures. No Credit Party or a Subsidiary of a Credit Party will, directly or indirectly, make or commit to make, whether through purchase, leases or otherwise, in a single transaction or a series of related transactions, expenditures not permitted under the Budget and in excess of $100,000, other than expenditures for payment of professional fees, without the prior written consent of the Lender.

7. TERM

7.1 Termination. The financing arrangements contemplated hereby shall be in effect until the Maturity Date, and the Term Loans and all other Obligations shall be automatically due and payable in full on such date.

7.2 Survival of Obligations Upon Termination of Financing Arrangements. Except as otherwise expressly provided for in the Loan Documents, no termination or cancellation (regardless of cause or procedure) of any financing arrangement under this Agreement shall in any way affect or impair the obligations, duties and liabilities of the Credit Parties or the rights of the Lender relating to any unpaid portion of the Term Loans or any other Obligations, due or not due, liquidated, contingent or unliquidated or any transaction or event occurring prior to such termination, or any transaction or event, the performance of which is required after the Maturity Date. All undertakings, agreements, covenants, warranties and representations of or binding upon the Credit Parties, and all rights of the Lender, all as contained in the Loan Documents, shall terminate and expire on the Termination Date; provided, that the provisions of Sections 13.3, 13.8, 13.9, 13.13, the payment obligations under Sections 1.11 and 1.13 shall survive the Termination Date.

8. EVENTS OF DEFAULT; RIGHTS AND REMEDIES

8.1 Events of Default. The occurrence of any one or more of the following events (regardless of the reason therefor) shall constitute an "Event of Default" hereunder:

(a) The Borrower (i) fails to make any payment of principal of the Term Loans when due and payable, (ii) fails to make any payment of interest on the Term Loans or any of the other Obligations (other than the reimbursement or payment of expenses) when due and payable within five (5) days following the demand for such interest or other Obligations, or (iii) fails to pay or reimburse the Lender for any expense reimbursable hereunder or under any other Loan Document within ten (10) days following the demand for such reimbursement or payment of expenses.

(b) Any Credit Party fails or neglects to perform, keep or observe any of the provisions of Sections 1.3(b), 1.5 1.7, 1.14, 5.4, 5.8, 5.15 or Article 6, the insurance provisions in the Collateral Documents or any of the provisions set forth in Annex B, Sections (h) of Annex D and Annex G, respectively.

(c) Any Credit Party fails or neglects to perform, keep or observe any of the provisions of Section (e) of Annex D and the same shall remain unremedied for three (3) Business Days.

(d) The Borrower fails or neglects to perform, keep or observe any of the provisions of Section 4.1 or any provisions set forth in Annex D (other than Sections (e), (h), (o) and (p)) respectively, and the same shall remain unremedied for five (5) Business Days.

(e) (x) The Borrower fails to perform or observe any covenant, condition or agreement to be performed or observed by it under this Agreement or any other Loan Document (other than as described in clauses (a), (b), (c) or (d) above) and such failure shall remain unremedied for 30 days from notice to or knowledge of any Credit Party.

(f) Any event shall have occurred that permits the Consenting Secured Lender to terminate its obligations under the Restructuring Support Agreement.

(g) Any representation or warranty herein or in any Loan Document or in any written statement, report, financial statement or certificate made or delivered to the Lender by any Credit Party is untrue or incorrect or false in any material respect, in each case, as of the date when made or deemed made.

(h) [Reserved].

(i) The Loan Documents, the Interim Order and, to the extent entered, the Final Order shall, for any reason, cease to create a valid Lien on any of the Collateral purported to be covered thereby or such Lien shall cease to be a perfected Lien having the priority provided for herein and in the Interim Order and, to the extent entered, the Final Order, or any Credit Party shall so allege in any pleading filed in any court or any material provision of any Loan Document shall, for any reason, cease to be valid and binding on each Credit Party party thereto (or any Credit Party shall challenge the enforceability of any Loan Document or shall assert in writing, or engage in any action or inaction based on any such assertion, that any provision of any of the Loan Documents has ceased to be or otherwise is not valid, binding and enforceable in accordance with its terms).

(j) Any judgment or judgments for the payment of any post-petition obligations in excess of $500,000 in the aggregate at any time are outstanding against one or more of the Credit Parties (which judgments are not covered by insurance policies as to which liability has been accepted by the insurance carrier) and, in each case, the same are not, within thirty (30) days after the entry thereof, discharged or bonded pending appeal, or such judgments are not discharged, satisfied or vacated prior to the expiration of any such stay.

(k) Any Change of Control occurs.

(l) [reserved].

(m) An ERISA Event shall have occurred that, when taken together with all other ERISA Events that have occurred, could reasonably be expected to result in a Material Adverse Effect.

(n) (i) Any of the Cases shall be dismissed without a provision for indefeasible payment of all of the Obligations in full in cash (or the Bankruptcy Court shall make a ruling requiring the dismissal of the Cases) or converted to a case under chapter 7 of the Bankruptcy Code, (ii) any Credit Party shall file any pleading requesting any such relief, (iii) a trustee under chapter 7 or chapter 11 of the Bankruptcy Code, a responsible officer or an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in section 1106(a)(3) and (4) of the Bankruptcy Code) under section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases without the prior written consent of the Lender; or (iv) an application shall be filed by any Credit Party for the approval of, or the Bankruptcy Court shall enter an order (x) granting any Lien that is *pari passu* or senior to any lien granted to the Lender under the Loan Documents, the Interim Order or, to the extent entered, the Final Order, except as expressly permitted therein; (y) 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; or (z) to grant a superpriority claim, other than that granted in the Interim Order and, to the extent entered, the Final Order (and other than with respect to the Carve-Out), which is *pari passu* with or senior to any of the claims of the Lender against the Borrower or any other Guarantor hereunder or under the Interim Order and, to the extent entered, the Final Order (or there shall arise or be granted any superpriority claim *pari passu* or senior to any such claims).

(o) Any Credit Party shall file a motion seeking, or the Bankruptcy Court shall enter, an order (i) approving any payment (as adequate protection or otherwise) on account of any Claim against any Credit Party arising or deemed to have arisen prior to the Petition Date, other than a Permitted Prepetition Payment, or any Credit Party shall make such a payment, (ii) approving any other First Day Order not acceptable to the Lender, (iii) the Bankruptcy Court shall enter an order granting relief from the automatic stay to the holder or holders of any other security interest or Lien (other than the Lender) in any Collateral to permit the pursuit of any judicial or non-judicial transfer or other remedy against any of the Collateral with a value in excess of $500,000 subject to any such relief from the automatic stay, or granting any form of adequate protection, including, without limitation, requiring cash payments by such Credit Party to such holder or holders, in lieu of such relief other than in connection with granting the first day relief as proposed by the Credit Parties (that is acceptable to the Lender), (iv) authorizing the sale of all or substantially all of the Borrower's assets (unless such order contemplates the

indefeasible payment in full in cash of the Obligations upon consummation of such sale, whether pursuant to a Plan of Reorganization or otherwise); (v) except as permitted under Section 6.8, approving the implementation of liquidation under chapter 11 of the Bankruptcy Code in any Case or (vi) any plan of reorganization or liquidation which does not provide for the indefeasible payment in full in cash of all Obligations on or before the date of the effectiveness of such plan is confirmed without the express prior written consent of the Lender.

(p) Any other party shall both seek and obtain allowance of any order in the Cases 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.

(q) (i) the Final Order shall not have been entered by the Bankruptcy Court on or before the 30th day following the Petition Date, or (ii) from and after the date of entry thereof, the Interim Order (or the Final Order, when applicable) shall cease to be in full force and effect, or (iii) any Credit Party shall fail to comply with the terms of the Interim Order (or the Final Order, when applicable) or (iv) the Interim Order (or the Final Order, when applicable) shall be amended, supplemented, stayed, reversed, vacated or otherwise modified (or any of the Credit Parties shall apply for authority to do so), in each case, without the prior written consent of the Lender.

8.2 Remedies.

(a) [Reserved].

(b) If any Event of Default has occurred and is continuing, without further order of, application to, or action by, the Bankruptcy Court, (i) the Lender may, without notice, declare all or any portion of the Obligations, including all or any portion of any Term Loans to be forthwith due and payable, all without presentment, demand, protest or further notice of any kind, all of which are expressly waived by the Borrower and each other Credit Party; and (ii) the Lender may, without notice except as required by the Interim Order or, to the extent entered, the Final Order, exercise any rights and remedies provided to the Lender under the Loan Documents or at law or equity, including all remedies provided under the Code; provided that the Lender shall provide to the Credit Parties (with a copy to counsel for (A) the Credit Parties, (B) any statutory committee appointed in the Cases and (C) the United States Trustee for the District of Delaware) within five (5) Business Days prior written notice (the "Notice Period").

(c) In addition, subject solely to any requirement of the giving of notice by the terms the Interim Order (or the Final Order, when applicable), the automatic stay provided in section 362 of the Bankruptcy Code shall be deemed automatically vacated without further action or order of the Bankruptcy Court and the Lender shall be entitled to exercise all of its rights and remedies under the Loan Documents, including, without limitation, all rights and remedies with respect to the Collateral and the Guarantors.

8.3 Waivers by Credit Parties. Except as otherwise provided for in this Agreement or by applicable law, each Credit Party waives: (a) presentment, demand and protest and notice of presentment, dishonor, notice of intent to accelerate, notice of acceleration, protest, default, nonpayment, maturity, release, compromise, settlement, extension or renewal of any or all

commercial paper, accounts, contract rights, documents, instruments, chattel paper and guaranties at any time held by the Lender on which any Credit Party may in any way be liable, and hereby ratifies and confirms whatever the Lender may do in this regard; (b) all rights to notice and a hearing prior to the Lender taking possession or control of, or to the Lender's replevy, attachment or levy upon, the Collateral or any bond or security that might be required by any court prior to allowing the Lender to exercise any of its remedies; and (c) the benefit of all valuation, appraisal, marshaling and exemption laws.

9. GUARANTY

9.1 Guaranty of Obligations of the Borrower. Each Guarantor hereby jointly and severally and absolutely and unconditionally guarantees to the Lender, and its successors, endorsees, transferees and assigns, the prompt payment when due (whether at stated maturity, by acceleration or otherwise) and performance of the Obligations of the Borrower. The Guarantors agree that this Guaranty is a guaranty of payment and performance and not of collection, and that their obligations under this Guaranty shall be primary, absolute and unconditional, irrespective of, and unaffected by:

(a) any claim of waiver, release, amendment, extension, renewal, settlement, surrender, alteration, or compromise of any of the Obligations or any of the Loan Documents, by operation of law or otherwise (other than the payment in full in cash of the Obligations (other than unasserted contingent indemnification obligations));

(b) any change in the corporate existence, structure or ownership of the Borrower or any other Guarantor;

(c) the existence of any claim, setoff or other rights which any Guarantor may have at any time against any Credit Party, the Lender or any other person, whether in connection herewith or in any unrelated transactions;

(d) the genuineness, validity, regularity, enforceability or any future amendment of, or change in any other Loan Document or any other agreement, document or instrument to which any Credit Party and/or the Guarantors are or may become a party;

(e) the absence of any action, claim or demand to enforce any of the Obligations or any other Loan Document or the waiver or consent by the Lender with respect to any of the provisions thereof;

(f) the existence, release, non-perfection, invalidity, value or condition of, or failure to perfect its Lien against, any collateral for the Obligations or any action, or the absence of any action, by the Lender in respect thereof (including, without limitation, the release of any such security);

(g) the insolvency of any Credit Party; or

(h) any other action or circumstances which might otherwise constitute a legal or equitable discharge or defense of a surety or the guarantor, it being agreed by each Guarantor that its obligations under this Guaranty shall not be discharged until the Termination Date. Each

Guarantor shall be regarded, and shall be in the same position, as principal debtor with respect to the Obligations. Each Guarantor agrees that any notice or directive given at any time to the Lender which is inconsistent with the waiver in the immediately preceding sentence shall be null and void and may be ignored by the Lender, and, in addition, may not be pleaded or introduced as evidence in any litigation relating to this Guaranty for the reason that such pleading or introduction would be at variance with the written terms of this Guaranty, unless the Lender has specifically agreed otherwise in writing. It is agreed among each Guarantor and and the Lender that the foregoing waivers are of the essence of the transaction contemplated by the Loan Documents and that, but for this Guaranty and such waivers, the Lender would decline to enter into this Agreement.

9.2 Demand the Lender. In addition to the terms of the Guaranty set forth in Section 9.1 hereof, and in no manner imposing any limitation on such terms, it is expressly understood and agreed that, if, at any time, the outstanding Obligations under this Agreement (including all accrued interest thereon) are declared to be immediately due and payable, then the Guarantors shall, without demand, pay to the holders of the Obligations the entire amount of the outstanding Obligations due and owing to such holders. Payment by the Guarantors shall be made to the Lender in immediately available Federal funds to a Blocked Account and applied to the Obligations.

9.3 Enforcement of Guaranty. In no event shall the Lender have any obligation (although it is entitled, at its option) to proceed against the Borrower or any other Credit Party or any Collateral pledged to secure Obligations or any other Guarantor before seeking satisfaction from any or all of the Guarantors, and the Lender may proceed, prior or subsequent to, or simultaneously with, the enforcement of their rights hereunder, to exercise any right or remedy which it may have against any Collateral, as a result of any Lien it may have as security for all or any portion of the Obligations.

9.4 Waiver. To the fullest extent permitted by applicable law, each Guarantor hereby waives any defense based on or arising out of any defense of the Borrower or any Guarantor or the unenforceability of all or any part of the Obligations from any cause, or the cessation from any cause of the liability of the Borrower or any Guarantor, other than, subject to Section 9.9, the payment in full in cash of the Obligations (other than unasserted contingent indemnification obligations). Without limiting the foregoing, in addition to the waivers contained in Section 9.1 hereof, the Guarantors waive, and agree that they shall not at any time insist upon, plead or in any manner whatever claim or take the benefit or advantage of, any appraisal, valuation, stay, extension, marshaling of assets or redemption laws, or exemption, whether now or at any time hereafter in force, which may delay, prevent or otherwise affect the performance by the Guarantors of their Obligations under, or the enforcement by Lender of, this Guaranty. Each Guarantor confirms that it is not a surety under any state law and shall not raise any such law as a defense to its obligations hereunder. The Guarantors hereby waive diligence, presentment and demand (whether for non-payment or protest or of acceptance, maturity, extension of time, change in nature or form of the Obligations, acceptance of further security, release of further security, composition or agreement arrived at as to the amount of, or the terms of, the Obligations, notice of adverse change in the Borrower's financial condition or any other fact which might increase the risk to the Guarantors) with respect to any of the Obligations or all other demands whatsoever and waive the benefit of all provisions of law which are or might be

in conflict with the terms of this Guaranty. The Guarantors represent, warrant and jointly and severally agree that, as of the date of this Guaranty, their obligations under this Guaranty are not subject to any offsets or defenses against the Lender or any Credit Party of any kind. The Guarantors further jointly and severally agree that their obligations under this Guaranty shall not be subject to any counterclaims or offsets or defenses against the Lender or against any Credit Party of any kind which may arise in the future (other than, subject to Section 9.9, the payment in full in cash of the Obligations (other than unasserted contingent indemnification obligations)).

9.5 Benefit of Guaranty. The provisions of this Guaranty are for the benefit of the Lender and its successors, transferees, endorsees and assigns, and nothing herein contained shall impair, as between any Credit Party and the Lender, the obligations of any Credit Party under the Loan Documents. In the event all or any part of the Obligations are transferred, indorsed or assigned by the Lender to any Person or Persons, any reference to the Lender herein shall be deemed to refer equally to such Person or Persons.

9.6 Modification of Obligations, Etc. Each Guarantor hereby acknowledges and agrees that the Lender may at any time or from time to time, with or without the consent of, or notice to, the Guarantors or any of them:

(a) change or extend the manner, place or terms of payment of, or renew or alter all or any portion of, the Obligations;

(b) take any action under or in respect of the Loan Documents in the exercise of any remedy, power or privilege contained therein or available to it at law, equity or otherwise, or waive or refrain from exercising any such remedies, powers or privileges;

(c) amend or modify, in any manner whatsoever, the Loan Documents;

(d) extend or waive the time for any Credit Party's performance of, or compliance with, any term, covenant or agreement on its part to be performed or observed under the Loan Documents, or waive such performance or compliance or consent to a failure of, or departure from, such performance or compliance;

(e) take and hold collateral for the payment of the Obligations guaranteed hereby or sell, exchange, release, dispose of, or otherwise deal with, any property pledged, mortgaged or conveyed, or in which the Lender has been granted a Lien, to secure any Obligations;

(f) release anyone who may be liable in any manner for the payment of any amounts owed by other the Guarantors or any other Credit Party to any Secured Party;

(g) modify or terminate the terms of any intercreditor or subordination agreement pursuant to which claims of other creditors of any Guarantor or any Credit Party are subordinated to the claims of the Lender; and/or

(h) apply any sums by whomever paid or however realized to any amounts owing by any other Guarantor or any other Credit Party to the Lender in such manner as the Lender shall determine in its discretion; and the Lender shall not incur any liability to the Guarantors as a

result thereof, and no such action shall impair or release the Obligations of the Guarantors or any of them under this Guaranty.

9.7 Subordination of Subrogation, Etc. Notwithstanding anything to the contrary in this Guaranty, or in any other Loan Document, each Guarantor hereby:

(a) expressly and irrevocably subordinates until the Termination Date, on behalf of itself and its successors and assigns (including any surety), any and all rights at law or in equity to subrogation, to reimbursement, to exoneration, to contribution, to indemnification, to set off or to any other rights that could accrue to a surety against a principal, to a guarantor against a principal, to a guarantor against a maker or obligor, to an accommodation party against the party accommodated, to a holder or transferee against a maker, or to the holder of any claim against any Person, and which such Guarantor may have or hereafter acquire against any Credit Party in connection with or as a result of such Guarantor's execution, delivery and/or performance of this Guaranty, or any other documents to which such Guarantor is a party or otherwise; and

(b) acknowledges and agrees (i) that this waiver is intended to benefit the Lender and shall not limit or otherwise effect any Guarantor's liability hereunder or the enforceability of this Guaranty, and (ii) that the Lender and its successors and assigns are intended third party beneficiaries of the waivers and agreements set forth in this Section 9.7.

9.8 Election of Remedies. If the Lender may, under applicable law, proceed to realize benefits under any of the Loan Documents giving the Lender a Lien upon any Collateral owned by any Credit Party, either by judicial foreclosure or by non-judicial sale or enforcement, the Lender may, at its sole option, determine which of such remedies or rights it may pursue without affecting any of such rights and remedies under this Guaranty. If, in the exercise of any of its rights and remedies, the Lender shall forfeit any of its rights or remedies, including its right to enter a deficiency judgment against any Credit Party, whether because of any applicable laws pertaining to election of remedies or the like, the Guarantors hereby consent to such action by the Lender and waive any claim based upon such action, even if such action by the Lender shall result in a full or partial loss of any rights of subrogation which the Guarantors might otherwise have had but for such action by the Lender. Any election of remedies which results in the denial or impairment of the right of the Lender to seek a deficiency judgment against any Credit Party shall not impair each Guarantor's obligation to pay the full amount of the Obligations. In the event the Lender shall bid at any foreclosure or trustee's sale or at any private sale permitted by law or the Loan Documents, the Lender may bid all or less than the amount of the Obligations and the amount of such bid need not be paid by the Lender but shall be credited against the Obligations. The amount of the successful bid at any such sale shall be conclusively deemed to be the fair market value of the Collateral and the difference between such bid amount and the remaining balance of the Obligations shall be conclusively deemed to be the amount of the Obligations guaranteed under this Guaranty, notwithstanding that any present or future law or court decision or ruling may have the effect of reducing the amount of any deficiency claim to which the Lender might otherwise be entitled but for such bidding at any such sale.

9.9 Reinstatement; Stay of Acceleration. If at any time any payment of any portion of the Obligations is rescinded or must otherwise be restored or returned, each Guarantor's obligations under this Agreement with respect to that payment shall be reinstated at such time as

though the payment had not been made. If acceleration of the time for payment of any of the Obligations is stayed upon the insolvency, bankruptcy or reorganization of the Borrower, all such amounts otherwise subject to acceleration under the terms of any agreement relating to the Obligations shall nonetheless be payable by the Guarantors forthwith on demand by the Lender.

9.10 Information. Each Guarantor assumes all responsibility for being and keeping itself informed of the Borrower's financial condition and assets, and of all other circumstances bearing upon the risk of nonpayment of the Obligations and the nature, scope and extent of the risks that each Guarantor assumes and incurs under this Agreement, and agrees that the Lender shall not have any duty to advise any Guarantor of information known to it regarding those circumstances or risks.

9.11 Taxes. All payments of the Obligations will be made by each Guarantor free and clear of and without deduction or withholding for any Taxes; provided that if any Guarantor shall be required to deduct or withhold any Taxes from such payments, then (i) the sum payable shall be increased as necessary so that after making all required deductions or withholdings (including deductions or withholdings applicable to additional sums payable under this Section 9.11) the Lender receives an amount equal to the sum it would have received had no such deductions been made, (ii) such Guarantor shall make such deductions and (iii) such Guarantor shall pay the full amount deducted to the relevant Governmental Authority in accordance with applicable law.

9.12 Maximum Liability. The provisions of this Guaranty are severable, and in any action or proceeding involving any state corporate law, or any state, federal or foreign bankruptcy, insolvency, reorganization or other law affecting the rights of creditors generally, if the obligations of any Guarantor under this Guaranty would otherwise be held or determined to be avoidable, invalid or unenforceable on account of the amount of such Guarantor's liability under this Guaranty, then, notwithstanding any other provision of this Guaranty to the contrary, the amount of such liability shall, without any further action by the Guarantors or the Lender, be automatically limited and reduced to the highest amount that is valid and enforceable as determined in such action or proceeding (such highest amount determined hereunder being the relevant Guarantor's "Maximum Liability"). This Section 9.12 with respect to the Maximum Liability of each Guarantor is intended solely to preserve the rights of the Lender to the maximum extent not subject to avoidance under applicable law, and no Guarantor nor any other person or entity shall have any right or claim under this Section 9.12 with respect to such Maximum Liability, except to the extent necessary so that the obligations of any Guarantor hereunder shall not be rendered voidable under applicable law. Each Guarantor agrees that the Obligations may at any time and from time to time exceed the Maximum Liability of each Guarantor without impairing this Guaranty or affecting the rights and remedies of the Lender hereunder, provided that, nothing in this sentence shall be construed to increase any Guarantor's obligations hereunder beyond its Maximum Liability.

9.13 Contribution. In the event any Guarantor (a "Paying Guarantor") shall make any payment or payments under this Guaranty or shall suffer any loss as a result of any realization upon any collateral granted by it to secure its obligations under this Guaranty, each other Guarantor (each a "Non-Paying Guarantor") shall contribute to such Paying Guarantor an amount equal to such Non-Paying Guarantor's "Applicable Percentage" of such payment or payments made, or losses suffered, by such Paying Guarantor. For purposes of this Article IX,

each Non-Paying Guarantor's "Applicable Percentage" with respect to any such payment or loss by a Paying Guarantor shall be determined as of the date on which such payment or loss was made by reference to the ratio of (i) such Non-Paying Guarantor's Maximum Liability as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder) or, if such Non-Paying Guarantor's Maximum Liability has not been determined, the aggregate amount of all monies received by such Non-Paying Guarantor from the Borrower after the date hereof (whether by loan, capital infusion or by other means) to (ii) the aggregate Maximum Liability of all Guarantors hereunder (including such Paying Guarantor) as of such date (without giving effect to any right to receive, or obligation to make, any contribution hereunder), or to the extent that a Maximum Liability has not been determined for any Guarantor, the aggregate amount of all monies received by such Guarantors from the Borrower after the date hereof (whether by loan, capital infusion or by other means). Nothing in this provision shall affect any Guarantor's several liability for the entire amount of the Obligations (up to such Guarantor's Maximum Liability). Each of the Guarantors covenants and agrees that its right to receive any contribution under this Guaranty from a Non-Paying Guarantor shall be subordinate and junior in right of payment to the indefeasible payment in full in cash of the Obligations. This provision is for the benefit of the Lender and the Guarantors and may be enforced by any one, or more, or all of them in accordance with the terms hereof.

9.14 Liability Cumulative. The liability of each Loan Party as a Guarantor under this Guaranty is in addition to and shall be cumulative with all liabilities of each Loan Party to the Lender under this Agreement and the other Loan Documents to which such Loan Party is a party or in respect of any obligations or liabilities of the other Loan Parties, without any limitation as to amount, unless the instrument or agreement evidencing or creating such other liability specifically provides to the contrary.

10. SECURITY

10.1 Security.

(a) To secure the prompt and complete payment, performance and observance of all of the Secured Obligations, in addition to other Collateral upon which a Lien is granted under the other Collateral Documents, each Credit Party hereby grants, collaterally assigns, conveys, mortgages, pledges, hypothecates and transfers to the Lender (subject to the Carve-Out and the Interim Order, or, to the extent entered, the Final Order) a first priority Lien in accordance with sections 364(c) and 364(d) of the Bankruptcy Code upon all of the following property now owned or at any time hereafter acquired by a Credit Party or in which such Credit Party now has or at any time in the future may acquire any right, title or interest:

(i) all Accounts;

(ii) all Chattel Paper;

(iii) all Copyrights, Patents and Trademarks;

(iv) all Documents;

(v) all Fixtures;

(vi) all General Intangibles (including Payment Intangibles and Software);

(vii) all Goods, Inventory and Equipment, including personal property, whether tangible or intangible or wherever located;

(viii) all Instruments;

(ix) all Investment Property, including Securities Accounts;

(x) all Real Property;

(xi) the Commercial Tort Claims described on Disclosure Schedule 10.1;

(xii) all Deposit Accounts of any Credit Party, including all Blocked Accounts, Concentration Accounts and all other bank accounts and all deposits therein;

(xiii) all money, cash or cash equivalents of any Credit Party;

(xiv) all Supporting Obligations and Letter of Credit Rights of any Credit Party;

(xv) to the extent not otherwise included, all monies and other property of any kind which is, after the Petition Date, received by such Credit Party in connection with refunds with respect to taxes, assessments and governmental charges imposed on such Credit Party or any of its property or income;

(xvi) to the extent not otherwise included, all causes of action including, for the avoidance of doubt, all claims and causes of action of the Credit Parties under Bankruptcy Code sections 502(d), 544, 545, 547, 548, 549, 550, and 553 and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise, and all monies and other property of any kind received therefrom, and all monies and other property of any kind recovered by any Credit Party;

(xvii) all property of any Credit Party held by the Lender, including all property of every description, in the possession or custody of or in transit to the Lender for any purpose, including safekeeping, collection or pledge, for the account of such Grantor or as to which such Grantor may have any right or power; and

(xviii) to the extent not otherwise included, all Proceeds of each of the foregoing, tort claims, insurance claims and other rights to payment not otherwise included in the foregoing and products of the foregoing and all accessions to, substitutions and replacements for, and rents and profits of, each of the foregoing.

(b) Collateral shall not include the Excluded Equity or any assets upon which security may not be lawfully granted provided that if and when any property shall cease to be Excluded Equity or when any such security may be lawfully granted, such property shall be deemed at all times from and after the date to constitute Collateral.

(c) In addition, to secure the prompt and complete payment, performance and observance of the Obligations and in order to induce the Lender as aforesaid, each Credit Party hereby grants to the Lender a right of setoff against the cash or cash equivalents of such Credit Party held by the Lender, consisting of Collateral now or hereafter in the possession or custody of or in transit to the Lender, for any purpose, including safekeeping, collection or pledge, for the account of such Credit Party, or as to which such Credit Party may have any right or power. Upon the occurrence and during the continuation of an Event of Default, the Lender may exercise such right of setoff upon at least five (5) Business Days' prior written notice to the Credit Parties and the Committee (or the U.S. Trustee if no Committee has been appointed) (or upon such longer period of time or after delivering such other notices as may be required by the Interim Order or Final Order, as applicable).

(d) To the extent a security interest hereunder would be created in any asset in which a security interest is created under any Loan Document, to the extent of conflict, the rights, remedies and obligations of the relevant Credit Party, the Lender with respect to such asset shall be governed by such Loan Document and not this Agreement.

10.2 Perfection of Security Interests.

(a) At any time and from time to time until the Termination Date, upon the reasonable request of the Lender and at the sole expense of the Credit Parties, each Credit Party shall promptly and duly execute and deliver any and all such further instruments and documents and take such further actions as the Lender may reasonably deem necessary to obtain the full benefits of any security interest granted or purported to be granted by such Credit Party hereunder and of the rights and powers herein granted, including (i) upon the reasonable request of the Lender using its commercially reasonable efforts to secure all consents and approvals necessary or appropriate for the assignment to or for the benefit of the Lender of any License or Contract held by such Credit Party and to enforce the security interests granted hereunder, (i) upon the request of the Lender, delivering to the Lender all Collateral consisting of negotiable Documents, certificated Securities, Chattel Paper and Instruments (in each case, accompanied by stock powers, allonges or other instruments of transfer executed in blank) promptly after such Credit Party receives the same, (i) obtaining (x) a blocked account or similar agreement with each bank or financial institution holding a Deposit Account for such Credit Party and (y) authenticated Control Letters from each issuer of uncertificated securities, securities intermediary, or commodities intermediary issuing or holding any financial assets or commodities, in each case constituting Collateral, to or for any Credit Party; provided, that the Lender shall not deliver a notice that it is exercising exclusive control over any financial assets or commodities to any such issuer, securities intermediary or commodities intermediary unless an Event of Default has occurred and is continuing, (i) for each Credit Party that is or becomes the beneficiary of a letter of credit with a face amount in excess of $500,000, promptly, and in any event within two (2) Business Days after becoming a beneficiary (or such longer period of time as the Lender may agree to in its sole discretion), notifying the Lender thereof and thereafter, unless the related Letter-of-Credit Rights constitute a Supporting Obligation for which the Lender's security interest is perfected, using its commercially reasonable efforts to cause the issuer and/or confirmation bank with respect to such Letter-of-Credit Rights to enter into a tri-party agreement with the Lender assigning such Letter-of-Credit Rights to the Lender and directing all payments thereunder to a Blocked Account, all in form and substance reasonably

satisfactory to the Lender, (i) promptly, and in any event within five (5) Business Days after the same is acquired by it (or such longer period of time as may be agreed to by the Lender in its sole discretion), notifying the Lender of any Commercial Tort Claim involving a claim of more than $500,000 acquired by it and if requested by the Lender, entering into a supplement to this Agreement, granting to the Lender a Lien in such Commercial Tort Claim and (i) maintaining complete and accurate stock records.

(b) Each Credit Party hereby irrevocably authorizes the Lender at any time and from time to time until the Termination Date to file in any filing office in any Uniform Commercial Code jurisdiction any initial financing statements and amendments thereto that (a) indicate the Collateral (i) as "all assets of such Credit Party" or words of similar effect, regardless of whether any particular asset comprised in the Collateral falls within the scope of Article 9 of the Code in such jurisdiction, or (ii) as being of an equal or lesser scope or with greater detail, and (b) contain any other information required by part 5 of Article 9 of the Code for the sufficiency or filing office acceptance of any financing statement or amendment, including (i) whether such Credit Party is an organization, the type of organization and any organization identification number issued to such Credit Party, and (ii) in the case of a financing statement filed as a fixture filing, a sufficient description of real property to which the Collateral relates. Each Credit Party agrees to furnish any such information to the Lender promptly upon request. Each Credit Party also ratifies its authorization for the Lender to have filed in any Uniform Commercial Code jurisdiction any initial financing statements or amendments thereto if filed prior to the date hereof.

(c) Each Credit Party hereby irrevocably authorizes the Lender at any time and from time to time until the Termination Date to file any filings with the United States Patent and Trademark Office or United States Copyright Office (or any successor office or any similar office in any other country) or other documents in order to perfect the Lender's security interest in the Collateral.

(d) Notwithstanding subsections (a) , (b) and (c) of this Section 10.2, or any failure on the part of any Credit Party or the Lender to take any of the actions set forth in such subsections, the Liens and security interests granted herein shall be deemed valid, enforceable and perfected by entry of the Interim Order and the Final Order. No financing statement, notice of lien, mortgage, deed of trust or similar instrument in any jurisdiction or filing office need be filed or any other action taken in order to validate and perfect the Liens and security interests granted by or pursuant to this Agreement, the Interim Order or the Final Order.

10.3 Rights of Lender; Limitations on Lender Obligations.

(a) Subject to each Credit Party's rights and duties under the Bankruptcy Code (including section 365 of the Bankruptcy Code), it is expressly agreed by each Credit Party that, anything herein to the contrary notwithstanding, each such Credit Party shall remain liable under each of its Contracts and each of its Licenses to observe and perform all the conditions and obligations to be observed and performed by it thereunder, unless such Credit Party determines in its reasonable good faith judgment and in accordance with the terms of this Agreement that such Contract or License is no longer valuable or useful to such Credit Party's business, economically or otherwise with the Lender's prior consent. The Lender shall not have any obligation or liability under any Contract or License by reason of or arising out of this

Agreement or the granting herein of a Lien thereon or the receipt by the Lender of any payment relating to any Contract or License pursuant hereto. The Lender shall not be required or obligated in any manner to perform or fulfill any of the obligations of any Credit Party under or pursuant to any Contract or License, or to make any payment, or to make any inquiry as to the nature or the sufficiency of any payment received by it or the sufficiency of any performance by any party under any Contract or License, or to present or file any claims, or to take any action to collect or enforce any performance or the payment of any amounts which may have been assigned to it or to which it may be entitled at any time or times.

(b) Subject to Section 10.5 hereof, the Lender authorizes each Credit Party to collect its Accounts, provided that such collection is performed in accordance with such Credit Party's customary procedures, and the Lender may, upon the occurrence and during the continuation of any Event of Default and upon prior or concurrent written notice to Borrower (in addition to any requirement of notice provided in the Interim Order (or the Final Order, when applicable)), limit or terminate said authority at any time.

(c) The Lender may, at any time upon the occurrence and during the continuation of an Event of Default, notify Account Debtors and other Persons obligated on the Collateral that the Lender has a security interest therein, and that payments shall be made directly to the Lender. Subject to any requirement of notice provided in the Interim Order (or the Final Order, when applicable), upon the occurrence and during the continuation of an Event of Default and upon the reasonable request of the Lender, each Credit Party shall so notify Account Debtors and other Persons obligated on Collateral. Once any such notice has been given to any Account Debtor or other Person obligated on the Collateral and so long as an Event of Default remains outstanding, the affected Credit Party shall not give any contrary instructions to such Account Debtor or other Person without the Lender's prior written consent. Subject to any requirement of notice provided in the Interim Order (or the Final Order, when applicable), upon the occurrence and during the continuation of an Event of Default, the Lender may in its own name, or in the name of others, communicate with such parties to such Accounts, Contracts, Instruments, Investment Property and Chattel Paper to verify with such Persons to the Lender's reasonable satisfaction the existence, amount and terms of any such Accounts, Contracts, Instruments, Investment Property or Chattel Paper.

(d) The Lender may, at any time upon the occurrence and during the continuation of an Event of Default, in the Lender's own name, in the name of a nominee of the Lender or in the name of any Credit Party communicate (by mail, telephone, facsimile or otherwise) with Account Debtors to verify with such Persons, to the Lender's satisfaction, the existence, amount, terms of, and any other matter relating to, Accounts and/or payment intangibles comprising Collateral; provided that the Lender shall not do any of the foregoing except during normal business hours and after giving such Credit Party reasonable prior notice and opportunity to be present. If an Event of Default shall have occurred and be continuing, each Credit Party, at its own expense, shall prepare and deliver, or use commercially reasonable efforts to cause the independent certified public accountants then engaged by such Credit Party to prepare and deliver, to the Lender from time to time promptly upon the Lender's reasonable written request the following reports with respect to each Credit Party: (i) a reconciliation of all Accounts; (ii) an aging of all Accounts; (iii) trial balances; and (iv) a test verification of such Accounts as the Lender may request. The Lender may at any time upon the occurrence and during the

continuation of an Event of Default in the Lender's own name, in the name of a nominee of the Lender or in the name of any Credit Party communicate (by mail, telephone, facsimile or otherwise) with parties to Contracts and obligors in respect of Instruments to verify with such Persons, to the Lender's satisfaction, the existence, amount, terms of, and any other matter relating to, Instruments, Chattel Paper and/or payment intangibles comprising Collateral; provided that the Lender shall not do any of the foregoing except during normal business hours and after giving such Credit Party reasonable prior notice and opportunity to be present. Upon Lender's reasonable written request, each Credit Party, at its own expense, shall deliver to the Lender the results of each physical verification of a recent date, if any, which such Credit Party may in its discretion have made, or caused any other Person to have made on its behalf, of all or any portion of its Inventory.

10.4 Covenants of the Credit Parties with Respect to Collateral. Each Credit Party covenants and agrees with the Lender that from and after the date of this Agreement and until the Termination Date:

(a) Maintenance of Records. Credit Parties shall keep and maintain, at their own cost and expense, satisfactory and complete records of the Collateral, including a record of any and all payments received and any and all credits granted with respect to the Collateral and all other dealings with the Collateral, in each case in a manner required under GAAP. Upon reasonable request by the Lender, Credit Parties shall mark their books and records pertaining to the Collateral to evidence this Agreement and the Liens granted hereby. If any Credit Party retains possession of any Chattel Paper or Instruments with the Lender's consent, such Chattel Paper and Instruments shall, if requested by the Lender, be marked with the following legend: This writing and the obligations evidenced or secured hereby are subject to the security interest of the Lender.

(b) Covenants Regarding Patent, Trademark and Copyright Collateral.

(i) Each Credit Party shall notify the Lender promptly if it knows or has reason to know that any application or registration relating to any material Patent, Trademark or Copyright (now or hereafter existing) may become abandoned or dedicated, or of any adverse determination or development (including the institution of, or any such determination or development in, any proceeding in the United States Patent and Trademark Office, the United States Copyright Office or any court) regarding any Credit Party's ownership of any material Patent, Trademark or Copyright, its right to register the same, or to keep and maintain the same, except to the extent such Credit Party is otherwise permitted to dispose or allow for the lapse of such Intellectual Property under this Agreement.

(ii) Concurrently with the delivery of the quarterly financial statements pursuant to clause (b) of Annex D, each Credit Party shall give the Lender written notice of any filings for an application for the registration of any Patent, Trademark or Copyright with the United States Patent and Trademark Office or the United States Copyright Office during the applicable fiscal quarter, and upon request of the Lender, the applicable Credit Party shall execute and deliver any and all Patent Security Agreements, Copyright Security Agreements or Trademark Security Agreements as the Lender may request to evidence the Lender's Lien on

such Patent, Trademark or Copyright, and the General Intangibles of such Credit Party relating thereto or represented thereby.

(iii) Except to the extent otherwise consented to by the Lender, the Credit Parties shall take all actions necessary or reasonably requested by the Lender to maintain and pursue each application, to obtain the relevant registration and to maintain the registration of each of the Patents, Trademarks and Copyrights (now or hereafter existing), including the filing of applications for renewal, affidavits of use, affidavits of noncontestability and opposition and interference and cancellation proceedings.

(iv) In the event that any of the Patent, Trademark or Copyright Collateral is infringed upon, or misappropriated or diluted by a third party, such Credit Party shall comply with Section 10.2 of this Agreement. Such Credit Party shall, unless such Credit Party reasonably determines that such Patent, Trademark or Copyright Collateral is in not material or, with respect to Trademarks and Copyrights, useful to the conduct of its business or operations, sue for infringement, misappropriation or dilution and to recover any and all damages for such infringement, misappropriation or dilution, and shall take such other actions as the Lender shall deem appropriate under the circumstances to protect such Patent, Trademark or Copyright Collateral.

(c) Compliance with Terms of Accounts, etc. Each Credit Party will perform and comply in all material respects with all obligations in respect of the Collateral and all other agreements to which it is a party or by which it is bound relating to the Collateral.

(d) Further Identification of Collateral. Subject to the limitations set forth herein or in any other Loan Document, the Credit Parties will, if so requested by the Lender, furnish to the Lender, as often as the Lender requests (but in any event, no more often than any times otherwise specified hereunder or under the Loan Documents), statements and schedules further identifying and describing the Collateral and such other reports in connection with the Collateral as the Lender may reasonably request, all in such detail as the Lender may specify.

(e) Notices. Credit Parties will advise the Lender promptly upon becoming aware thereof, in reasonable detail, (i) of any Lien or claim made or asserted against any of the Collateral other than in respect of Permitted Liens, and (ii) of the occurrence of any other event which has had a material adverse effect on the aggregate value of the Collateral or on the Liens created hereunder or under any other Loan Document.

(f) [Reserved].

(g) Terminations; Amendments Not Authorized. Except to the extent permitted by clause (h), each Credit Party acknowledges that it is not authorized to file any financing statement or amendment or termination statement with respect to any financing statement relating to the Collateral and filed pursuant to the terms hereof without the prior written consent of the Lender and agrees that it will not do so without the prior written consent of the Lender, subject to such Credit Party's rights under Section 9-509(d)(2) of the Code.

(h) Authorized Terminations and Subordinations. The Lender will promptly deliver to each Credit Party, after a reasonable period of time following receipt of an officer's certificate

from such Credit Party, for filing or authorize each Credit Party to prepare and file termination statements and releases in respect of any sales, transfers, conveyances, assignments or other dispositions of Collateral made in accordance with Section 6.8 of this Agreement; provided that such Credit Party shall represent and warrant in such officer's certificate that such sale, transfer, conveyance assignment or other disposition of Collateral was made in compliance with this Agreement or other Loan Document, as applicable. The Lender will, upon request of any Credit Party, and after a reasonable period of time following receipt of an officer's certificate from such Credit Party, expressly subordinate, in form and substance reasonably satisfactory to the Lender the Liens granted hereunder to any prior Lien permitted under Section 6.7 of this Agreement; provided that such Credit Party shall represent and warrant in such officer's certificate that such prior Lien is permitted under Section 6.7.

(i) [Reserved].

(j) Pledged Collateral.

(i) All certificates and all promissory notes and Instruments evidencing the Pledged Collateral shall be delivered to and held by or on behalf of the Lender pursuant hereto. All Pledged Shares shall be accompanied by duly executed instruments of transfer or assignment in blank, all in form and substance reasonably satisfactory to the Lender and all promissory notes or other instruments evidencing the Pledged Indebtedness shall be endorsed by the applicable Credit Party. In addition, the Lender shall have the right at any time to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations.

(ii) No Credit Party will sell, assign, transfer, pledge, or otherwise encumber any of its rights in or to the Pledged Collateral, or any unpaid dividends, interest or other distributions or payments with respect to the Pledged Collateral or grant a Lien in the Pledged Collateral, unless otherwise expressly permitted by this Agreement or any other Loan Document;

(iii) Subject to the limitations set forth herein or in any other Loan Document, each Credit Party will, at its expense, promptly execute, acknowledge and deliver all such instruments and take all such actions as the Lender from time to time may reasonably request in order to ensure to the Lender the benefits of the Liens in and to the Pledged Collateral intended to be created by this Agreement, including the filing of any necessary Code financing statements, which may be filed by the Lender with or (to the extent permitted by law) without the signature of Credit Party, and will cooperate with the Lender, at such Credit Party's expense, in obtaining all necessary approvals and making all necessary filings under federal, state, local or foreign law in connection with such Liens or any sale or transfer of the Pledged Collateral; provided that the Lender shall not, prior to the occurrence of any Event of Default, require any actions to be taken with respect to property the acquisition or construction of which was financed through Indebtedness (existing as of the Closing Date or as permitted by Section 6.3(a) of this Agreement);

(iv) Each Credit Party will use commercially reasonable efforts to defend the title to the Pledged Collateral and the Liens of the Lender in the Pledged Collateral against the

claim of any Person (other than the holder of a Permitted Lien) and will maintain and preserve such Liens; and

(v) Each Credit Party will, upon obtaining ownership of any additional Stock issued by an entity that has issued Pledged Shares or promissory notes or instruments representing Pledged Indebtedness or Stock or promissory notes or instruments otherwise required to be pledged to the Lender pursuant to any of the Loan Documents, which Stock, notes or instruments are not already Pledged Collateral, promptly (and in any event within ten (10) Business Days or such longer period as determined by Lender in its sole discretion) deliver to the Lender a Pledge Amendment, duly executed by such Credit Party, in form and substance reasonably acceptable to the Lender (a "Pledge Amendment") in respect of any such additional Stock, notes or instruments, pursuant to which such Credit Party shall pledge to the Lender all of such additional Stock, notes and instruments; provided, that such Credit Party shall be required to do the foregoing with respect to any such promissory note or instrument only if requested to do so by the Lender pursuant to Section 10.2(a)(ii) of this Agreement. Credit Party hereby authorizes the Lender to attach each Pledge Amendment to this Agreement and agrees that all Pledged Shares and Pledged Indebtedness listed on any Pledge Amendment delivered to the Lender shall for all purposes hereunder be considered Pledged Collateral. This clause (v) shall not apply to any Excluded Equity.

(vi) At any time that an Event of Default has occurred and is then continuing, upon two Business Days prior written notice to the applicable Pledgor and subject to any requirement of notice provided in the Interim Order (or the Final Order, when applicable):

A. All rights of the Pledgor to exercise voting and other consensual rights in respect of the Pledged Shares shall immediately cease and all such voting and other consensual rights shall become vested in the Pledgee, and the Pledgee shall thereupon have the sole right to exercise such voting and other consensual rights; provided, the voting and other consensual rights of the Pledgor in respect of the Pledged Shares shall automatically be restored in full upon the cure or waiver of all Events of Default then existing. In order to effect the foregoing, the Pledgor hereby grants to the Pledgee an irrevocable proxy to vote the Pledged Shares and, any time that an Event of Default exists, the Pledgor agrees to execute such other proxies as the Pledgee may request; and

B. All rights of the Pledgor to receive and retain any distributions, dividends (in the form of cash, securities or otherwise), instruments, chattel paper or other property paid or payable with respect to any of the Pledged Shares (other than any of the foregoing permitted under Section 6.13) shall immediately cease and any such distributions, dividends (in the form of cash, securities or otherwise), instruments, chattel paper or other property paid or payable with respect to any of the Pledged Shares shall be paid to the Pledgee (for application to the Obligations with respect to any cash or cash equivalents, or to be held by the Pledgee as additional security). Any distributions, dividends (in the form of cash, securities or otherwise), instruments, chattel paper or other property paid or payable with respect to any of the Pledged Shares and received by the Pledgor contrary to the provisions of this Agreement shall be received in trust for the

benefit of the Pledgee, shall be segregated from other assets (including, in the case of cash or cash equivalents, other funds) of Pledgor and shall be immediately delivered to the Pledgee (for application to the Obligations with respect to any cash or cash equivalents, or to be held by the Pledgee as additional security).

10.5 Performance by the Lender of the Credit Parties Obligations. If any Credit Party fails to perform or comply with any of its agreements contained herein and the Lender, as provided for by the terms of this Agreement, shall itself perform or comply, or otherwise cause performance or compliance, with such agreement, the expenses of the Lender incurred in connection with such performance or compliance, together with interest thereon at the rate then in effect in respect of the Term Loans, shall be payable by such Credit Party to the Lender on demand and shall constitute Obligations secured by the Collateral. Performance of such Credit Party's obligations as permitted under this Section 10.5 shall in no way constitute a violation of the automatic stay provided by section 362 of the Bankruptcy Code and each Credit Party hereby waives applicability thereof. Moreover, the Lender shall in no way be responsible for the payment of any costs incurred in connection with preserving or disposing of Collateral pursuant to section 506(c) of the Bankruptcy Code and the Collateral may not be charged for the incurrence of any such cost.

10.6 Limitation on the Lender's duty in Respect of Collateral. The Lender shall use reasonable care with respect to the Collateral in its possession or under its control. The Lender shall not have any other duty as to any Collateral in its possession or control or in the possession or control of any agent or nominee of the Lender or any income thereon or as to the preservation of rights against prior parties or any other rights pertaining thereto.

10.7 Remedies; Rights Upon Default.

(a) In addition to all other rights and remedies granted to it under the other Loan Documents and under any other instrument or agreement securing, evidencing or relating to any of the Secured Obligations and subject to any notice requirements hereunder or under any other Loan Document or provided for in the Interim Order or Final Order, as applicable, if any Event of Default shall have occurred and be continuing, the Lender may exercise all rights and remedies of a secured party under the Code. Without limiting the generality of the foregoing, each Credit Party expressly agrees that in any such event the Lender, without demand of performance or other demand, advertisement or notice of any kind (except the notice required by the Interim Order (or the Final Order, when applicable) or the notice specified below of time and place of public or private sale or any other notice required hereunder or under any other Loan Document) to or upon such Credit Party or any other Person (all and each of which demands, advertisements and notices are hereby expressly waived to the maximum extent permitted by the Code and other applicable law), may, to the maximum extent permitted by law, forthwith enter upon the premises of such Credit Party where any Collateral is located through self-help, without judicial process, without first obtaining a final judgment or giving such Credit Party or any other Person notice and opportunity for a hearing on the Lender's claim or action and may collect, receive, assemble, process, appropriate and realize upon the Collateral, or any part thereof, and may forthwith sell, lease, license, assign, give an option or options to purchase, or sell or otherwise dispose of and deliver said Collateral (or contract to do so), or any part thereof, in one or more parcels at a public or private sale or sales, at any exchange at such prices as it may deem

acceptable, for cash or on credit or for future delivery without assumption of any credit risk. The Lender shall have the right upon any such public sale or sales and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of said Collateral so sold, free of any right or equity of redemption, which equity of redemption each Credit Party hereby releases. Such sales may be adjourned and continued from time to time with or without notice. The Lender shall have the right to conduct such sales on any Credit Party's premises or elsewhere and shall have the right to use any Credit Party's premises without charge for such time or times as the Lender may deem necessary or advisable. EACH CREDIT PARTY HEREBY IRREVOCABLY CONSTITUTES AND APPOINTS THE LENDER AS THE PROXY AND ATTORNEY-IN-FACT OF SUCH CREDIT PARTY WITH RESPECT TO THE PLEDGED COLLATERAL, INCLUDING THE RIGHT TO VOTE THE PLEDGED SHARES, WITH FULL POWER OF SUBSTITUTION TO DO SO. THE APPOINTMENT OF THE LENDER AS PROXY AND ATTORNEY-IN-FACT IS COUPLED WITH AN INTEREST AND SHALL BE IRREVOCABLE UNTIL THE TERMINATION DATE. IN ADDITION TO THE RIGHT TO VOTE THE PLEDGED SHARES, THE APPOINTMENT OF THE LENDER AS PROXY AND ATTORNEY-IN-FACT SHALL INCLUDE THE RIGHT TO EXERCISE ALL OTHER RIGHTS, POWERS, PRIVILEGES AND REMEDIES TO WHICH A HOLDER OF THE PLEDGED SHARES WOULD BE ENTITLED (INCLUDING GIVING OR WITHHOLDING WRITTEN CONSENTS OF SHAREHOLDERS, CALLING SPECIAL MEETINGS OF SHAREHOLDERS AND VOTING AT SUCH MEETINGS). SUCH PROXY SHALL BE EFFECTIVE, AUTOMATICALLY AND WITHOUT THE NECESSITY OF ANY ACTION (INCLUDING ANY TRANSFER OF ANY PLEDGED SHARES ON THE RECORD BOOKS OF THE ISSUER THEREOF) BY ANY PERSON (INCLUDING THE ISSUER OF THE PLEDGED SHARES OR ANY OFFICER OR AGENT THEREOF, OTHER THAN ANY NOTICES REQUIRED HEREUNDER OR UNDER APPLICABLE LAW). NOTWITHSTANDING THE FOREGOING, THE LENDER SHALL NOT HAVE ANY DUTY TO EXERCISE ANY SUCH RIGHT OR TO PRESERVE THE SAME AND SHALL NOT BE LIABLE FOR ANY FAILURE TO DO SO OR FOR ANY DELAY IN DOING SO AND THE LENDER SHALL NOT EXERCISE SUCH PROXY OR POWER OF ATTORNEY-IN-FACT UNLESS AN EVENT OF DEFAULT HAS OCCURRED AND IS CONTINUING.

(b) If any Event of Default shall have occurred and be continuing, each Credit Party further agrees, at the Lender's request, to assemble the Collateral and make it available to the Lender at a place or places designated by the Lender which are reasonably convenient to the Lender and such Credit Party, whether at such Credit Party's premises or elsewhere. Until the Lender is able to effect a sale, lease, or other disposition of Collateral, the Lender shall have the right to hold or use Collateral, or any part thereof, to the extent that it deems appropriate for the purpose of preserving Collateral or its value or for any other purpose deemed appropriate by the Lender. The Lender shall have no obligation to any Credit Party to maintain or preserve the rights of Credit Party as against third parties with respect to Collateral while Collateral is in the possession of the Lender. The Lender may, if it so elects, seek the appointment of a receiver or keeper to take possession of Collateral and to enforce any of the Lender's remedies, with respect to such appointment without prior notice or hearing as to such appointment. The Lender shall deposit the net proceeds of any such collection, recovery, receipt, appropriation, realization or sale to a Blocked Account and such net proceeds shall be applied in accordance with Section 1.3. To the maximum extent permitted by applicable law, each Credit Party waives all claims, damages, and demands against the Lender arising out of the repossession, retention or sale of the

Collateral except such as arise solely out of the gross negligence or willful misconduct of the Lender as finally determined by a court of competent jurisdiction. Each Credit Party agrees that ten (10) days prior notice by the Lender of the time and place of any public sale or of the time after which a private sale may take place is reasonable notification of such matters. Credit Parties shall remain liable for any deficiency if the proceeds of any sale or disposition of the Collateral are insufficient to pay all Secured Obligations, including any attorneys fees and other expenses incurred by the Lender to collect such deficiency.

(c) Except as otherwise specifically provided herein, each Credit Party hereby waives presentment, demand, protest or any notice (to the maximum extent permitted by applicable law) of any kind in connection with this Agreement or any Collateral.

(d) To the extent that applicable law imposes duties on the Lender to exercise remedies in a commercially reasonable manner, each Credit Party acknowledges and agrees that it is not commercially unreasonable for the Lender (i) to fail to incur expenses reasonably deemed significant by the Lender to prepare Collateral for disposition or otherwise to complete raw material or work in process into finished goods or other finished products for disposition, (ii) to fail to obtain third party consents for access to Collateral to be disposed of, or to obtain or, if not required by other law, to fail to obtain governmental or third party consents for the collection or disposition of Collateral to be collected or disposed of, (iii) to fail to exercise collection remedies against Account Debtors or other Persons obligated on Collateral or to remove Liens on or any adverse claims against Collateral, (iv) to exercise collection remedies against Account Debtors and other Persons obligated on Collateral directly or through the use of collection agencies and other collection specialists, (v) to advertise dispositions of Collateral through publications or media of general circulation, whether or not the Collateral is of a specialized nature, (vi) to contact other Persons, whether or not in the same business as the Credit Parties, for expressions of interest in acquiring all or any portion of such Collateral, (vii) to hire one or more professional auctioneers to assist in the disposition of Collateral, whether or not the Collateral is of a specialized nature, (viii) to dispose of Collateral by utilizing internet sites that provide for the auction of assets of the types included in the Collateral or that have the reasonable capacity of doing so, or that match buyers and sellers of assets, (ix) to dispose of assets in wholesale rather than retail markets, (x) to disclaim disposition warranties, such as title, possession or quiet enjoyment, (xi) to purchase insurance or credit enhancements to insure the Lender against risks of loss, collection or disposition of Collateral or to provide to the Lender a guaranteed return from the collection or disposition of Collateral, or (xii) to the extent deemed appropriate by the Lender, to obtain the services of other brokers, investment bankers, consultants and other professionals to assist the Lender in the collection or disposition of any of the Collateral. Each Credit Party acknowledges that the purpose of this Section 10.7(d) is to provide non-exhaustive indications of what actions or omissions by the Lender would not be commercially unreasonable in the Lender's exercise of remedies against the Collateral and that other actions or omissions by the Lender shall not be deemed commercially unreasonable solely on account of not being indicated in this Section 10.7(d). Without limitation upon the foregoing, nothing contained in this Section 10.7(d) shall be construed to grant any rights to any Credit Party or to impose any duties on the Lender that would not have been granted or imposed by this Agreement or by applicable law in the absence of this Section 10.7(d).

(e) The Lender shall not be required to make any demand upon, or pursue or exhaust any of its rights or remedies against, any Credit Party, any other obligor, the Guarantor, pledgor or any other Person with respect to the payment of the Secured Obligations or to pursue or exhaust any of its rights or remedies with respect to any Collateral therefore or any direct or indirect guarantee thereof. The Lender shall not be required to marshal the Collateral or any guarantee of the Secured Obligations or to resort to the Collateral or any such guarantee in any particular order, and all of its and its rights hereunder or under any other Loan Document shall be cumulative. To the extent it may lawfully do so, each Credit Party absolutely and irrevocably waives and relinquishes the benefit and advantage of, and covenants not to assert against the Lender, any valuation, stay, appraisement, extension, redemption or similar laws and any and all rights or defenses it may have as a surety now or hereafter existing which, but for this provision, might be applicable to the sale of any Collateral made under the judgment, order or decree of any court, or privately under the power of sale conferred by this Agreement, or otherwise.

(f) Upon the occurrence of an Event of Default and during the continuation of such Event of Default (and subject to the notice requirements set forth in Section 10.4(j)(vi)), the Lender is hereby authorized and empowered to transfer and register in its name or in the name of its nominee the whole or any part of the Pledged Collateral, to exchange certificates or instruments representing or evidencing Pledged Collateral for certificates or instruments of smaller or larger denominations, to exercise the voting and all other rights as a holder with respect thereto, to collect and receive all cash dividends, interest, principal and other distributions made thereon, to sell in one or more sales after ten (10) days notice of the time and place of any public sale or of the time at which a private sale is to take place (which notice Credit Parties agree is commercially reasonable) the whole or any part of the Pledged Collateral and to otherwise act with respect to the Pledged Collateral as though the Lender was the outright owner thereof. Any sale shall be made at a public or private sale at the Lender's place of business, or at any place to be named in the notice of sale, either for cash or upon credit or for future delivery at such price as the Lender may deem fair, and the Lender may be the purchaser of the whole or any part of the Pledged Collateral so sold and hold the same thereafter in its own right free from any claim of such Credit Party or any right of redemption. Each sale shall be made to the highest bidder, but the Lender reserves the right to reject any and all bids at such sale which, in its discretion, it shall deem inadequate. Demands of performance, except as otherwise herein specifically provided for, notices of sale, advertisements and the presence of property at sale are hereby waived and any sale hereunder may be conducted by an auctioneer or any officer or agent of the Lender.

(g) If, at the original time or times appointed for the sale of the whole or any part of the Pledged Collateral, the highest bid, if there be but one sale, shall be inadequate to discharge in full all the Secured Obligations, or if the Pledged Collateral has been offered for sale in lots, and if at any of such sales, the highest bid for the lot offered for sale would indicate to the Lender, in its discretion, that the proceeds of the sales of the whole of the Pledged Collateral would be unlikely to be sufficient to discharge all the Secured Obligations, the Lender may, on one or more occasions and in its sole discretion, postpone effectuating any of said sales by public announcement at the time of sale or the time of previous postponement of sale, and no other notice of such postponement or postponements of sale need be given, any other notice being hereby waived.

(h) If, at any time when the Lender in its sole discretion determines, following the occurrence and during the continuance of an Event of Default, that, in connection with any actual or contemplated exercise of its rights, when permitted under this Section (h) to sell the whole or any part of the Pledged Shares hereunder, it is necessary or advisable to effect a public registration of all or part of the Pledged Collateral pursuant to the Securities Act of 1933, as amended (or any similar statute then in effect) (the "Act"), such Credit Party shall, in an expeditious manner, cause the issuers of Pledged Collateral to:

(i) Prepare and file with the Commission a registration statement with respect to the Pledged Shares and in good faith use commercially reasonable efforts to cause such registration statement to become and remain effective;

(ii) Prepare and file with the Commission such amendments and supplements to such registration statement and the prospectus used in connection therewith as may be necessary to keep such registration statement effective and to comply with the provisions of the Act with respect to the sale or other disposition of the Pledged Shares covered by such registration statement whenever the Lender shall desire to sell or otherwise dispose of the Pledged Shares;

(iii) Furnish to the Lender such numbers of copies of a prospectus and a preliminary prospectus, in conformity with the requirements of the Act, and such other documents as the Lender may request in order to facilitate the public sale or other disposition of the Pledged Shares by the Lender;

(iv) Use commercially reasonable efforts to register or qualify the Pledged Shares covered by such registration statement under such other securities or blue sky laws of such jurisdictions within the United States and Puerto Rico as the Lender shall request, and do such other reasonable acts and things as may be required of it to enable the Lender to consummate the public sale or other disposition in such jurisdictions of the Pledged Shares by the Lender;

(v) Furnish, at the request of the Lender, on the date that shares of the Pledged Collateral are delivered to the underwriters for sale pursuant to such registration or, if the security is not being sold through underwriters, on the date that the registration statement with respect to such Pledged Shares becomes effective, (A) an opinion, dated such date, of the independent counsel representing such registrant for the purposes of such registration, addressed to the underwriters, if any, and in the event the Pledged Shares are not being sold through underwriters, then to the Lender, in customary form and covering matters of the type customarily covered in such legal opinions; and (B) a comfort letter, dated such date, from the independent certified public accountants of such registrant, addressed to the underwriters, if any, and in the event the Pledged Shares are not being sold through underwriters, then to the Lender, in a customary form and covering matters of the type customarily covered by such comfort letters and as the underwriters or the Lender shall reasonably request. The opinion of counsel referred to above shall additionally cover such other legal matters with respect to the registration in respect of which such opinion is being given as the Lender may reasonably request. The letter referred to above from the independent certified public accountants shall additionally cover such other financial matters (including information as to the period ending

not more than five (5) Business Days prior to the date of such letter) with respect to the registration in respect of which such letter is being given as the Lender may reasonably request; and

(vi) Otherwise use commercially reasonable efforts to comply with all applicable rules and regulations of the Commission, and make available to its security holders, as soon as reasonably practicable but not later than 18 months after the effective date of the registration statement, an earnings statement covering the period of at least 12 months beginning with the first full month after the effective date of such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Act.

(i) All expenses incurred in complying with Section 10.7 hereof, including, without limitation, all registration and filing fees (including all expenses incident to filing with the National Association of Securities Dealers, Inc.), printing expenses, fees and disbursements of counsel for the registrant, the fees and expenses of counsel for the Lender, expenses of the independent certified public accountants (including any special audits incident to or required by any such registration) and expenses of complying with the securities or blue sky laws or any jurisdictions, shall be paid by Credit Parties.

(j) If, at any time when the Lender shall determine to exercise its right to sell the whole or any part of the Pledged Collateral hereunder, such Pledged Collateral or the part thereof to be sold shall not, for any reason whatsoever, be effectively registered under the Act, the Lender may, in its discretion (subject only to applicable requirements of law), sell such Pledged Collateral or part thereof by private sale in such manner and under such circumstances as the Lender may deem necessary or advisable, but subject to the other requirements of this Section 10.7, and shall not be required to effect such registration or to cause the same to be effected. Without limiting the generality of the foregoing, in any such event, the Lender in its discretion (i) may, in accordance with applicable securities laws, proceed to make such private sale notwithstanding that a registration statement for the purpose of registering such Pledged Collateral or part thereof could be or shall have been filed under said Act (or similar statute), (ii) may approach and negotiate with a single possible purchaser to effect such sale, and (iii) may restrict such sale to a purchaser who is an accredited investor under the Act and who will represent and agree that such purchaser is purchasing for its own account, for investment and not with a view to the distribution or sale of such Pledged Collateral or any part thereof. In addition to a private sale as provided above in this Section 10.7, if any of the Pledged Collateral shall not be freely distributable to the public without registration under the Act (or similar statute) at the time of any proposed sale pursuant to this Section 10.7, then the Lender shall not be required to effect such registration or cause the same to be effected but, in its discretion (subject only to applicable requirements of law), may require that any sale hereunder (including a sale at auction) be conducted subject to restrictions:

(i) as to the financial sophistication and ability of any Person permitted to bid or purchase at any such sale;

(ii) as to the content of legends to be placed upon any certificates representing the Pledged Collateral sold in such sale, including restrictions on future transfer thereof;

(iii) as to the representations required to be made by each Person bidding or purchasing at such sale relating to that Person's access to financial information about such Credit Party and such Person's intentions as to the holding of the Pledged Collateral so sold for investment for its own account and not with a view to the distribution thereof; and

(iv) as to such other matters as the Lender may, in its discretion, reasonably deem necessary or appropriate in order that such sale (notwithstanding any failure so to register) may be effected in compliance with the Bankruptcy Code and other laws affecting the enforcement of creditors rights and the Act and all applicable state securities laws.

(k) Each Credit Party recognizes that the Lender may be unable to effect a public sale of any or all the Pledged Collateral and may be compelled to resort to one or more private sales thereof in accordance with clause (j) above. Each Credit Party also acknowledges that any such private sale may result in prices and other terms less favorable to the seller than if such sale were a public sale and, notwithstanding such circumstances, agrees that any such private sale shall not be deemed to have been made in a commercially unreasonable manner solely by virtue of such sale being private. The Lender shall be under no obligation to delay a sale of any of the Pledged Collateral for the period of time necessary to permit the issuer of any Pledged Shares to register such securities for public sale under the Act, or under applicable state securities laws, even if such Credit Party and such issuer would agree to do so.

(l) Each Credit Party agrees to the maximum extent permitted by applicable law that following the occurrence and during the continuance of an Event of Default it will not at any time plead, claim or take the benefit of any appraisal, valuation, stay, extension, moratorium or redemption law now or hereafter in force in order to prevent or delay the enforcement of this Agreement, or the absolute sale of the whole or any part of the Pledged Collateral or the possession thereof by any purchaser at any sale hereunder, and each Credit Party waives the benefit of all such laws to the extent it lawfully may do so. Each Credit Party agrees that it will not interfere with any right, power and remedy of the Lender provided for in this Agreement or now or hereafter existing at law or in equity or by statute or otherwise, or the exercise or beginning of the exercise by the Lender of any one or more of such rights, powers or remedies. No failure or delay on the part of the Lender to exercise any such right, power or remedy and no notice or demand which may be given to or made upon Credit Parties by the Lender with respect to any such remedies shall operate as a waiver thereof, or limit or impair the Lender's right to take any action or to exercise any power or remedy hereunder, without notice or demand, or prejudice its rights as against any Credit Party in any respect.

(m) Each Credit Party further agrees that a breach of any of the covenants contained in this Section 10.7 will cause irreparable injury to the Lender, that the Lender shall have no adequate remedy at law in respect of such breach and, as a consequence, agrees that each and every covenant contained in this Section 10.7 shall be specifically enforceable against the Credit Parties, and each Credit Party hereby waives and agrees not to assert any defenses against an action for specific performance of such covenants except for a defense that the Secured Obligations are not then due and payable in accordance with the agreements and instruments governing and evidencing such Obligations.

(n) To the extent that any rights and remedies under this Section 10.7 would otherwise be in violation of the automatic stay of section 362 of the Bankruptcy Code, to the extent provided for in the Interim Order or Final Order, as applicable, and permitted by applicable law, such stay shall be deemed modified, as set forth in the Interim Order (or the Final Order, when applicable), to the extent necessary to permit the Lender to exercise such rights and remedies.

10.8 The Lender's Appointment as Attorney-in-Fact.

(a) On the Closing Date each Credit Party shall execute and deliver to the Lender a power of attorney (the "Power of Attorney") substantially in the form attached hereto as Exhibit 10.8. The power of attorney granted pursuant to the Power of Attorney is a power coupled with an interest and shall be irrevocable until the Termination Date. The powers conferred on the Lender under the Power of Attorney are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon the Lender to exercise any such powers. The Lender agrees that it shall account for any moneys received by the Lender in respect of any foreclosure on or disposition of Collateral pursuant to the Power of Attorney; provided, that the Lender shall not have any duty as to any Collateral, and the Lender shall be accountable only for amounts that they actually receive as a result of the exercise of such powers and that the Lender shall not exercise such powers unless an Event of Default has occurred and is continuing. THE LENDER AND ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS OR REPRESENTATIVES SHALL NOT BE RESPONSIBLE TO ANY CREDIT PARTY FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION, NOR FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

(b) The Credit Parties hereby ratify, to the extent permitted by law, all that said attorneys shall lawfully do or cause to be done by virtue hereof. [Exercise by the Lender of the powers granted hereunder is not a violation of the automatic stay provided by section 362 of the Bankruptcy Code and each Credit Party waives applicability thereof]. The power of attorney granted pursuant to this Section 10.8 is a power coupled with an interest and shall be irrevocable until the Obligations are paid in full in cash.

(c) The powers conferred on the Lender hereunder are solely to protect the Lender's interests in the Collateral and shall not impose any duty upon it to exercise any such powers. The Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers.

(d) Each Credit Party also authorizes the Lender, at any time and from time to time upon the occurrence and during the continuation of any Event of Default or as otherwise expressly permitted by this Agreement, (i) to communicate in its own name or the name of its Subsidiaries with any party to any Contract with regard to the assignment of the right, title and interest of such Credit Party in and under the Contracts hereunder and other matters relating thereto and (ii) to execute any endorsements, assignments or other instruments of conveyance or

transfer with respect to the Collateral (subject to any notice requirements hereunder or under any other Loan Document or as required by the Interim Order or Final Order, as applicable).

(e) All Obligations shall constitute, in accordance with section 364(c)(1) of the Bankruptcy Code, claims against the Borrower and each Credit Party in their respective Cases which are administrative expense claims having priority over any all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code.

10.9 Modifications.

(a) The Liens, lien priority, administrative priorities and other rights and remedies granted to the Lender pursuant to this Agreement, the Interim Order and, to the extent entered, the Final Order (specifically, including, but not limited to, the existence, perfection and priority of the Liens provided herein and therein and the administrative priority provided herein and therein) shall not be modified, altered or impaired in any manner by any other financing or extension of credit or incurrence of Indebtedness by any of the Credit Parties (pursuant to section 364 of the Bankruptcy Code or otherwise), or by any dismissal or conversion of any of the Cases, or by any other act or omission whatsoever. Without limitation, notwithstanding any such order, financing, extension, incurrence, dismissal, conversion, act or omission:

(i) except for the Carve-Out having priority over the Obligations, no costs or expenses of administration which have been or may be incurred in any of the Cases or any conversion of the same or in any other proceedings related thereto, and no priority claims, are or will be prior to or on a parity with any claim of the Lender against the Credit Parties in respect of any Obligation;

(ii) the Liens and security interests granted herein shall constitute valid and perfected Liens on and security interests (having the priority provided for herein and in the Interim Order and the Final Order); in all right, title and interest in the Collateral; and

(iii) the Liens and security interests granted hereunder shall continue valid and perfected without the necessity that financing statements be filed or that any other action be taken under applicable nonbankruptcy law.

(b) Notwithstanding any failure on the part of any Credit Party or the Lender to perfect, maintain, protect or enforce the liens and security interests in the Collateral granted hereunder, the Interim Order and the Final Order (when entered) shall automatically, and without further action by any Person, perfect such Liens and security interests against the Collateral.

11. ASSIGNMENT AND PARTICIPATIONS

11.1 Assignment and Participations.

(a) Right to Assign. The Lender may sell, transfer, negotiate or assign (an "Assignment") all or a portion of its rights and obligations hereunder (including all or a portion of its Commitments and its rights and obligations with respect to Term Loans) with the Borrower's (so long as no Event of Default is continuing) reasonable approval, such approval not to be unreasonably withheld, delayed or conditioned.

(b) Grant of Security Interests. In addition to the other rights provided in this Section 11.1, the Lender may grant a security interest in, or otherwise assign as collateral, any of its rights under this Agreement, whether now owned or hereafter acquired (including rights to payments of principal or interest on the Term Loans), to (A) any federal reserve bank (pursuant to Regulation A of the Federal Reserve Board) or (B) any holder of, or trustee for the benefit of the holders of, the Lender's Securities or any debt obligations; provided, that no such holder or trustee, whether because of such grant or assignment or any foreclosure thereon (unless such foreclosure is made through an assignment in accordance with clause (b) above), shall be entitled to any rights of the Lender hereunder and the Lender shall not be relieved of any of its obligations hereunder.

(c) Participants. If the Lender sells a participation, the Lender shall, acting solely for this purpose as an agent of the Borrower, maintain a register on which it enters the name and address of each participant and the principal amounts (and stated interest) of each participant's interest in the Term Loans or other obligations under the Loan Documents (the "Participant Register"); provided that the Lender shall not have any obligation to disclose all or any portion of the Participant Register (including the identity of any participant or any information relating to a participant's interest in any commitments, loans, letters of credit or its other obligations under any Loan Document) to any Person except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and the Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary.

11.2 The Lender's Reliance, Etc. None of the Lender or any of its Affiliates or any of their respective directors, officers, agents or employees shall be liable for any action taken or omitted to be taken by it or them under or in connection with this Agreement or the other Loan Documents, except for damages caused by its or their own gross negligence or willful misconduct. Without limiting the generality of the foregoing, the Lender: (a) may treat the payee of any Note as the holder thereof until the Lender receives written notice of the assignment or transfer thereof signed by such payee and in form reasonably satisfactory to the Lender; (b) may consult with legal counsel, independent public accountants and other experts selected by it and shall not be liable for any action taken or omitted to be taken by it in good faith in accordance with the advice of such counsel, accountants or experts; (c) shall not have any duty to ascertain or to inquire as to the performance or observance of any of the terms, covenants or conditions of this Agreement or the other Loan Documents on the part of any Credit Party or to inspect the Collateral (including the Books and Records to the extent not prohibited by a confidentiality agreement in favor of a third party) of any Credit Party; and (d) shall incur no liability under or in respect of this Agreement or the other Loan Documents by acting upon any notice, consent, certificate or other instrument or writing (which may be by telecopy, telegram, cable or telex) believed by it to be genuine and signed or sent by the proper party or parties.

11.3 Setoff . In addition to any rights now or hereafter granted under applicable law and not by way of limitation of any such rights, the Lender is hereby authorized upon the occurrence and during the continuance of any Event of Default, at any time or from time to time, without prior notice to any Credit Party or to any Person, any such notice being hereby expressly

waived, to offset and to appropriate and to apply any and all balances held by the Lender at any of its offices for the account of the Borrower or any Guarantor (regardless of whether such balances are then due to the Borrower or any Guarantor) and any other properties or assets at any time held or owing by the Lender or that holder to or for the credit or for the account of the Borrower or any Guarantor against and on account of any of the Obligations that are not paid when due; provided, that the Lender exercising such offset rights shall not be required to give notice thereof to the affected Credit Party, except as otherwise required by the Interim Order (or the Final Order, when applicable), promptly after exercising such rights.

12. SUCCESSORS AND ASSIGNS

12.1 Successors and Assigns. This Agreement and the other Loan Documents shall be binding on and shall inure to the benefit of each Credit Party, the Lender and its successors and assigns (including, in the case of any Credit Party, a debtor-in-possession on behalf of such Credit Party), except as otherwise provided herein or therein. No Credit Party may assign, transfer, hypothecate or otherwise convey its rights, benefits, obligations or duties hereunder or under any of the other Loan Documents without the prior express written consent of the Lender. Any such purported assignment, transfer, hypothecation or other conveyance by any Credit Party without the prior express written consent of the Lender shall be void. The terms and provisions of this Agreement are for the purpose of defining the relative rights and obligations of each Credit Party, the Lender with respect to the transactions contemplated hereby and no Person shall be a third party beneficiary of any of the terms and provisions of this Agreement or any of the other Loan Documents.

13. MISCELLANEOUS

13.1 Complete Agreement; Modification of Agreement. The Loan Documents constitute the complete agreement between the parties with respect to the subject matter thereof and may not be modified, altered or amended except as set forth in Section 13.2. Any fee letter or confidentiality agreement, if any, between any Credit Party and the Lender or any of their respective Affiliates, predating this Agreement and relating to a financing of substantially similar form, purpose or effect shall be superseded by this Agreement.

13.2 Amendments and Waivers.

(a) Except as otherwise expressly provided in this Agreement, the Lender, on the one hand, and the Borrower, on the other hand, may from time to time enter into written amendments, supplements or modifications for the purpose of adding, deleting or modifying any provision of any Loan Document or changing in any manner the rights, remedies, obligations and duties of the parties thereto, and the Lender may execute and deliver a written instrument waiving, on such terms and conditions as may be specified in such instrument, any of the requirements applicable to the Credit Parties, as the case may be, party to any Loan Document, or any Default or Event of Default and its consequences.

(b) Upon the Termination Date, to the extent reasonably requested by the Borrower, the Lender shall promptly deliver to the Borrower termination statements, mortgage releases,

reconveyances and other documents necessary to evidence the termination of the Liens securing payment and performance of the Obligations.

13.3 Costs and Expenses. The Borrower shall reimburse the Lender for all fees, and reasonable and documented out-of-pocket costs and expenses incurred in connection with the negotiation, preparation and filing and/or recordation of the Loan Documents and incurred in connection with:

(a) any amendment, modification or waiver of, or consent with respect to, or termination of, any of the Loan Documents or advice in connection with the administration of the Term Loans made pursuant hereto or its rights hereunder or thereunder;

(b) [reserved];

(c) any attempt to enforce any remedies of the Lender against any or all of the Credit Parties or any other Person that may be obligated to the Lender by virtue of any of the Loan Documents, including any such attempt to enforce any such remedies in the course of any work-out or restructuring of the Term Loans during the pendency of one or more Events of Default;

(d) any workout or restructuring of the Term Loans; and

(e) efforts to (i) monitor the Term Loans or any of the other Obligations, (ii) evaluate, observe or assess any of the Credit Parties or their respective affairs, and (iii) verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral, in each case pursuant to and in accordance with the terms of the Loan Documents;

including, as to each of clauses (a) through (e) above, the fees of a single counsel (and any special or local counsel) and a single advisor for the Lender arising from such services and other advice, assistance or other representation, and all expenses, costs, charges and other fees incurred by such counsel and others in connection with or relating to any of the events or actions described in this Section 13.3, all of which shall be payable, on demand, by the Borrower to the Lender. Without limiting the generality of the foregoing, such expenses, costs, charges and fees may include: fees, costs and expenses of accountants, environmental advisors, appraisers, investment bankers, management and other consultants and paralegals; court costs and expenses; photocopying and duplication expenses; court reporter fees, costs and expenses; long distance telephone charges; air express charges; telegram or telecopy charges; secretarial overtime charges; charges for any E-System; and expenses for travel, lodging and food paid or incurred in connection with the performance of such legal or other advisory services.

13.4 No Waiver. The Lender's failure, at any time or times, to require strict performance by the Credit Parties of any provision of this Agreement or any other Loan Document shall not waive, affect or diminish any right of the Lender thereafter to demand strict compliance and performance herewith or therewith. Any suspension or waiver of an Event of Default shall not suspend, waive or affect any other Event of Default whether the same is prior or subsequent thereto and whether the same or of a different type. Subject to the provisions of Section 13.2, none of the undertakings, agreements, warranties, covenants and representations of any Credit Party contained in this Agreement or any of the other Loan Documents and no Default or Event of Default by any Credit Party shall be deemed to have been suspended or

waived by the Lender, unless such waiver or suspension is by an instrument in writing signed by an officer of or other authorized employee of the Lender and directed to the Borrower specifying such suspension or waiver.

13.5 Remedies. The Lender's rights and remedies under this Agreement shall be cumulative and nonexclusive of any other rights and remedies that the Lender may have under any other agreement, including the other Loan Documents, by operation of law or otherwise. Recourse to the Collateral shall not be required.

13.6 Severability. Wherever possible, each provision of this Agreement and the other Loan Documents shall be interpreted in such a manner as to be effective and valid under applicable law, but if any provision of this Agreement or any other Loan Document shall be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Agreement or such other Loan Document.

13.7 Conflict of Terms. Except as otherwise provided in this Agreement or any of the other Loan Documents by specific reference to the applicable provisions of this Agreement, (i) if any provision contained in this Agreement or any of the other Loan Documents conflicts with the Interim Order or, to the extent entered, the Final Order, the provision contained in the Interim Order or, to the extent entered, the Final Order shall govern and control and (ii) if any provision contained in this Agreement conflicts with any provision in any of the other Loan Documents, the provision contained in this Agreement shall govern and control.

13.8 Confidentiality. The Lender agrees to use commercially reasonable efforts (equivalent to the efforts the Lender applies to maintain the confidentiality of its own confidential information) to maintain as confidential all confidential information provided to the Lender by the Credit Parties, except that the Lender may disclose such information (a) to Persons employed or engaged by the Lender; (b) to any bona fide assignee or participant or potential assignee or participant that has agreed to comply with the covenant contained in this Section 13.8 (and any such bona fide assignee or participant or potential assignee or participant may disclose such information to Persons employed or engaged by them as described in clause (a) above); (c) as required or requested by any Governmental Authority or reasonably believed by the Lender to be compelled by any court decree, subpoena or legal or administrative order or process (in which case, you agree to provide Borrower with prior notice thereof, except to the extent prohibited by law); (d) as is required by law; (e) in connection with the exercise of any right or remedy under the Loan Documents or in connection with any Litigation to which the Lender is a party; (f) that ceases to be confidential through no fault of the Lender; (g) to its affiliates and its and their directors, officers, employees, advisors, representatives or agents that has agreed to comply with the covenant contained in this Section 13.8, and (h) to ratings agencies.

13.9 GOVERNING LAW. **EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN ANY OF THE LOAN DOCUMENTS, IN ALL RESPECTS, INCLUDING ALL MATTERS OF CONSTRUCTION, VALIDITY AND PERFORMANCE, THE LOAN DOCUMENTS AND THE OBLIGATIONS SHALL BE GOVERNED BY, AND CONSTRUED AND ENFORCED IN ACCORDANCE WITH, THE INTERNAL LAWS OF THE STATE OF NEW YORK APPLICABLE TO CONTRACTS MADE AND**

PERFORMED IN THAT STATE AND ANY APPLICABLE LAWS OF THE UNITED STATES OF AMERICA. EACH CREDIT PARTY HEREBY CONSENTS AND AGREES TO THE EXCLUSIVE JURISDICTION OF THE BANKRUPTCY COURT; PROVIDED, THAT IF THE BANKRUPTCY COURT DECLINES TO EXERCISE JURISDICTION, THE STATE OR FEDERAL COURTS LOCATED IN NEW YORK COUNTY, CITY OF NEW YORK, NEW YORK SHALL HEAR AND DETERMINE ANY CLAIMS OR DISPUTES BETWEEN THE CREDIT PARTIES AND THE LENDER PERTAINING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR TO ANY MATTER ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS; PROVIDED, FURTHER THAT THE LENDER AND THE CREDIT PARTIES ACKNOWLEDGE THAT ANY APPEALS FROM THOSE COURTS MAY HAVE TO BE HEARD BY A COURT LOCATED OUTSIDE OF NEW YORK COUNTY AND; PROVIDED, FURTHER THAT NOTHING IN THIS AGREEMENT SHALL BE DEEMED OR OPERATE TO PRECLUDE THE LENDER FROM BRINGING SUIT OR TAKING OTHER LEGAL ACTION IN ANY OTHER JURISDICTION TO REALIZE ON THE COLLATERAL OR ANY OTHER SECURITY FOR THE OBLIGATIONS, OR TO ENFORCE A JUDGMENT OR OTHER COURT ORDER IN FAVOR OF THE LENDER. EACH CREDIT PARTY EXPRESSLY SUBMITS AND CONSENTS IN ADVANCE TO SUCH JURISDICTION IN ANY ACTION OR SUIT COMMENCED IN ANY SUCH COURT, AND EACH CREDIT PARTY HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, ANY OBJECTION THAT SUCH CREDIT PARTY MAY HAVE BASED UPON LACK OF PERSONAL JURISDICTION, IMPROPER VENUE OR FORUM NON CONVENIENS AND HEREBY CONSENTS, TO THE EXTENT PERMITTED BY LAW, TO THE GRANTING OF SUCH LEGAL OR EQUITABLE RELIEF AS IS DEEMED APPROPRIATE BY SUCH COURT. EACH CREDIT PARTY HEREBY WAIVES, TO THE EXTENT PERMITTED BY LAW, PERSONAL SERVICE OF THE SUMMONS, COMPLAINT AND OTHER PROCESS ISSUED IN ANY SUCH ACTION OR SUIT AND AGREES THAT SERVICE OF SUCH SUMMONS, COMPLAINTS AND OTHER PROCESS MAY BE MADE BY REGISTERED OR CERTIFIED MAIL ADDRESSED TO SUCH CREDIT PARTY AT THE ADDRESS SET FORTH IN ANNEX H OF THIS AGREEMENT AND THAT SERVICE SO MADE SHALL, TO THE EXTENT PERMITTED BY LAW, BE DEEMED COMPLETED UPON THE EARLIER OF SUCH CREDIT PARTY'S ACTUAL RECEIPT THEREOF OR THREE (3) DAYS AFTER DEPOSIT IN THE UNITED STATES MAILS, PROPER POSTAGE PREPAID.

13.10 Notices.

(a) Except as otherwise provided herein, whenever it is provided herein that any notice, demand, request, consent, approval, declaration or other communication shall or may be given to or served upon any of the parties by any other parties, or whenever any of the parties desires to give or serve upon any other parties any communication with respect to this Agreement, each such notice, demand, request, consent, approval, declaration or other communication shall be in writing and shall be deemed to have been validly served, given or delivered (i) upon the earlier of actual receipt and three (3) Business Days after deposit in the United States Mail, registered or certified mail, return receipt requested, with proper postage prepaid, (ii) upon transmission, when sent by telecopy or other similar facsimile transmission

(with such telecopy or facsimile promptly confirmed by delivery of a copy by personal delivery or United States Mail as otherwise provided in this Section 13.10); (iii) one (1) Business Day after deposit with a reputable overnight courier with all charges prepaid or (iv) when delivered, if hand-delivered by messenger, all of which shall be addressed to the party to be notified and sent to the address or facsimile number indicated in Annex H or to such other address (or facsimile number) as may be substituted by notice given as herein provided. The giving of any notice required hereunder may be waived in writing by the party entitled to receive such notice. Failure or delay in delivering copies of any notice, demand, request, consent, approval, declaration or other communication to any Person (other than the Borrower or the Lender) designated in Annex H to receive copies shall in no way adversely affect the effectiveness of such notice, demand, request, consent, approval, declaration or other communication.

(b) Subject to the provisions of Section 13.10(a), each of the Lender, the Borrower, and their authorized agents is authorized (but not required) to transmit, post or otherwise make or communicate, in its sole discretion, Electronic Transmissions in connection with any Loan Document and the transactions contemplated therein; provided, that notices to any Credit Party shall not be made by any posting to an Internet or extranet based site or other equivalent service but may be made by e-mail or E-fax, if available, so long as such notices are also sent in accordance with Section 13.10(a). Each Credit Party and the Lender hereby acknowledges and agrees that the use of Electronic Transmissions is not necessarily secure and that there are risks associated with such use, including risks of interception, disclosure and abuse and each indicates it assumes and accepts such risks by hereby authorizing the transmission of Electronic Transmissions.

(c) Subject to the provisions of Section 13.10(a), (i)(A) no posting to any E-System shall be denied legal effect merely because it is made electronically, (B) each E-Signature on any such posting shall be deemed sufficient to satisfy any requirement for a signature and (C) each such posting shall be deemed sufficient to satisfy any requirement for a writing, in each case including pursuant to any Loan Document, any applicable provision of any Uniform Commercial Code, the federal Uniform Electronic Transactions Act, the Electronic Signatures in Global and National Commerce Act and any substantive or procedural Requirement of Law governing such subject matter, (ii) each such posting that is not readily capable of bearing either a signature or a reproduction of a signature may be signed, and shall be deemed signed, by attaching to, or logically associating with such posting, an E-Signature, upon which the Lender and each Credit Party may rely and assume the authenticity thereof, (iii) each such posting containing a signature, a reproduction of a signature or an E-Signature shall, for all intents and purposes, have the same effect and weight as a signed paper original and (iv) each party hereto or beneficiary hereto agrees not to contest the validity or enforceability of any posting on any E-System or E-Signature on any such posting under the provisions of any applicable Requirement of Law requiring certain documents to be in writing or signed; provided, however, that nothing herein shall limit such party's or beneficiary's right to contest whether any posting to any E-System or E-Signature has been altered after transmission.

(d) All uses of an E-System shall be governed by and subject to, in addition to this Section 13.10, separate terms and conditions posted or referenced in such E-System and related contractual obligations executed by the Lender and the Credit Parties in connection with the use of such E-System.

(e) ALL E-SYSTEMS AND ELECTRONIC TRANSMISSIONS SHALL BE PROVIDED AS IS AND AS AVAILABLE. NONE OF THE LENDER OR ANY OF ITS AFFILIATES WARRANTS THE ACCURACY, ADEQUACY OR COMPLETENESS OF ANY E-SYSTEMS OR ELECTRONIC TRANSMISSION AND DISCLAIMS ALL LIABILITY FOR ERRORS OR OMISSIONS THEREIN. NO WARRANTY OF ANY KIND IS MADE BY THE LENDER OR ANY OF ITS AFFILIATES IN CONNECTION WITH ANY E SYSTEMS OR ELECTRONIC COMMUNICATION, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD-PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS. The Credit Parties agree (and the Borrower shall cause each other Credit Party to agree) that the Lender has no responsibility for maintaining or providing any equipment, software, services or any testing required in connection with any Electronic Transmission or otherwise required for any E-System.

13.11 Section Titles. The Section titles and Table of Contents contained in this Agreement are and shall be without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto.

13.12 Counterparts. This Agreement may be executed in any number of separate counterparts, each of which shall collectively and separately constitute one agreement. Any counterpart delivered via facsimile or other electronic transmission shall be deemed to be an original signature hereto.

13.13 WAIVER OF JURY TRIAL. **BECAUSE DISPUTES ARISING IN CONNECTION WITH COMPLEX FINANCIAL TRANSACTIONS ARE MOST QUICKLY AND ECONOMICALLY RESOLVED BY AN EXPERIENCED AND EXPERT PERSON AND THE PARTIES WISH APPLICABLE STATE AND FEDERAL LAWS TO APPLY (RATHER THAN ARBITRATION RULES), THE PARTIES DESIRE THAT THEIR DISPUTES BE RESOLVED BY A JUDGE APPLYING SUCH APPLICABLE LAWS. THEREFORE, TO ACHIEVE THE BEST COMBINATION OF THE BENEFITS OF THE JUDICIAL SYSTEM AND OF ARBITRATION, THE PARTIES HERETO WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, SUIT, OR PROCEEDING BROUGHT TO RESOLVE ANY DISPUTE, WHETHER SOUNDING IN CONTRACT, TORT OR OTHERWISE, BETWEEN THE LENDER AND ANY CREDIT PARTY ARISING OUT OF, CONNECTED WITH, RELATED TO, OR INCIDENTAL TO THE RELATIONSHIP ESTABLISHED AMONG THEM IN CONNECTION WITH, THIS AGREEMENT OR ANY OF THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS RELATED THERETO.**

13.14 Press Releases and Related Matters. Each Credit Party executing this Agreement agrees that neither it nor its Affiliates will in the future issue any press releases or other public disclosure using the name of the Lender or its Affiliates or referring to this Agreement, the other Loan Documents without at least two (2) Business Days prior notice to the Lender, and without the prior written consent of the Lender, unless (and only to the extent that) such Credit Party or Affiliate is required to do so under law and then, in any event, such Credit Party or Affiliate will consult, to the extent permitted by law, with the Lender before issuing such press release or other public disclosure.

13.15 [Reserved].

13.16 Advice of Counsel. Each of the parties represents to each other party hereto that it has discussed this Agreement and, specifically, the provisions of Sections 13.9 and 13.13, with its counsel.

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

[The remainder of this page is intentionally left blank.]

IN WITNESS WHEREOF, this Agreement has been duly executed as of the date first written above.

CONEXANT SYSTEMS, INC., as the Borrower

By: _____
Name: _____
Title: _____

QP SFM CAPITAL HOLDINGS LTD., as the Lender

By: _____
Name: _____
Title: _____

The following Persons are signatories to this Agreement in their capacity as Credit Parties and not as Borrower:

BROOKTREE BROADBAND HOLDING, INC.

By: _____
Name:_____
Title: _____

CONEXANT SYSTEMS WORLDWIDE, INC.

By: _____
Name:_____
Title: _____

CONEXANT, INC.

By: _____
Name:_____
Title: _____

CONEXANT CF, LLC

By: _____
Name:_____
Title: _____

ANNEX A (Recitals)
to
CREDIT AGREEMENT

DEFINITIONS

Capitalized terms used in the Loan Documents shall have (unless otherwise provided elsewhere in the Loan Documents) the following respective meanings and all references to Sections, Exhibits, Schedules or Annexes in the following definitions shall refer to Sections, Exhibits, Schedules or Annexes of or to the Agreement:

"363 Sale" has the meaning ascribed to it in the Restructuring Support Agreement.

"363 Sale Amendment" has the meaning ascribed to it in Section 1.14.

"363 Triggering Event" has the meaning ascribed to it in the Restructuring Support Agreement.

"Account Debtor" means any Person who may become obligated to any Credit Party under, with respect to, or on account of, an Account, Chattel Paper or General Intangibles (including a payment intangible).

"Accounting Changes" refers to changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board (the "FASB"), the Emerging Issues Task Force ("EITF") of the FASB or, if applicable, the SEC.

"Accounts" means all accounts, as such term is defined in the Code, now owned or hereafter acquired by any Credit Party, including (a) all accounts receivable, other receivables, book debts and other forms of obligations (other than forms of obligations evidenced by Chattel Paper or Instruments), (including any such obligations that may be characterized as an account or contract right under the Code), (b) all of each Credit Party's rights in, to and under all purchase orders or receipts for goods or services, (c) all of each Credit Party's rights to any goods represented by any of the foregoing (including unpaid sellers rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all Healthcare Insurance Receivables (as such term is defined in the Code), and (e) all collateral security of any kind, now or hereafter in existence, given by any Account Debtor or other Person with respect to any of the foregoing.

"Adequate Protection Obligations" shall have the meaning set forth in the Interim Order or if the Final Order has been entered, the Final Order.

"Adjusted LIBOR" means a rate per annum equal to the greater of (a) 1.00% per annum and (b) the offered rate for deposits in Dollars for a period of three months as determined by the Lender from the Reuters Screen LIBOR01 Page as of approximately 11:00 a.m., New York, New York time, on the first day of each Interest Period, or if such day is not a Business Day, then on the first Business Day in the applicable Fiscal Month in which such Interest Period commences (to be applicable for each day in such Interest Period), or the rate for such deposits reasonably

determined by the Lender at such time based on such other published service of general application as shall be selected by the Lender for such purpose; provided, that if the LIBOR Rate is not determinable in the foregoing manner, the Lender may determine the rate based on rates offered to the Lender for deposits in Dollars in the interbank eurodollar market at such time for delivery on the first day of the Interest Period for the number of days comprised therein. If the Board of Governors of the Federal Reserve System (or any successor) prescribes a reserve percentage (the "Reserve Percentage") for "Eurocurrency liabilities" (as defined in Regulation D of the Federal Reserve Board, as amended), then the above definition of LIBOR Rate shall be the "Base LIBOR Rate", and "LIBOR Rate" shall mean: Base LIBOR Rate divided by (100% minus LIBOR Reserve Percentage). Each determination by the Lender of the applicable LIBOR Rate shall be conclusive and binding upon the parties hereto, in the absence of demonstrable error.

"Affiliate" means, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, 10% or more of the Stock having ordinary voting power in the election of directors of such Person, (b) each Person that controls, is controlled by or is under common control with such Person, and (c) each of such Person's beneficial owner and partners who are Affiliates under clause (a) hereof. For the purposes of this definition, control of a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise; provided, that the term Affiliate, when used with reference to a Credit Party, shall specifically exclude the Lender.

"Aggregate Cash On Hand" means the amount of cash and Cash Equivalents of the Credit Parties that may be classified, in accordance with GAAP, as unrestricted on the consolidated balance sheets of the Borrower.

"Appendices" has the meaning ascribed to it in the recitals to the Agreement.

"Appraisers" shall mean any appraiser reasonably acceptable to the Lender.

"Asset Sale" has the meaning ascribed to it in Section 6.8.

"Assignment" has the meaning ascribed to it in Section 11.1(a).

"Assignment Agreement" means the agreement, in a form reasonably acceptable to the Lender, by which an Assignment shall be made.

"Bankruptcy Code" means the provisions of Title 11 of the United States Code, 11 U.S.C. §§ 101 et seq.

"Bankruptcy Court" has the meaning ascribed to it in the Preamble or shall mean any other court having competent jurisdiction over the Cases.

"Blocked Account" means any account of any Credit Party that is subject to a Blocked Account Agreement or a Control Letter pursuant to Annex B.

"Blocked Account Agreement" means a control agreement, in form and substance reasonably satisfactory to the Lender, among any Credit Party, the Lender and the applicable bank or financial institution.

"Books and Records" means books and records of the Credit Parties, including financial, corporate, operations and sales books, records, books of account, sales and purchase records, lists of suppliers and customers, formulae, business reports, plans and projections and all other documents, logs, surveys, plans, files, records, assessments, correspondence, and other data and information, financial or otherwise, and all log books and other documents and records, including all data and information stored on computer-related or other electronic media.

"Borrower" has the meaning ascribed thereto in the preamble to the Agreement.

"Borrowing Date" shall mean any Business Day specified by the Borrower as a date on which the Borrower requests the Lender to make Term Loans hereunder.

"Budget" means the Initial Budget and, as delivered thereafter in accordance with section (e) of Annex D, the applicable updated 13-week Budget, which updates shall be acceptable to the Lender in its sole discretion. Notwithstanding anything to the contrary contained herein, the Lender's approval of the Budget is given solely in its capacity as the Lender hereunder, and such approval does not constitute approval of the Budget for any other purpose, including without limitation, any other contractual arrangement between the Lender and the Credit Parties.

"Business Day" means any day that is not a Saturday, a Sunday or a day on which banks are required or permitted to be closed in the State of New York.

"Capital Lease" means, with respect to any Person, any lease of any property (whether real, personal or mixed) by such Person as lessee that, in accordance with GAAP, would be required to be classified and accounted for as a capital lease on a balance sheet of such Person; provided, that for purposes of this Agreement, GAAP will be deemed to treat operating leases and capital leases in a manner consistent with their current treatment under generally accepted accounting principles as in effect on the Closing Date, notwithstanding any modifications or interpretive changes thereto that may occur hereafter.

"Carve-Out" shall have the meaning set forth in the Interim Order or if the Final Order has been entered, the Final Order.

"Cases" has the meaning ascribed to it in the Preamble.

"Cash Equivalents" means Permitted Investments.

"Cash Management Order" means Interim Order Authorizing (i) Debtors to Continue to Use Existing Cash Management System and Maintain Existing Bank Accounts and Business Forms and (ii) Financial Institutions to Honor and Process Related Checks and Transactions, entered on [___], 2013 Docket No. [__] and any final order entered into in connection therewith.

"Cash Management Systems" has the meaning ascribed to it in Section 1.7.

"Change of Control" shall mean (i) after the Closing Date, the acquisition of ownership, directly or indirectly, beneficially or of record, by any Person or group (within the meaning of the Securities Exchange Act of 1934 and the rules of the Commission thereunder as in effect on the date hereof), of shares representing ordinary voting power represented by the issued and outstanding capital stock of the Borrower and (ii) the occupation of a majority of the seats (other than vacant seats) on the board of directors of a Person by Persons who were neither (A) nominated or appointed by the board of directors of the Person nor (B) appointed by directors so nominated or appointed.

"CERCLA" means the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (42 U.S.C. §§ 9601 et seq.).

"Charges" means all federal, state, county, city, municipal, local, foreign or other governmental taxes (including taxes owed to the PBGC at the time due and payable), levies, assessments, charges, liens, claims or encumbrances (including interest and penalties relating thereto) upon or relating to (a) the Collateral, (b) the Obligations, (c) the employees, payroll, income or gross receipts of any Credit Party, (d) any Credit Party's ownership or use of any properties or other assets, or (e) any other aspect of any Credit Party's business.

"Chattel Paper" means any chattel paper, as such term is defined in the Code, including Electronic Chattel Paper, now owned or hereafter acquired by any Credit Party, wherever located.

"Claim" has the meaning ascribed to such term in Section 101(5) of the Bankruptcy Code.

"Closing Checklist" means the schedule, including all appendices, exhibits or schedules thereto, listing certain documents and information to be delivered in connection with the Agreement, the other Loan Documents and the transactions contemplated thereunder, substantially in the form attached hereto as Annex C.

"Closing Date" has the meaning ascribed to it in Section 2.1.

"Code" means the Uniform Commercial Code as the same may, from time to time, be enacted and in effect in the State of New York; provided, that to the extent that the Code is used to define any term herein or in any Loan Document and such term is defined differently in different Articles or Divisions of the Code, the definition of such term contained in Article or Division 9 shall govern; provided, further, that in the event that, by reason of mandatory provisions of law, any or all of the attachment, perfection or priority of, or remedies with respect to, the Lender's Lien on any Collateral is governed by the Uniform Commercial Code as enacted and in effect in a jurisdiction other than the State of New York, the term Code shall mean the Uniform Commercial Code as enacted and in effect in such other jurisdiction solely for purposes of the provisions thereof relating to such attachment, perfection, priority or remedies and for purposes of definitions related to such provisions.

"Collateral" means all property and interests in property and proceeds thereof now owned or hereafter acquired by any Credit Party in or upon which a Lien is granted under this Agreement or any Collateral Documents.

"Collateral Documents" means this Agreement, the Interim Order, the Final Order, any Copyright Security Agreement, any Patent Security Agreement, any Trademark Security Agreement, any Blocked Account Agreement and all similar agreements entered into guaranteeing payment of, or granting a Lien upon property as security for payment of, the Obligations.

"Collateral Reports" means the reports with respect to the Collateral referred to in Annex E.

"Collection Account" means that certain account of the Lender as may be specified in writing by the Lender as the Collection Account.

"Commercial Tort Claims" means any commercial tort claim, as such term is defined in the Code, now owned or hereafter acquired by any Credit Party, wherever located.

"Commission" means the Securities and Exchange Commission.

"Commitments" means the Commitments set forth on Annex I to this Agreement, as such Commitments may be reduced, amortized or adjusted from time to time in accordance with this Agreement.

"Committee" means the official statutory committee of unsecured creditors approved in the Cases pursuant to section 1102 of the Bankruptcy Code.

"Commodities Account" shall have the meaning ascribed to it in the Code.

"Concentration Account" has the meaning ascribed to it in Section (c) of Annex B.

"Consenting Secured Lender" has the meaning ascribed to it in the Restructuring Support Agreement.

"Contracts" means all contracts, as such term is defined in the Code, now owned or hereafter acquired by any Credit Party, in any event, including all contracts, undertakings, or agreements (other than rights evidenced by Chattel Paper, Documents or Instruments) in or under which any Credit Party may now or hereafter have any right, title or interest, including any agreement relating to the terms of payment or the terms of performance of any Account.

"Control Letter" means a letter agreement, in form and substance reasonably satisfactory to the Lender, between the Lender and (i) the issuer of uncertificated securities with respect to uncertificated securities in the name of any Credit Party, (ii) a securities intermediary with respect to securities, whether certificated or uncertificated, securities entitlements and other financial assets held in a securities account in the name of any Credit Party, (iii) a futures commission merchant or clearinghouse, as applicable, with respect to commodity accounts and commodity contracts held by any Credit Party, whereby, among other things, the issuer,

securities intermediary or futures commission merchant limits any security interest in the applicable financial assets in a manner satisfactory to the Lender, acknowledges the Lien of the Lender on such financial assets, and agrees to follow the instructions or entitlement orders of the Lender without further consent by the affected Credit Party.

"Copyright" means all of the following now owned or hereafter adopted or acquired by any Credit Party: (a) all copyrights and General Intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including all registrations, recordings and applications in the United States Copyright Office or in any similar office or agency under United States, any State or territory thereof, Canadian, multinational or foreign laws or otherwise, or any other country or any political subdivision thereof, and (b) all reissues, extensions or renewals thereof.

"Copyright License" means any and all rights now owned or hereafter acquired by any Credit Party under any written agreement granting any right to use any Copyright or Copyright registration.

"Copyright Security Agreements" means the Copyright Security Agreements made in favor of the Lender by each applicable Credit Party in form and substance acceptable o the Lender.

"Credit Parties" means the Borrower and each of the Guarantors.

"Default" means any event that, with the passage of time or notice or both, would, unless cured or waived, become an Event of Default.

"Default Rate" has the meaning ascribed to it in Section 1.6(d).

"Deposit Accounts" means all deposit accounts as such term is defined in the Code, now or hereafter held in the name of any Credit Party.

"DIP Motion" has the meaning ascribed to it in Section 2.1(b).

"Documents" means any documents, as such term is defined in the Code, now owned or hereafter acquired by any Credit Party, wherever located.

"Dollars" or "$" means lawful currency of the United States of America.

"Domestic Subsidiary" means a Subsidiary of the Borrower organized under the laws of any jurisdiction within the United States of America.

"E-Fax" means any system used to receive or transmit faxes electronically.

"E-Signature" means the process of attaching to or logically associating with an Electronic Transmission an electronic symbol, encryption, digital signature or process (including the name or an abbreviation of the name of the party transmitting the Electronic Transmission) with the intent to sign, authenticate or accept such Electronic Transmission.

"E-System" means any electronic system, including Intralinks® and any other Internet or extranet-based site, whether such electronic system is owned, operated or hosted by the Lender, any of its Affiliates or any other Person, providing for access to data protected by passcodes or other security system.

"Electronic Chattel Paper" means any electronic chattel paper, as such term is defined in the Code, now owned or hereafter acquired by any Credit Party, wherever located.

"Electronic Transmission" means each notice, request, instruction, demand, report, authorization, agreement, document, file, information and any other communication transmitted, posted or otherwise made or communicated by e-mail, E-Fax, Internet or extranet based site or any other equivalent electronic service, whether owned, operated or hosted by the Lender, any Affiliate of the Lender or any other Person.

"Environmental Laws" means all applicable federal, state, local and foreign laws, statutes, ordinances, codes, rules, standards and regulations, now or hereafter in effect, and any applicable judicial or administrative interpretation thereof, including any applicable judicial or administrative order, consent decree, order or judgment, imposing liability or standards of conduct for or relating to the regulation and protection of human health, safety, the environment and natural resources (including ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws include CERCLA; the Hazardous Materials Transportation Authorization Act of 1994 (49 U.S.C. §§ 5101 et seq.); the Federal Insecticide, Fungicide, and Rodenticide Act (7 U.S.C. §§ 136 et seq.); the Solid Waste Disposal Act (42 U.S.C. §§ 6901 et seq.); the Toxic Substance Control Act (15 U.S.C. §§ 2601 et seq.); the Clean Air Act (42 U.S.C. §§ 7401 et seq.); the Federal Water Pollution Control Act (33 U.S.C. §§ 1251 et seq.); the Occupational Safety and Health Act (29 U.S.C. §§ 651 et seq.); and the Safe Drinking Water Act (42 U.S.C. §§ 300(f) et seq.), and any and all regulations promulgated thereunder, and all analogous state, local and foreign counterparts or equivalents and any transfer of ownership notification or approval statutes.

"Environmental Liabilities" means, with respect to any Person, all liabilities, obligations, responsibilities, response, remedial and removal costs, investigation and feasibility study costs, capital costs, operation and maintenance costs, losses, damages, punitive damages, property damages, natural resource damages, consequential damages, treble damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts and consultants), fines, penalties, sanctions and interest incurred as a result of or related to any claim, suit, action, investigation, proceeding or demand by any Person, whether based in contract, tort, implied or express warranty, strict liability, criminal or civil statute or common law, arising under or related to any Environmental Laws, Environmental Permits, or in connection with any Release or threatened Release or presence of a Hazardous Material whether on, at, in, under, from or about or in the vicinity of any real or personal property.

"Environmental Permits" means all permits, licenses, authorizations, certificates, approvals or registrations required by any Governmental Authority under any Environmental Laws.

"Equipment" means all equipment as such term is defined in the Code.

"ERISA" means the Employee Retirement Income Security Act of 1974, as amended from time to time, any regulations promulgated thereunder or any successor statute.

"ERISA Affiliate" means any trade or business (whether or not incorporated) that, together with any Credit Party, is treated as a single employer under Section 414(b) or (c) of the Code or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" means, with respect to any Credit Party or any ERISA Affiliate, (a) any reportable event described in Section 4043 of ERISA with respect to a Title IV Plan (other than a reportable event to which the 30-day notice is waived; (b) the withdrawal of any Credit Party or ERISA Affiliate from a Title IV Plan subject to Section 4063 of ERISA during a plan year in which it was a substantial employer, as defined in Section 4001(a)(2) of ERISA; (c) the complete or partial withdrawal of any Credit Party or any ERISA Affiliate from any Multiemployer Plan; (d) the filing of a notice of intent to terminate a Title IV Plan or the treatment of a plan amendment as a termination under Section 4041 of ERISA; (e) the institution of proceedings to terminate a Title IV Plan or Multiemployer Plan by the PBGC; (f) the failure by any Credit Party or ERISA Affiliate to make when due required contributions to a Multiemployer Plan or Title IV Plan unless such failure is cured within thirty (30) days; (g) any other event or condition that would reasonably be expected to constitute grounds under Section 4042 of ERISA for the termination of, or the appointment of a trustee to administer, any Title IV Plan or Multiemployer Plan or for the imposition of liability under Section 4069 or 4212(c) of ERISA; (h) the termination of a Multiemployer Plan under Section 4041A of ERISA or the reorganization or insolvency of a Multiemployer Plan under Section 4241 or 4245 of ERISA; or (i) the loss of a Qualified Plan's qualification or tax exempt status.

"Event of Default" has the meaning ascribed to it in Section 8.1.

"Excluded Account" means any of the following: (i) any collateral account permitted under Section 6.7 hereof; (ii) any imprest account solely to fund health-related claims; (iii) the investment accounts, which, in the aggregate, hold cash, Cash Equivalents or Permitted Investments with Fair Market Value of not more than $100,000 at any time; (iv) any payroll, tax, trust or similar fiduciary account, (v) any other deposit account, in which, when aggregated with any other deposit account that does not constitute a Blocked Account (other than the deposit accounts described in clauses (i) through (iv) herein) not more than $100,000 is maintained at any time.

"Excluded Equity" means any Voting Stock in excess of 65% of the total outstanding Voting Stock of any Foreign Subsidiary of any Credit Party. For purposes of this definition, "Voting Stock" means, as to any issuer, the issued and outstanding shares of each class of capital stock or other membership interests of such issuer entitled to vote (within the meaning of Treasury Regulations § 1.956-2(c)(2)).

"Excluded Obligations" means contingent indemnification and expense reimbursement obligations not yet due and owing or for which no demand has been made.

"Excluded Taxes" means, with respect to the Lender, (a) income or franchise taxes imposed on (or measured by) its net income (i) by any Governmental Authority or other authority, by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located, or in which its Funding Office is located or (ii) as a result of a present or former connection between such person and the jurisdiction imposing such tax (other than connections solely arising from such person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned any interest in any Term Loan or Loan Document), (b) any branch profits taxes imposed (i) by any Governmental Authority or any similar tax imposed by any other jurisdiction in which the Borrower is located or (ii) as a result of a present or former connection between such person and the jurisdiction imposing such tax (other than connections solely arising from such person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold assigned an interest in any Loan or Loan Document), (c) in the case of a Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign Lender becomes a party to this Agreement (or designates a new lending office) or is attributable to such Foreign Lender's failure to comply with Section 1.13(e), (d) U.S. backup withholding tax and (e) any taxes imposed under FATCA.

"Existing Liens" has the meaning ascribed to it in Section 3.18(b)(iii).

"Fair Market Value" means (a) with respect to any asset or group of assets (other than a marketable Security) at any date, the value of the consideration obtainable in a sale of such asset at such date assuming a sale by a willing seller to a willing purchaser dealing at arm's length and arranged in an orderly manner over a reasonable period of time having regard to the nature and characteristics of such asset, as reasonably determined by the Chief Financial Officer or Treasurer and (b) with respect to any marketable Security at any date, the closing sale price of such Security on the Business Day next preceding such date, as appearing in any published list of any national securities exchange or the NASDAQ Stock Market or, if there is no such closing sale price of such Security, the final price for the purchase of such Security at face value quoted on such Business Day by a financial institution of recognized standing regularly dealing in Securities of such type and selected by the Lender and Borrower.

"FATCA" means Sections 1471-1474 of the IRC in effect as of the date hereof or any amended or successor version and any current or future Treasury regulations issued thereunder.

"Federal Reserve Board" means the Board of Governors of the Federal Reserve System.

"Final Order" means an order substantially in the form of the Interim Order, with such modifications thereto as are satisfactory to the Lender.

"Financial Covenants" means the financial covenants set forth in Annex G.

"Financial Statements" means the consolidated income statements and stockholders' equity, statements of cash flows and balance sheets of the Borrower delivered in accordance with Section 3.4 and Annex D.

"First Day Orders" means all orders entered by the Bankruptcy Court in respect of all motions and all related pleadings filed on the Petition Date or within five Business Days thereafter.

"Fiscal Month" means any of the monthly accounting periods of the Borrower.

"Fiscal Quarter" means any of the quarterly accounting periods of the Borrower, ending on March 31, June 29, September 30 and December 31 of each year.

"Fiscal Year" means any of the annual accounting periods of the Borrower ending on September 30 of each year.

"Fixtures" means all fixtures as such term is defined in the Code, now owned or hereafter acquired by any Credit Party.

"Foreign Subsidiary" means any Subsidiary which is a controlled foreign corporation within the meaning of the Internal Revenue Code of 1986, as amended from time to time.

"Funding Office" shall mean the office of the Lender set forth on Annex H to the Agreement or such other office as may be specified from time to time by the Lender as its funding office by written notice to the Borrower.

"GAAP" means generally accepted accounting principles in the United States of America, consistently applied, as such term is further defined in Annex G to the Agreement.

"General Intangibles" means general intangibles, as such term is defined in the Code, now owned or hereafter acquired by any Credit Party, including all right, title and interest that such Credit Party may now or hereafter have in or under any Contract, all payment intangibles, customer lists, Licenses, Copyrights, Trademarks, Patents, and all applications therefor and reissues, extensions or renewals thereof, rights in Intellectual Property, interests in partnerships, joint ventures and other business associations, licenses, permits, copyrights, trade secrets, proprietary or confidential information, inventions (whether or not patented or patentable), technical information, procedures, designs, knowledge, know-how, Software, data bases, data, skill, expertise, experience, processes, models, drawings, materials and records, goodwill (including the goodwill associated with any Trademark or Trademark License), all rights and claims in or under insurance policies (including insurance for fire, damage, loss and casualty, whether covering personal property, real property, tangible rights or intangible rights, all liability, life, key man and business interruption insurance, and all unearned premiums), uncertificated securities, choses in action, rights to receive tax refunds and other payments, rights to receive dividends, distributions, cash, Instruments and other property in respect of or in exchange for pledged Stock and Investment Property, rights of indemnification, all Books and Records, correspondence, credit files, invoices and other papers, including without limitation all tapes, cards, computer runs and other papers and documents in the possession or under the

control of such Credit Party or any computer bureau or service company from time to time acting for such Credit Party.

"Governmental Authority" means any nation or government, any state or other political subdivision thereof, and any agency, department or other entity exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government.

"Guaranteed Indebtedness" means, as to any Person, any obligation of such Person guaranteeing or otherwise supporting any Indebtedness (primary obligation) of any other Person (the primary obligor) in any manner, including any obligation or arrangement of such Person to (a) purchase or repurchase any such primary obligation, (b) advance or supply funds (i) for the purchase or payment of any such primary obligation or (ii) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency or any balance sheet condition of the primary obligor, (c) purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation, (d) protect the beneficiary of such arrangement from loss (other than product warranties given in the ordinary course of business) or (e) indemnify the owner of such primary obligation against loss in respect thereof. The amount of any Guaranteed Indebtedness at any time shall be deemed to be an amount equal to the lesser at such time of (x) the stated or determinable amount of the primary obligation in respect of which such Guaranteed Indebtedness is incurred and (y) the maximum amount for which such Person may be liable pursuant to the terms of the instrument embodying such Guaranteed Indebtedness, or, if not stated or determinable, the maximum reasonably anticipated liability (assuming full performance) in respect thereof.

"Guarantors" means each Domestic Subsidiary of the Borrower and each other Person, if any, that executes a guaranty or other similar agreement in favor of the Lender in connection with the transactions contemplated by the Agreement and the other Loan Documents.

"Hazardous Material" means any substance, material or waste that is regulated by, or forms the basis of liability now or hereafter under, any Environmental Laws, including any material or substance that is (a) defined as a solid waste, hazardous waste, hazardous material, hazardous substance, extremely hazardous waste, restricted hazardous waste, pollutant, contaminant, hazardous constituent, special waste, toxic substance or other similar term or phrase under any Environmental Laws, or (b) petroleum or any fraction or by-product thereof, asbestos, polychlorinated biphenyls (PCB's), or any radioactive substance.

"Hedging Obligations" has the meaning ascribed to it in the definition of Indebtedness.

"Indebtedness" means, with respect to any Person, without duplication (a) all obligations of such Person for borrowed money, (b) obligations for the deferred purchase price of property but excluding trade payables incurred in the ordinary course of business, (c) all reimbursement and other obligations with respect to letters of credit, bankers acceptances and surety bonds, whether or not matured, (d) all obligations evidenced by notes, bonds, debentures or similar instruments, (e) all indebtedness created or arising under any conditional sale or other title retention agreement with respect to property acquired by such Person (even though the rights and remedies of the seller or lender under such agreement in the event of default are limited to

repossession or sale of such property), (f) all Capital Lease Obligations and the present value of future rental payments under all synthetic leases, (g) all Guaranteed Indebtedness, (h) all obligations, contingent or otherwise, of such Person as an account party in respect of letters of credit and letters of guaranty, (i) "earnouts" and similar payment obligations of such Person, (j) all obligations, contingent or otherwise, of such Person in respect of bankers' acceptances, (k) all obligations of such Person under (i) commodity purchase or option agreements or other commodity price hedging arrangements, in each case whether contingent or matured, (ii) any foreign exchange contract, currency swap agreement, interest rate swap, cap or collar agreement or other similar agreement or arrangement designed to alter the risks of that Person arising from fluctuations in currency values or interest rates, in each case whether contingent or matured (collectively, "Hedging Obligations"), (l) all Indebtedness referred to above secured by any Lien upon or in property or other assets (including accounts and contract rights) owned by such Person, even though such Person has not assumed or become liable for the payment of such Indebtedness, and (m) the Obligations. The Indebtedness of any Person shall include the Indebtedness of any other entity (including any partnership in which such Person is a general partner) to the extent such Person is liable therefor as a result of such Person's ownership interest in or other relationship with such entity, except to the extent the terms of such Indebtedness provide that such Person is not liable therefor.

"Indemnified Liabilities" has the meaning ascribed to it in Section 1.11.

"Indemnified Person" has the meaning ascribed to it in Section 1.11.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Initial Budget" means the initial thirteen (13) week budget annexed as Exhibit 2 to this Agreement.

"Instruments" means all instruments, as such term is defined in the Code, now owned or hereafter acquired by any Credit Party, wherever located, and, in any event, including all promissory notes and other evidences of indebtedness, other than instruments that constitute, or are a part of a group of writings that constitute, Chattel Paper.

"Intellectual Property" means any and all Licenses, Patents, Copyrights, Trademarks, and the goodwill associated with such Trademarks, and Technology.

"Interest Payment Date" means the thirtieth (30th) calendar day of each Fiscal Month to occur while any Term Loans are outstanding (or the Business Day immediately preceding the 30th calendar day if such day is not a Business Day); provided, that in addition to the foregoing, each of (x) the date upon which all of the Commitments have been terminated and the Term Loans have been paid in full and (y) the Maturity Date shall be deemed to be an Interest Payment Date with respect to any interest that has then accrued under the Agreement.

"Interest Period" means, with respect to any Term Loan borrowed from time to time, each period beginning on the first day, and ending on the last day, of each Fiscal Month, provided that the initial Interest Period for any Term Loan shall commence on the date of the initial borrowing of such Term Loan hereunder and end on the last day of the Fiscal Month in which such borrowing occurs.

"Interim Order" means the order of the Bankruptcy Court entered in the Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 2001 and other applicable law), approving and authorizing, on an interim basis, (a) the Term Loans and transactions contemplated herein, all provisions thereof and the priorities and liens granted under Bankruptcy Code section 364(c) and (d), as applicable, (b) extensions of credit in amounts not in excess of $15,000,000, (c) payment by the Borrower of all of the costs and expenses provided for in this Agreement, (d) estate stipulations, (e) releases from liability for all claims and causes of action arising out of or relating to the Loan Documents and all agreements, certificates, instruments and other documents and statements related thereto effective immediately, (f) indemnification for the Lender relating to the Loan Documents and (g) other customary provisions.

"Inventory" means any inventory, as such term is defined in the Code, now owned or hereafter acquired by any Credit Party, wherever located, and in any event including inventory, merchandise, goods and other personal property that are held by or on behalf of any Credit Party for sale or lease or are furnished or are to be furnished under a contract of service, or that constitute raw materials, work in process, finished goods, returned goods, supplies or materials of any kind, nature or description used or consumed or to be used or consumed in such Credit Party's business or in the processing, production, packaging, promotion, delivery or shipping of the same, including all supplies and embedded Software.

"Investment Property" means all investment property as such term is defined in the Code now owned or hereafter acquired by any Credit Party, wherever located, including (i) all securities, whether certificated or uncertificated, including stocks, bonds, interests in limited liability companies, partnership interests, treasuries, certificates of deposit, and mutual fund shares, (ii) all securities entitlements of any Credit Party, including the rights of such Credit Party to any securities account and the financial assets held by a securities intermediary in such securities account and any free credit balance or other money owing by any securities intermediary with respect to that account, (iii) all Securities Accounts of any Credit Party, (iv) all commodity contracts of any Credit Party and (v) all Commodity Accounts held by any Credit Party.

"Investments" means the purchase, holding or acquisition (including pursuant to any merger with any Person that was not a wholly owned Subsidiary prior to such merger) of any Stock, evidence of indebtedness or other securities (including any option, warrant or other right to acquire any of the foregoing), any investment, loan or advance or any other interest in, any other Person, and the purchase or other acquisition of (in one transaction or a series of transactions) any assets of any other Person constituting a business unit.

"IRC" means the Internal Revenue Code of 1986, as amended, and all regulations promulgated thereunder.

"IRS" means the Internal Revenue Service.

"Lender" has the meaning ascribed to it in the Preamble.

"Liabilities" means all claims, actions, suits, judgments, damages, losses, liability, obligations, responsibilities, fines, penalties, sanctions, costs, fees, taxes, commissions, charges, disbursements and expenses, in each case of any kind or nature (including interest accrued thereon or as a result thereto and fees, charges and disbursements of financial, legal and other advisors and consultants), whether joint or several, whether or not indirect, contingent, consequential, actual, punitive, treble or otherwise.

"License" means any Copyright License, Patent License, Trademark License or other similar license of rights or interests now held or hereafter acquired by any Credit Party.

"Lien" means, with respect to any asset or property, or any interest therein, (i) any mortgage or deed of trust, pledge, hypothecation, assignment, deposit arrangement, lien, charge, claim, security interest, easement or encumbrance, or preference, priority or other security agreement or preferential arrangement of any kind or nature whatsoever, (ii) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing) relating to such asset or property and (iii) in the case of securities, any purchase option, call or similar right of a third party with respect to such security.

"Litigation" has the meaning ascribed to it in Section 3.13.

"Loan" means any loan made by the Lender pursuant to this Agreement.

"Loan Account" has the meaning ascribed to it in Section 1.10.

"Loan Documents" means the Agreement, the Notes, the Collateral Documents and all other agreements, instruments, documents and certificates executed by a Credit Party and delivered to, or in favor of, the Lender in connection with the Agreement and the transactions contemplated thereby and including all other pledges, powers of attorney, consents, assignments, contracts, notices, letter of credit agreements and all other written agreements whether heretofore, now or hereafter executed by or on behalf of any Credit Party and delivered to the Lender in connection with the Agreement or the transactions contemplated thereby. Any reference in the Agreement or any other Loan Document to a Loan Document shall include all appendices, exhibits or schedules thereto, and all amendments, restatements, supplements or other modifications thereto, and shall refer to the Agreement or such Loan Document as the same may be in effect at any and all times such reference becomes operative. For the avoidance of doubt, the Senior Secured Notes Indenture and the documents delivered in connection therewith shall not constitute Loan Documents.

"Margin Stock" has the meaning ascribed to it in Section 3.10.

"Material Adverse Effect" means a material adverse effect on (i) the business, assets, properties, operations or financial condition of the Credit Parties taken as a whole, (ii) the ability of the Credit Parties to pay any of the Term Loans or any of the other Obligations in accordance with the terms of this Agreement, (iii) the Collateral or the Liens in favor of the Lender on the Collateral or the priority of such Liens, or (iv) the Lender's rights and remedies under the Agreement and the other Loan Documents, in each case, other than the commencement of the

Cases and any change of the type that customarily occurs as a result of the commencement of the Cases.

"Material Budget Deviation" shall mean, with respect to each Test Period, if (i) the actual cash disbursements of the Credit Parties during such Test Period exceed one hundred fifteen percent (115%) of the projected cash disbursements during such Test Period as reflected in the Testing Budget or (ii) the actual cash receipts of the Credit Parties during such Test Period is less than eighty percent (80%) of the projected cash receipts during such Test Period as reflected in the Testing Budget. For purposes of this definition, "cash disbursements" shall be calculated excluding cash disbursements for the payment of professional fees.

"Material Contract" means any contract, agreement or other arrangement to which the Borrower or any of its Subsidiaries is a party for which breach, nonperformance, cancellation or failure to renew could reasonably be expected to have a Material Adverse Effect.

"Material Indebtedness" means Indebtedness (other than the Term Loans) of any one or more of the Credit Parties in an aggregate principal amount outstanding or committed as of the date of such determination including undrawn committed or available amounts) equal to or exceeding $100,000.

"Material Real Estate Contracts" means (for purposes of the Agreement only) any lease, usufruct, use agreement, license, permit or other occupancy or facility use agreement under which a Credit Party is a tenant or counterparty, that (i) requires a Credit Party make lease payments in excess of $100,000 in any year or (ii) relates to facilities required for a Credit Party's operations, the loss of the lease, usufruct, use agreement, license, permit or other occupancy or facility use agreement with respect thereto could reasonably be expected to adversely affect a Credit Party's ability to conduct its business as now being conducted (after giving effect to the Operating Forecast and the Budget).

"Maturity Date" the earliest of (a) Scheduled Maturity Date, (b) the effective date of a Plan of Reorganization and (c) the consummation of any sale of all or substantially all of the assets of the Borrower and its Subsidiaries pursuant to section 363 of the Bankruptcy Code.

"Milestones" shall have the meaning in Annex F.

"Moody's" means Moody's Investors Service, Inc.

"Multiemployer Plan" means a plan as defined in Section 4001(a)(3) of ERISA, and to which any Credit Party or ERISA Affiliate is making, is obligated to make or has made or been obligated to make, contributions on behalf of participants who are or were employed by any of them.

"Net Cash Proceeds" means proceeds received by any Credit Party after the Closing Date in cash or Cash Equivalents from:

(a) (i) Asset Sales other than any Asset Sale permitted under Sections 6.8(d), in each case, net of (1) the reasonable cash costs of sale, assignment or other disposition, (2) taxes paid or reasonably estimated to be payable as a result thereof, (3) reserves provided, to the extent

required by GAAP, against any liabilities that are directly attributed to such Asset Sale (clauses (1), (2) and (3) collectively referred to herein as the "Sale Costs") and (4) any amount of Indebtedness or other obligations (other than the Obligations) payable to a Person that is not an Affiliate of a Credit Party which is secured by the assets subject to such Asset Sale, or otherwise required to be repaid as a result of such Asset Sale, in each case only to the extent that such Person's security is senior in right of payment to the Lender;

(b) Property Loss Event, net of (1) the costs of collection (the "Collection Costs" and, together with the Sale Costs, "Costs"), (2) any amount of Indebtedness or other obligations (other than the Obligations) payable to a Person that is not an Affiliate of a Credit Party which is secured by the assets subject to such Property Loss Event, or otherwise required to be repaid as a result of such Property Loss Event, in each case only to the extent that such Person's security is senior in right of payment to the Lender, and (3) taxes paid or reasonably estimated to be payable as a result thereof; and

(c) the incurrence of Indebtedness, net of (i) the reasonable costs, fees and expenses paid or required to be paid in connection therewith (including any brokers', advisors'' and investment banking fees), (ii) any taxes paid or reasonably expected to be payable as a result thereof, (iii) any other reasonable underwriting discounts and commissions incurred in connection with such transaction .

"Non-Stayed Order" means an order of the Bankruptcy Court which is in full force and effect, as to which no stay has been entered and which has not been reversed, modified, vacated or overturned.

"Note" has the meaning assigned to it in Section 1.1(e).

"Notice of Borrowing" has the meaning assigned to it in Section 1.2.

"Notice Period" has the meaning assigned to it in Section 8.2.

"Obligations" means all loans, advances, debts, liabilities and obligations, for the performance of covenants, tasks or duties or for payment of monetary amounts (whether or not such performance is then required or contingent, or such amounts are liquidated or determinable) owing by any Credit Party to the Lender under the Loan Documents, and all covenants and duties regarding such amounts, of any kind or nature, present or future, whether or not evidenced by any note, agreement, or other instrument, arising under the Agreement or any of the other Loan Documents. This term includes all principal, interest (including all interest that accrues after the commencement of any case or proceeding by or against any Credit Party in bankruptcy, whether or not allowed in such case or proceeding), expenses, attorneys fees and any other sum chargeable to any Credit Party under the Agreement or any of the other Loan Documents. For the avoidance of doubt, the obligations under the Senior Secured Notes Indenture and the documents delivered in connection therewith shall not constitute Obligations.

"Operating Forecast" shall have the meaning given to such term in Item 9 of Annex C attached hereto. Notwithstanding anything to the contrary contained herein, the Lender has approved the Operating Forecast solely in its capacity as the Lender hereunder, and such

approval does not constitute approval of the Operating Forecast for any other purpose, including without limitation, any other contractual arrangement between the Lender and the Credit Parties.

"Other Taxes" has the meaning specified in Section 1.13(b).

"Participant Register" has the meaning ascribed to it in Section 11.1(c).

"Patent License" means rights under any written agreement now owned or hereafter acquired by any Credit Party granting any right with respect to any invention on which a Patent is in existence.

"Patent Security Agreement" means a Patent Security Agreements made in favor of the Lender by each applicable Credit Party, in form and substance acceptable to the Lender.

"Patents" means all of the following in which any Credit Party now holds or hereafter acquires any interest: (a) all letters patent under United States, any State or territory thereof, Canadian, multinational or foreign laws or otherwise, all registrations and recordings thereof, and all applications for letters patent under United States, Canadian, multinational or foreign laws or otherwise, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency under United States, State, Canadian, multinational or foreign laws or otherwise, and (b) all reissues, continuations, continuations-in-part or extensions thereof.

"PBGC" means the Pension Benefit Guaranty Corporation referred to and defined in ERISA and any successor entity performing similar functions.

"Permitted Investments" means Investments made in accordance with the Investment Guidelines set forth in Annex K.

"Permitted Liens" means: (i) Liens securing Indebtedness under this Agreement; (ii) Liens existing on the date of this Agreement and listed in Disclosure Schedule 6.7 hereto; (iii) Liens for taxes, assessments or governmental charges or claims that are not yet delinquent or that are being contested in good faith by appropriate proceedings promptly instituted and diligently conducted, and for which adequate reserves in accordance with GAAP are being maintained on the financial statements of the applicable Credit Party; (iv) landlords', carriers', workmen's, warehousemen's, mechanic's, materialmen's, repairmen's, employees' or other like Liens arising in the ordinary course of business with respect to amounts which are not yet delinquent or that are being contested in good faith by appropriate proceedings; (v) pledges or deposits made in the ordinary course of business in connection with (a) leases, performance bonds or similar obligations, (b) workers' compensation, unemployment insurance and other social security legislation or public liability laws or similar legislation or (c) securing the performance of surety bonds and appeal or customs bonds required (I) in the ordinary course of business or in connection with the enforcement of rights or claims of the Credit Parties or (II) in connection with judgments that do not give rise to an Event of a Default; (vi) with respect to Real Property or interests therein, zoning restrictions, easements, licenses, rights-of-way, restrictions, minor defects or irregularities in title and other similar encumbrances which, in the aggregate, do not materially detract from the value of the property subject thereto or materially interfere with the ordinary conduct of the business of the Credit Parties or liens disclosed in title reports; (vii)

Liens in favor of depository institutions or collecting banks arising by operation of law under Sections 4-203 or 4-210 of the UCC; and (viii) Liens in favor of customs revenue authorities arising as a matter of law which secure payment of customs duties in the ordinary course of business.

"Permitted Prepetition Payment" means a payment (as adequate protection or otherwise) on account of any Claim against any Credit Party arising or deemed to have arisen prior to the Petition Date, which payments are permitted pursuant to the Interim Order and, to the extent entered, the Final Order, First Day Order or otherwise approved by the Bankruptcy Court and the Lender.

"Person" means any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, public benefit corporation, other entity or government (whether federal, state, county, city, municipal, local, foreign, or otherwise, including any instrumentality, division, agency, body or department thereof).

"Petition Date" has the meaning ascribed to it in the Preamble.

"Plan of Reorganization" means a plan of reorganization in the Cases under chapter 11 of the Bankruptcy Code, which shall be in form and substance reasonably acceptable to the Lender.

"Pledged Collateral" means all of the following property now owned or at anytime acquired by a Credit Party or in which such Credit Party now has or at any time in the future may acquire any right, title or interest:

(a) the Pledged Shares, the certificates representing the Pledged Shares and all other stock, and all dividends, distributions, cash, instruments and other property or proceeds from time to time received, receivable or otherwise distributed in respect of or in exchange for any or all of the Pledged Shares; and

(b) the Pledged Indebtedness and the promissory notes or instruments evidencing the Pledged Indebtedness, and all interest, cash, instruments and other property and assets from time to time received, receivable or otherwise distributed in respect of the Pledged Indebtedness; and

(c) all additional Indebtedness arising after the date hereof and owing to a Credit Party and evidenced by promissory notes or other instruments, together with such promissory notes and instruments, and all interest, cash, instruments and other property and assets from time to time received, receivable or otherwise distributed in respect of that Indebtedness.

"Pledged Indebtedness" means the Indebtedness evidenced by promissory notes and instruments listed on Part 2 of Disclosure Schedule 10.4 hereto (as amended from time to time).

"Pledged Shares" means the stock listed on Part 1 of Disclosure Schedule 10.4 hereto.

"Primed Liens" has the meaning ascribed to it in Section 3.18(b)(iv).

"Proceeds" means proceeds, as such term is defined in the Code, including (a) any and all proceeds of any insurance, indemnity, warranty or guaranty payable to any Credit Party from time to time with respect to any asset, (b) any and all payments (in any form whatsoever) made or due and payable to any Credit Party from time to time in connection with any requisition, confiscation, condemnation, seizure or forfeiture of all or any part of such property by any Governmental Authority (or any Person acting under color of governmental authority), (c) any claim of any Credit Party against third parties (i) for past, present or future infringement of any Patent or Patent License, or (ii) for past, present or future infringement or dilution of any Copyright, Copyright License, Trademark or Trademark License, or for injury to the goodwill associated with any Trademark or Trademark License, (d) any recoveries by any Credit Party against third parties with respect to any litigation or dispute concerning such property including claims arising out of the loss or nonconformity of, interference with the use of, defects in, or infringement of rights in, or damage to, such property, (e) all amounts collected on, or distributed on account of, other property, including dividends, interest, distributions and Instruments with respect to Investment Property and pledged Stock, and (f) any and all other amounts, rights to payment or other property acquired upon the sale, lease, license, exchange or other disposition of such property and all rights arising out of such property.

"Professionals" shall have the meaning set forth in the Interim Order, or if the Final Order has been entered, the Final Order.

"Projections" means the Borrower's forecasted consolidated (a) balance sheets, (b) profit and loss statements and (c) cash flow statements consistent with the historical Financial Statements of the Borrower (other than adjustments related to the impact of the Cases), together with appropriate supporting details and a statement of underlying assumptions.

"Property Loss Event" means (a) any loss of or damage to property of any Credit Party that results in the receipt by such Person of proceeds of insurance or (b) any taking of property of any Credit Party that results in the receipt by such Person of a compensation payment in respect thereof.

"Qualified Plan" means an employee benefit plan that is intended to be tax-qualified under Section 401(a) of the IRC.

"Real Estate" has the meaning ascribed to it in Section 3.6(b).

"Real Property" means all real property as such term is defined in the Code, now owned or hereafter acquired by any Credit Party.

"Release" means any release, threatened release, spill, emission, leaking, pumping, pouring, emitting, emptying, escape, injection, deposit, disposal, discharge, dispersal, dumping, leaching or migration of Hazardous Material in the indoor or outdoor environment, including the movement of Hazardous Material through or in the air, soil, surface water, ground water or property.

"Requirement of Law" means, with respect to any Person, the common law and all federal, state, local and foreign laws, treaties, rules and regulations, orders, judgments, decrees and other legal requirements or determinations of any Governmental Authority or arbitrator,

applicable to or binding upon such Person or any of its property or to which such Person or any of its property is subject.

"Restricted Payment" means, with respect to any Credit Party (a) the declaration or payment of any dividend or the incurrence of any liability to make any other payment or distribution of cash or other property or assets in respect of Stock; (b) any payment on account of the purchase, redemption, defeasance, sinking fund or other retirement of such Credit Party's Stock or any other payment or distribution made in respect thereof, either directly or indirectly; and (c) any payment made to redeem, purchase, repurchase or retire, or to obtain the surrender of, any outstanding warrants, options or other rights to acquire Stock of such Credit Party now or hereafter outstanding.

"Restructuring Support Agreement" means that certain Restructuring Support Agreement, in form and substance reasonably satisfactory to the Lender, among the Borrower, the pre-petition holders of the Senior Secured Notes and the holders of the issued and outstanding capital stock of the Borrower.

"S&P" means Standard & Poor's Ratings Group.

"Scheduled Maturity Date" means [___][1].

"Sell" means, with respect to any property, to sell, convey, transfer, assign, license, lease or otherwise dispose of, any interest therein or to permit any Person to acquire any such interest, including, in each case, through a Sale and Leaseback Transaction or through a sale, factoring at maturity, collection of or other disposal, with or without recourse, of any notes or accounts receivable. Conjugated forms thereof and the noun Sale have correlative meanings.

"Secured Obligations" means, in the case of the Borrower, the Obligations and, in the case of any other Credit Party, the obligations of such Credit Party under the Guaranties and the other Loan Documents to which it is a party.

"Securities Account" shall have the meaning set forth in the Code.

"Security" means any Stock, voting trust certificate, bond, debenture, note or other evidence of Indebtedness, whether secured, unsecured, convertible or subordinated, or any certificate of interest, share or participation in, any temporary or interim certificate for the purchase or acquisition of, or any right to subscribe to, purchase or acquire, any of the foregoing, but shall not include any evidence of the Obligations.

"Senior Secured Notes" means the $175,000,000 aggregate principal amount of 11.25% Senior Secured Notes due 2015 of the Borrower issued on March 10, 2010 under the Senior Secured Notes Indenture.

"Senior Secured Notes Collateral" means all assets pledged as collateral to secure obligations with respect to the Senior Secured Notes.

[1] Insert the [120th] day after the Closing Date.

"Senior Secured Notes Indenture" means the Indenture, dated as of March 10, 2010, by and between the Borrower, as borrower, and The Bank of New York Mellon Trust Company, N.A., as trustee and collateral trustee, as amended, restated, supplemented or otherwise modified from time to time.

"Software" shall mean computer programs whether in source code or object code form, together with all related documentation.

"Stock" means all shares, options, warrants, general or limited partnership interests, membership interests or other equivalents (regardless of how designated) of or in a corporation, partnership, limited liability company or equivalent entity whether voting or nonvoting, including common stock, preferred stock or any other equity security (as such term is defined in Rule 3(a) of the General Rules and Regulations promulgated by the Commission under the Securities Exchange Act of 1934).

"Stockholder" means, with respect to any Person, each holder of Stock of such Person.

"Subsidiary" of a Person means a corporation, partnership, joint venture, limited liability company or other business entity of which (i) a majority of the shares of securities or other interests having ordinary voting power for the election of directors or other governing body (other than securities or interests having such power only by reason of the happening of a contingency) are at the time beneficially owned or (ii) more than half of the issued share capital is at the time beneficially owned. Unless otherwise specified, all references herein to a "Subsidiary" or to "Subsidiaries" shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Super-Priority Claim" shall mean a claim against any Credit Party in any of the Cases which is an administrative expense claim having priority over any or all administrative expenses of the kind specified in sections 503(b) or 507(b) of the Bankruptcy Code.

"Taxes" has the meaning set forth in Section 1.13.

"Technology" means, collectively, all designs, formulas, algorithms, procedures, methods, techniques, ideas, know-how, programs, subroutines, tools, inventions, creations, improvements, works of authorship, Software, other similar materials, and all recordings, graphs, drawings, reports, analyses, other writings, and any other embodiment of the above, in any form whether or not specifically listed herein, and all related technology, that are used in, incorporated in, embodied in or displayed by any of the foregoing, or used or useful in the design, development, reproduction, maintenance or modification of any of the foregoing.

"Term Loans" shall have the meaning ascribed to it in Section 1.1(a)(i).

"Termination Date" means the date on which (a) the Term Loans have been repaid in full in cash, (b) all other monetary Obligations (other than Excluded Obligations) pursuant to the Agreement and the other Loan Documents have been completely discharged, and (c) the Borrower shall not have any further right to borrow any monies under the Agreement.

"Test Period" shall mean, as of each measurement date, the cumulative period beginning with the Closing Date and ending on the applicable measurement date, (i) with such first measurement date being [•][2] and (ii) thereafter, each subsequent Friday.

"Testing Budget" shall mean, the Initial Budget, the Budget delivered on the Wednesday following [•][3] and thereafter, the Budget delivered on the Wednesday following each four week anniversary of [•][4].

"Title IV Plan" means a plan (other than a Multiemployer Plan), that is covered by Title IV of ERISA, and that any Credit Party or ERISA Affiliate maintains, contributes to or has an obligation to contribute to on behalf of participants who are or were employed by any of them.

"Total Operating Expenses" shall mean, as defined in the Operating Forecast, expenses incurred by the Credit Parties associated with performing their business operations.

"Trademark Security Agreements" means the Trademark Security Agreements made in favor of the Lender by each applicable Credit Party, in form and substance acceptable o the Lender.

"Trademark License" means rights under any written agreement now owned or hereafter acquired by any Credit Party granting any right to use any Trademark.

"Trademarks" means all of the following now owned or hereafter adopted or acquired by any Credit Party: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark Office or in any similar office or agency under United States, any State or territory thereof, Canadian, multinational or foreign laws or otherwise; (b) all reissues, extensions or renewals thereof; and (c) all goodwill associated with or symbolized by any of the foregoing.

"Uniform Commercial Code jurisdiction" means any jurisdiction that has adopted all or substantially all of Article 9 as contained in the 2000 Official Text of the Uniform Commercial Code, as recommended by the National Conference of Commissioners on Uniform State Laws and the American Law Institute, together with any subsequent amendments or modifications to the Official Text.

Rules of construction with respect to accounting terms used in the Agreement or the other Loan Documents shall be as set forth in Annex G. All other undefined terms contained in any of

[2] To be the Friday closest to the end of the 4th week after the Petition Date.

[3] See prior footnote.

[4] See prior footnote.

the Loan Documents shall, unless the context indicates otherwise, have the meanings provided for by the Code to the extent the same are used or defined therein; in the event that any term is defined differently in different Articles or Divisions of the Code, the definition contained in Article or Division 9 shall control. Unless otherwise specified, references in the Agreement or any of the Appendices to a Section, subsection or clause refer to such Section, subsection or clause as contained in the Agreement. The words "herein", "hereof" and "hereunder" and other words of similar import refer to the Agreement as a whole, including all Annexes, Exhibits and Schedules, as the same may from time to time be amended, restated, modified or supplemented, and not to any particular section, subsection or clause contained in the Agreement or any such Annex, Exhibit or Schedule.

Wherever from the context it appears appropriate, each term stated in either the singular or plural shall include the singular and the plural, and pronouns stated in the masculine, feminine or neuter gender shall include the masculine, feminine and neuter genders. The words "including", "includes" and "include" shall be deemed to be followed by the words "without limitation"; the word "or" is not exclusive. References to a Person includes its respective successors and assigns (to the extent and only to the extent permitted by the Loan Documents) or, in the case of governmental Persons, Persons succeeding to the relevant functions of such Persons. References to statutes and related regulations shall include any amendments, modifications, restatements and successors of the same and any successor statutes and regulations. Whenever any provision in any Loan Document refers to the knowledge (or an analogous phrase) of any Credit Party, such words are intended to signify that such Credit Party has actual knowledge or awareness of a particular fact or circumstance.

ANNEX B (Section 1.7)
to
CREDIT AGREEMENT

CASH MANAGEMENT SYSTEM

Each Credit Party shall establish and maintain the Cash Management Systems described below:

(a) On or before the thirtieth Business Day after the Closing Date (or such later date as the Lender shall consent to in writing) and until the Termination Date, each Credit Party shall cause each of its accounts to be Blocked Accounts; provided, Excluded Accounts shall not be required to be Blocked Accounts.

(b) On or before the thirtieth Business Day after the Closing Date (or such later date as the Lender shall consent to in writing), (i) each bank or financial institution where any Credit Party maintains a deposit account (other than an Excluded Account) shall have entered into a Blocked Account Agreement with the applicable Credit Party and the Lender and (ii) each financial institution where any Credit Party has an investment account (other than an Excluded Account) shall have entered into a Control Letter, with the applicable Credit Party and the Lender, in each effective as of the Closing Date (or such later date as the Lender shall consent to in writing). Each such Blocked Account Agreement and Control Letter shall provide, unless otherwise agreed by the Lender, that (i) upon notice from the Lender, such bank or financial institution agrees to forward immediately all amounts in each Blocked Account or investment account to the account set forth by the Lender in such notice or to any other account designated by the Lender (the "Concentration Account") and to commence the process of daily sweeps from such Blocked Account into the Concentration Account and otherwise accept directions from the Lender without consent of any Credit Party.

(c) The Borrower may only open accounts (other than Excluded Accounts) if, prior to the time of the opening of such account (unless such account is an Excluded Account) after the Closing Date, the relevant Credit Party and such bank or financial institution shall have executed and delivered to the Lender a Blocked Account Agreement or Control Letter, as applicable.

(d) The Blocked Accounts and Concentration Account shall be cash collateral accounts, with all cash, checks and other similar items of payment in such accounts securing payment of the Term Loans and all other Obligations, and in which each applicable Credit Party shall have granted a Lien to the Lender pursuant to the Agreement and the other Loan Documents.

(e) All amounts deposited in the Collection Account shall be deemed received by the Lender in accordance with Section 1.9 and shall be applied (and allocated) by the Lender in accordance with Section 1.4. In no event shall any amount be so applied unless and until such amount shall have been credited in immediately available funds to the Collection Account.

(f) Each Credit Party, on behalf of itself and each of its Affiliates, agrees to hold in trust for the Lender all checks, cash and other items of payment received by such Credit Party or any such Affiliate to the extent constituting Collateral, provided that any such checks, cash and

other items may be applied in any manner not prohibited by the Credit Agreement. Each Credit Party, on behalf of itself and each Affiliate, acknowledges and agrees that all cash, checks or other items of payment constituting proceeds of the Collateral are part of the Collateral. All Net Cash Proceeds arising from the sale or other disposition of any assets shall be deposited directly into a Blocked Account unless such Net Cash Proceeds are used to prepay the Term Loans in accordance with Section 1.3 of the Agreement.

(g) The Lender shall not deliver a notice that it is exercising exclusive control over any Blocked Account to any such bank or financial institution unless an Event of Default has occurred and is continuing.

ANNEX C (Section 2.1(e))
to
CREDIT AGREEMENT

CLOSING CHECKLIST

See the attached closing checklist.

ANNEX D (Section 4.1(a))
to
CREDIT AGREEMENT

FINANCIAL STATEMENTS AND PROJECTIONS – REPORTING

The Borrower shall deliver or cause to be delivered to the Lender the following:

(a) Monthly Financials. Within thirty (30) days after the end of the first two Fiscal Months of each Fiscal Quarter, financial information regarding the Borrower and its Subsidiaries, certified by the Chief Financial Officer, Chief Operating Officer or Chief Executive Officer of the Borrower, consisting of consolidated (i) unaudited balance sheets as of the close of such Fiscal Month and the related statements of income and cash flows for that portion of the Fiscal Year ending as of the close of such Fiscal Month; and (ii) unaudited statements of income and cash flows for such Fiscal Month, setting forth in comparative form the figures for the corresponding period in the prior year , all prepared in accordance with GAAP (subject to normal quarter-end or year-end adjustments). Such financial information shall be accompanied by the certification of the Chief Financial Officer, Chief Operating Officer or Chief Executive Officer of the Borrower that (1) such financial information presents fairly in all material respects in accordance with GAAP (subject to normal quarter-end or year-end adjustments) the financial position and results of operations of the Borrower and its Subsidiaries, on a consolidated basis, in each case as at the end of such Fiscal Month and for that portion of the Fiscal Year then ended and (2) that there was no Default or Event of Default in existence as of such time or, if a Default or Event of Default shall have occurred and be continuing, describing the nature thereof and all efforts undertaken to cure such Default or Event of Default.

(b) Quarterly Financials. Within forty-five (45) days after the end of the first three Fiscal Quarters of each Fiscal Year, consolidated financial information regarding the Borrower and its Subsidiaries, certified by the Chief Financial Officer, Chief Operating Officer or Chief Executive Officer of the Borrower, consisting of (i) unaudited consolidated balance sheet as of the close of such Fiscal Quarter and the related statements of income, cash flow and stockholders' equity for that portion of the Fiscal Year ending as of the close of such Fiscal Quarter, and (ii) unaudited consolidated statements of income and cash flows for such Fiscal Quarter, in each case setting forth in comparative form the figures for the corresponding period in the prior year, all prepared in accordance with GAAP (subject to normal year-end adjustments). Such financial information shall be accompanied by the certification of the Chief Financial Officer, Chief Operating Officer or Chief Executive Officer of the Borrower that (A) such financial information presents fairly in all material respects in accordance with GAAP (subject to normal year-end adjustments) the financial position, results of operations and statements of cash flows of the Borrower and its Subsidiaries, on a consolidated or a consolidating basis (as applicable), as at the end of such Fiscal Quarter and for that portion of the Fiscal Year then ended, (B) that there was no Default or Event of Default in existence as of such time or, if a Default or Event of Default has occurred and is continuing, describing the nature thereof and all efforts undertaken to cure such Default or Event of Default. In addition, the Borrower shall deliver to the Lender, within forty-five (45) days after the end of each Fiscal Quarter, a management discussion and analysis for the Borrower and its Subsidiaries on a

consolidated basis that includes a comparison of performance for that Fiscal Quarter to the corresponding period in the prior year.

(c) Operating Plan. As soon as available, but not later than thirty (30) days after the end of each Fiscal Year, an annual operating plan for the Borrower, approved by the Board of Directors of the Borrower, for the following Fiscal Year, which (i) includes a statement of all of the material assumptions on which such plan is based, (ii) includes monthly balance sheets and a monthly budget for the following year and (iii) integrates operating revenues, operating expenses, operating profit and cash flow projections, all prepared on the same basis and in similar detail as that on which operating results are reported (and in the case of cash flow projections, based on assumptions believed by the Borrower to be reasonable at the time such projections were delivered in light of conditions and facts known to the Borrower as of the date of their delivery).

(d) [Reserved].

(e) Budget. By no later than the Wednesday after the last day of each Test Period (or such later date as the Lender may agree to in its sole discretion), the Borrower shall furnish, in form and substance reasonably satisfactory to the Lender, (i) a report that sets forth for the relevant Test Period a comparison of the actual cumulative cash receipts and cash disbursements for such Test Period to the projected cash receipts and cash disbursements for such Test Period set forth in the Testing Budget on a line item basis, noting all variances (it being agreed and understood that any such report in a form substantially similar to any such report delivered prior to the Closing Date shall be in a form reasonably satisfactory to the Lender), together with (ii) a management's (or Chief Financial Officer's) discussion and analysis with respect to any material variance between the projected cash receipts and cash disbursements for such period and the actual cash receipts and cash disbursements for such period. By no later than the Wednesday after the last day of each Test Period (or such later date as the Lender may agree to in its sole discretion), a subsequent thirteen (13) week Budget, which subsequent Budget(s) shall (A) roll-forward by one week the then existing Budget, (B) be in a form and include such information substantially similar to the Budgets delivered prior to the Closing Date, (C) be approved by the Consultant and (D) be acceptable to the Lender in its sole discretion (it being agreed and understood that a Budget in a form substantially similar to the Budget delivered prior to the Closing Date shall be in a form acceptable to the Lender).

(f) [Reserved].

(g) Management Letters. Promptly after receipt thereof by any Credit Party, copies of all management letters, exception reports or similar letters or reports received by such Credit Party from its independent registered public accountants.

(h) Default Notices. As soon as practicable, and in any event within five (5) Business Days after a responsible officer of a Credit Party obtains knowledge of the existence of any Default, Event of Default, written notice specifying the nature of such Default or Event of Default, including the anticipated effect thereof.

(i) SEC Filings and Press Releases. Promptly upon their becoming available, copies of: (i) all Financial Statements, reports, notices and proxy statements made publicly available by any Credit Party to its security holders; (ii) all regular and periodic reports and all registration statements and prospectuses, if any, filed by any Credit Party with any securities exchange or with the Commission or any governmental or private regulatory authority; and (iii) all press releases and other statements made available by any Credit Party to the public concerning material changes or developments in the business of any such Person.

(j) Litigation. In writing, promptly upon any responsible officer of a Credit Party obtaining knowledge thereof, notice of any Litigation commenced or threatened against any Credit Party that (i) seeks damages in excess of $500,000, (ii) seeks injunctive relief that could reasonably be expected to result in costs and/or liabilities or loss of revenues to Credit Parties in excess of $500,000, (iii) is asserted or instituted against any Plan of Reorganization, its fiduciaries or its assets or against any Credit Party or ERISA Affiliate in connection with any Plan of Reorganization, (iv) alleges criminal misconduct by any Credit Party, or (v) alleges the violation of any law regarding, or seeks remedies in connection with, any Environmental Liabilities if such Litigation is reasonably likely to result in any Credit Party incurring Environmental Liabilities in excess of $100,000 individually.

(k) Governmental Investigation. In writing, promptly upon any responsible officer of any Credit Party obtaining knowledge thereof, notice of the commencement of any investigation by a Governmental Authority of any Credit Party.

(l) Change in Accounting Practices. In writing, notice of any change in any Credit Party's accounting practices with regard to depreciation and/or establishing reserves for any or all of the Collateral or any other material change in any accounting practices or procedures of the Credit Parties, in each case no later than five (5) Business Days after such change (or such later date as the Lender may agree to in its sole discretion).

(m) Insurance Notices. Disclosure of losses or casualties required by Section 5.4.

(n) Documents Filed with Bankruptcy Court. To the Lender, delivery of, reasonably in advance of filing under the circumstances to permit review by the Lender, any motions, pleadings, replies, objections, memoranda, financial information, applications, judicial information or other documents to be filed with the Bankruptcy Court (or any other court) in, or in connection with, the Cases (the "Court Documents").

(o) Documents Provided to Committees. Substantially contemporaneous with delivery of any Committee Documents (as defined below) to any official committee (the "Committee"), copies of any reports filed in any Case and provided to the Committee (collectively, the "Committee Documents"); provided, however, that any such Committee Documents that are subject to attorney client privilege or filed under seal or subject to confidentiality or other restrictions prohibiting disclosure to the Lender shall not be provided to Lender.

(p) Other Documents. Such other financial information respecting any Credit Party's business, assets, prospects, or financial condition as the Lender shall, from time to time, reasonably request, subject to any limitations under applicable law.

(q) Documents required to be delivered pursuant to paragraphs (b), (d) or (g) (to the extent any such documents are included in materials otherwise filed with the SEC) may be delivered electronically and if so delivered, shall be deemed to have been delivered on the date on which the Borrower gives notice to the Lender that such documents have been posted to the Borrower's Internet site on the Internet at www.conexant.com at www.sec.gov/edaux/searches.html or at another website identified in such notice and accessible to the Lender without charge; provided that upon request by the Lender, the Borrower shall deliver paper copies of such documents to the Lender.

ANNEX E (Section 4.1(b))
to
CREDIT AGREEMENT

COLLATERAL REPORTS AND APPRAISALS

The Borrower shall deliver or cause to be delivered the following:

(a) [reserved]; and

(b) Such other reports, statements and reconciliations with respect to the Collateral or Obligations of any or all Credit Parties as the Lender shall from time to time reasonably request in its discretion, subject to any limitations under applicable law.

ANNEX F (Section 5.8)
to
CREDIT AGREEMENT

MILESTONES

The Credit Parties are required to meet the following milestones in Cases (the "Milestones"):

[To conform to RSA Milestones.]

ANNEX G (Section 6.10)
to
CREDIT AGREEMENT

FINANCIAL COVENANTS

The Credit Parties shall not cause or permit there to be a Material Budget Deviation for any Test Period.

ANNEX H (Section 13.10)
to
CREDIT AGREEMENT

NOTICE ADDRESSES

If to the Borrower, at Conexant Systems, Inc.

Conexant Systems, Inc.
Attn: Chief Financial Officer
Attn: General Counsel
4000 MacArthur Blvd
Newport Beach, CA 92660
Telephone: (949) 483 4600
Telecopier No.: (949) 483 4176

with a copy to:

Samantha Good
Kirkland & Ellis LLP
555 California Street, Suite 2700
San Francisco, CA 94104
Telephone: (415) 439 1914
Telecopier No.: (415) 439 1500

If to the Lender, at QP SFM Capital Holdings Ltd.

QP SFM Capital Holdings Ltd.
c/o Soros Fund Management LLC
888 Seventh Avenue
Suite 3300
New York, NY 10106

Attention: Cynthia Paul
Telephone: (212) 320-5431
Telecopier No.: (646) 731-5431

Attention: Jay Schoenfarber
Telephone: (212) 320-5584
Telecopier No.: (646) 731-5584

with a copy to:

Akin Gump Strauss Hauer & Feld LLP
One Bryant Park
New York, NY 10036
Attention: Frederick Lee

Telephone: (212) 872-1034
Telecopier No.: (212) 872-1002

ANNEX I (from Annex A - Commitments definition)
to
CREDIT AGREEMENT

Lender	**Commitment**
QP SFM Capital Holdings Ltd.	$15,000,000

ANNEX J (from Annex A Permitted Investments definition)
to
CREDIT AGREEMENT

INVESTMENT GUIDELINES

a Direct obligations of, or obligations the principal of and interest on which are unconditionally guaranteed by, the United States of America (or by any agency thereof to the extent such obligations are backed by the full faith and credit of the United States of America), in each case maturing within one year from the date of acquisition thereof;

b Investments in commercial paper maturing within 270 days from the date of acquisition thereof and having, at such date of acquisition, rated at least "A-1" by S&P or "P-1" by Moody's;

c Investments in certificates of deposit, banker's acceptances, time deposits, eurodollar time deposits or overnight bank deposits maturing within 180 days from the date of acquisition thereof issued or guaranteed by or placed with, and money market deposit accounts issued or offered by, any domestic office of any other commercial bank of recognized standing organized under the laws of the United States of America or any State thereof that has a combined capital and surplus and undivided profits of not less than $500,000,000;

d Investments of money in an investment company organized under the Investment Company Act of 1940, as amended, or in pooled accounts or funds offered through mutual funds, investment advisors, banks and brokerage houses which invest its assets in obligations of the type described in (a) through (c) above. This could include, but not be limited to, money market funds or short-term and intermediate bonds funds;

e Securities with maturities of one year or less from the date of acquisition issued or fully guaranteed by any state, commonwealth or territory of the United States, by any political subdivision or taxing authority of any such state, commonwealth or territory or by any foreign government, the securities of which state, commonwealth, territory, political subdivision, taxing authority or foreign government (as the case may be) are rated at least "A-1" by S&P or "P-1" by Moody's;

f Money market funds that (i) comply with the criteria set forth in Securities and Exchange Commission Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA (or the equivalent thereof) by S&P and Aaa (or the equivalent thereof) by Moody's and (iii) have portfolio assets of at least $500,000,000; and

g Deposits available for withdrawal on demand with commercial banks organized in the United States having capital and surplus in excess of $500,000,000.

Exhibit 1 to Exhibit B

DIP Budget

Bankruptcy Cash Flow Forecast	**March**					**April**				**May**				**Total**
	Wk1	Wk2	Wk3	Wk4	Wk5	Wk6	Wk7	Wk8	Wk9	Wk10	Wk11	Wk12	Wk13	
$ in thousands	3/1/13	3/8/13	3/15/13	3/22/13	3/29/13	4/5/13	4/12/13	4/19/13	4/26/13	5/3/13	5/10/13	5/17/13	5/24/13	2/28 - 5/24
Beginning Cash Balance (US)	**$8,612**	**$9,026**	**$2,393**	**$0**	**$0**	**$491**	**$0**	**$0**	**$0**	**$0**	**$104**	**$0**	**$0**	**$8,612**
Net Collections	413	1,366	386	60	2,972	2,400	1,690	1,470	1,517	2,554	2,333	2,112	1,042	20,317
Net Inventory Purchases	-	(2,663)	(1,810)	(995)	(342)	(540)	(415)	(1,294)	(271)	(353)	(299)	(1,778)	(584)	(11,342)
Payroll	-	(1,265)	(74)	(1,107)	(74)	(1,107)	(74)	(1,107)	(74)	(1,107)	(74)	(1,134)	(74)	(7,272)
G&A	-	(1,258)	(1,188)	(616)	(440)	(1,128)	(368)	(274)	(529)	(396)	(789)	(423)	(329)	(7,738)
Facilities	-	(1,549)	-	-	(124)	(458)	-	-	(124)	(508)	(50)	(50)	(50)	(2,912)
Capital Expenditures	-	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(10)	(120)
Foreign Entity Transfers	-	(1,086)	-	-	-	-	(1,317)	-	-	-	(1,160)	-	-	(3,562)
Other Expenses	-	(92)	(1)	(60)	(18)	(43)	(1)	-	(26)	1	(11)	(15)	(25)	(290)
Net Change in Operational Cash	**$413**	**($6,557)**	**($2,696)**	**($2,728)**	**$1,965**	**($885)**	**($495)**	**($1,215)**	**$485**	**$182**	**($60)**	**($1,298)**	**($30)**	**($12,919)**
Restructuring Expenses	-	(75)	(75)	(75)	(1,469)	(63)	(63)	(63)	(1,446)	(69)	(69)	(69)	(4,611)	(8,145)
Other Non-Operating Expenses	-	-	-	(195)	(5)	(5)	(5)	(6)	(8)	(9)	(9)	(9)	(2,011)	(2,262)
Net Change in Non-Operational Cash	**-**	**($75)**	**($75)**	**($270)**	**($1,474)**	**($67)**	**($68)**	**($69)**	**($1,454)**	**($78)**	**($78)**	**($78)**	**($6,622)**	**($10,407)**
Net Change in Total Cash	**$413**	**($6,632)**	**($2,771)**	**($2,998)**	**$491**	**($952)**	**($563)**	**($1,284)**	**($969)**	**$104**	**($137)**	**($1,376)**	**($6,652)**	**($23,326)**
Ending Cash Balance (US)	**$9,026**	**$2,393**	**($377)**	**($2,998)**	**$491**	**($462)**	**($563)**	**($1,284)**	**($969)**	**$104**	**($34)**	**($1,376)**	**($6,652)**	**($14,714)**
DIP Draw (min $0 cash balance)	-	-	(377)	(2,998)	-	(462)	(563)	(1,284)	(969)	-	(34)	(1,376)	(6,652)	(14,714)
DIP Outstanding	**$0**	**$0**	**($377)**	**($3,375)**	**($3,375)**	**($3,837)**	**($4,399)**	**($5,683)**	**($6,653)**	**($6,653)**	**($6,686)**	**($8,062)**	**($14,714)**	**($14,714)**

Exhibit C

Hassel Declaration

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re:	)	Chapter 11
CONEXANT SYSTEMS, INC., *et al.*,[1]	)	Case No. 13-10367 ( )
Debtors.	)	Joint Administration Requested

DECLARATION OF SHAWN HASSEL IN SUPPORT OF THE DEBTORS' MOTION FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING PURSUANT TO SECTION 364 OF THE BANKRUPTCY CODE, (II) AUTHORIZING USE OF CASH COLLATERAL PURSUANT TO SECTION 363 OF THE BANKRUPTCY CODE, (III) GRANTING LIENS AND SUPER-PRIORITY CLAIMS AND (IV) SCHEDULING A FINAL HEARING PURSUANT TO FED. R. BANKR. P. 4001(B) AND (C)

Pursuant to 28 U.S.C. § 1746, I, Shawn Hassel, hereby declare as follows under the penalty of perjury:

1. I submit this declaration (this "***Declaration***")[2] in support of the *Debtors' Motion for Entry of Interim and Final Orders Pursuant to 11 U.S.C. §§ 105, 361, 362, 363(C), 364 and 507 and Fed. R. Bankr. P. 2002, 4001 and 9014 (I) Authorizing Debtors to Obtain Postpetition Financing Pursuant to Section 364 of the Bankruptcy Code, (II) Authorizing Use of Cash Collateral Pursuant to Section 363 of the Bankruptcy Code, (III) Granting Liens and Super-*

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal taxpayer-identification number, are: Conexant Systems, Inc. (9439); Brooktree Broadband Holding, Inc. (5436); Conexant, Inc. (8218); Conexant Systems Worldwide, Inc. (0601); Conexant CF, LLC (6434). The Debtors' main corporate address is 4000 MacArthur Blvd., Newport Beach, California 92660.

[2] Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to them in the DIP Motion.

Priority Claims and (IV) Scheduling a Final Hearing Pursuant to Fed. R. Bankr. P. 4001(B) And (C) (the "***DIP Motion***"), filed by the above-captioned debtors and debtors-in-possession (the "***Debtors***") on February 28, 2013 (the "***Petition Date***"). Except as otherwise noted herein, all facts set forth in this declaration are based on my personal knowledge, upon information supplied to me by other employees at Alvarez and Marsal North America, LLC and Alvarez and Marsal Securities, LLC (collectively, "***A&M***"), upon information learned from my review of relevant documents or upon my opinion based on my experience and knowledge of the Debtors' operations and financial condition. If I were called upon to testify, I could and would testify competently to the facts set forth herein.

2. Since September 2012, the Debtors and their advisors have been engaged in negotiations with the Debtors' sole prepetition secured lender, QP SFM Capital Holdings Ltd. (the "***Secured Lender***") regarding a restructuring of the Debtors' balance sheet. An integral part of the Debtors' restructuring is a $15 million debtor in possession financing facility (the "***DIP Financing***") to be provided by the Secured Lender, which DIP Financing is the product of arm's length negotiations. I believe the DIP Financing is the best financing available under the circumstances, providing the Debtors with access to liquidity that will help effectuate a swift restructuring.

Professional Background

3. I am a Managing Director of Alvarez and Marsal North America, LLC and manage its Phoenix office. I have nearly eighteen (18) years of restructuring and financial advisory experience. During my career, I have been involved in numerous out-of-court and chapter 11 restructurings involving public and private companies. I have been involved in all aspects of restructurings and have acted, among other roles, as Chief Restructuring Officer, Chief Operating Officer and Chief Financial Officer. My experience includes developing and

negotiating complex capital structure solutions, formulating and evaluating strategic business plans, developing and implementing short-term turnaround strategies and helping companies mitigate crisis situations to manage their return to corporate viability. My notable engagements include William Lyon and Shea (market-leading homebuilders), Leiner Health Products (a leading vitamin manufacturer), as well as cases related to the semiconductor industry, including Vitesse Semiconductor, in which I served as the Chief Restructuring Officer and Chief Financial Officer and Read-Rite Corporation, which involved debt and equity financings, mergers & acquisitions, and restructurings.

4. In September 2012, the Debtors engaged A&M to act as their advisor in connection with the Debtors' restructuring initiatives.[3] Since September, I have worked closely with Debtors' management and become well-acquainted with the Debtors' capital structure and business operations.

Development of the DIP Budget and the Debtors' Liquidity Needs

5. The Debtors have faced a number of financial challenges that are straining their liquidity, all of which have contributed to the filing of these chapter 11 cases. These challenges include, among others, the Debtors' substantial debt burden and a significant reduction in demand for the Debtors' products, which together have directly affected the Debtors' ability to satisfy their interest expense obligations on their prepetition secured debt.

6. A&M worked closely with the Debtors' management team and its advisors to analyze the Debtors' cash needs to determine whether additional liquidity was necessary to

[3] Contemporaneously herewith, the Debtors have filed that certain *Application for Entry of an Order Authorizing the Employment and Retention of Alvarez & Marsal North America, LLC as Restructuring Advisor and Financial Advisor to the Debtors Nunc Pro Tunc to the Petition Date.*

support a restructuring. In undertaking this analysis, A&M relied upon near-term financial projections that were prepared by the Debtors' management team with assistance from A&M representatives. A&M considered, among other things, payroll costs that enable the continued technological development of the Debtors' products, demand for the Debtors' finished products, and the costs necessary to complete products currently being manufactured overseas. In addition, A&M considered the cost of purchasing, continuing to design, and distributing the Debtors' products during the course of these chapter 11 cases. The Debtors' management team also conferred with operational divisions to understand the key drivers to the Debtors' financial performance and cash flow. This process helped management to establish the financial projections that were necessary to adequately analyze the Debtors' needs.

7. With the support of A&M, the Debtors created a thirteen-week cash flow forecast.[4] In taking into account cash receipts and disbursements, the forecast considers the impact of the chapter 11 filing on operations, including fees and interest expense associated with debtor-in-possession financing, professional fees and required vendor payments. Also considered were the savings derived from the filings of these cases, including potential lease rejections and the Debtors' ability to maintain customary payment terms with key suppliers.

8. The Debtors' management team and A&M contemplated the use of cash on hand without additional financing to fund operations during these chapter 11 cases. Based on the Debtors' financial projections, A&M concluded that cash on hand alone would be insufficient to fund operations and the Debtors' business plan throughout the pendency of these chapter 11

[4] A 13-week budget with respect to the DIP Financing is attached as **Exhibit 1** to **Exhibit B** to the DIP Motion filed contemporaneously herewith.

cases. Thus, to provide the Debtors with appropriate and necessary financing, obtaining debtor-in-possession financing became critical.

9. Utilizing the thirteen-week cash flow analysis, A&M and the Debtors believe that access to approximately $5 million (in addition to cash on hand) is necessary for operations on an interim basis. The mere commencement of these chapter 11 cases will increase demands on the Debtors' free cash as a result of, among other things, the cost of administering these chapter 11 cases and alleviating key constituent concerns.

10. In addition to the payments required pursuant to various "First-Day" pleadings, the Debtors believe vendors may tighten credit terms or temporarily stop shipments to the Debtors' customers, which would cause a severe reduction to the Debtors' cash on hand. Therefore, without Court approval of the relief sought in the DIP Motion, the Debtors may face significant liquidity constraints in the near term. Accordingly, I believe the Debtors have an immediate need for access to liquidity.

The Debtors' Efforts to Obtain Postpetition Financing

11. Beginning in January 2013, and following attempts to effectuate an out-of-court restructuring or sale of substantially all of their assets, the Debtors — through A&M — initiated a process to identify potential sources of funding. More specifically, A&M sought to procure approximately $15 million to finance the Debtors through these chapter 11 cases. And because of increased customer and vendor pressures, A&M sought to ensure that postpetition financing could be provided quickly and consensually.

12. A&M contacted eight (8) parties in addition to the Secured Lender, including traditional banks as well as funds that specialize in debtor in possession financing. A&M sent each party a brief document providing summary-level information relating to the opportunity, and held follow-up discussions with each of the parties to discuss details and answer questions.

In response to questions and to be candid from the outset, the Debtors made clear to all parties based on representations by the Secured Lender that it was unwilling to be primed consensually. As a result, the possibility of a contested priming fight, the compressed timeline in which the Debtors were seeking commitments, and that the Debtors' inventory is located overseas, none of the parties approached by A&M expressed an interest in providing postpetition financing.

13. Thus, the Debtors turned their attention to the Secured Lender. After hard-fought negotiations, the Secured Lender agreed to provide a postpetition, delayed-draw term loan facility on an expedited basis, largely because of its familiarity with the Debtors' businesses. I believe the terms of the DIP Financing are fair and reasonable. More specifically, the DIP Financing provides for a $15 million senior-secured, delayed-draw term loan, with access to $5 million on an interim basis. The DIP Financing requires that interest be paid monthly accruing at Adjusted LIBOR plus 7%. Importantly, I believe the DIP Financing includes other favorable terms that suggest the reasonableness and appropriateness of the DIP Financing, including:

- no commitment fees;
- favorable pricing;
- fair, reasonable, attainable and negotiated milestones;
- low minimum borrowing thresholds;
- a budget consistent with the relief requested in the Debtors' "First-Day" motions; and
- an appropriate level of cushion with respect to financial covenants.

Conclusion

14. In sum, I believe the proposed DIP Financing represents the best and most favorable financing option available to the Debtors under the circumstances. The proposed DIP Financing will provide the Debtors with the liquidity needed during these chapter 11 cases to continue running its businesses smoothly. Further, the DIP Financing does this on terms that are appropriate under the circumstances. For these reasons, I believe the proposed DIP Financing is

in the best interests of the Debtors' estates and all stakeholders in these chapter 11 cases and should be approved on the terms and conditions described in the DIP Motion.

Pursuant to 28 U.S.C. § 1746, I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge and belief.

Executed on: February 28, 2013.

By:
/s/ *Shawn Hassel*
Shawn Hassel
Managing Director
Alvarez & Marsal North America, LLC