

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

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

Debtor.

Chapter 11

Case No. 18-\_\_\_\_ (\_\_\_)

**MOTION OF DEBTOR FOR ENTRY OF INTERIM AND FINAL ORDER (I) AUTHORIZING THE DEBTOR’S USE OF CASH COLLATERAL, (II) APPROVING ADEQUATE PROTECTION TO PREPETITION LENDER, (III) MODIFYING THE AUTOMATIC STAY, AND (IV) SCHEDULING A FINAL HEARING**

The above-captioned debtor and debtor-in-possession (the “**Debtor**”) hereby moves (the “**Motion**”) for entry of an interim order, substantially in the form attached hereto as **Exhibit A** (the “**Interim Order**”), and a final order (“**Final Order**”), pursuant to sections 105(a), 361, 362, 363, 506, 507(b) and 552 of chapter 11 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 2002, 4001, 6004(h), 7062 and 9014 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rules 2002-1(b), 4001-2 and 9013-1(m) of the Local Rules for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”): (a) authorizing the Debtor’s use of cash collateral, (b) providing certain adequate protection to the Prepetition Lender (as defined herein), (c) modifying the automatic stay, and (d) scheduling a final hearing to consider entry of an order granting the relief requested in the Motion in a Final Order. In support of this Motion, the Debtor relies upon the *Declaration of Michael Wyse in Support of Chapter 11 Petition and First Day Pleadings* filed with the Court concurrently herewith (the “**First Day Declaration**”). In further support of the Motion, the Debtor, by and through its undersigned counsel, respectfully represents:

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<sup>1</sup> The Debtor’s last four digits of its U.S. federal tax identification number are 6904. The address for the Debtor’s headquarters is 420 Lexington Ave., Suite 408, New York, NY 10170.

**JURISDICTION AND VENUE**

1. This Court has jurisdiction over this Motion pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2). The Debtor confirms its consent, pursuant to Local Rule 9013-1(f), to the entry of a final order to the extent it is later determined that the Court, absent the consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution.

2. Venue of this case and this Motion is proper in this District pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory predicates for the relief requested herein are Bankruptcy Code sections 105(a), 361, 362, 363, 506, 507(b) and 552, Bankruptcy Rules 2002, 4001, 6004(h), 7062 and 9014, and Local Rules 2002-1(b), 4001-2 and 9013-1(m).

**BACKGROUND**

4. On January 30, 2018 (the “**Petition Date**”), the Debtor filed a voluntary petition in this Court commencing a case for relief under chapter 11 of the Bankruptcy Code (the “**Chapter 11 Case**”).

5. The Debtor continues to manage and operate its business as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108.

6. No trustee, examiner or committee has been appointed in this Chapter 11 Case.

7. The factual background regarding the Debtor, including its business operations, its capital and debt structures, and the events leading to the filing of this Chapter 11 Case, is set forth in detail in the First Day Declaration and fully incorporated herein by reference.

8. As more fully set forth in the First Day Declaration, the Debtor is indebted to Myrian Capital Fund, LLC (Series C) (the “**Prepetition Lender**”) pursuant to that certain Amended and Restated Senior Secured Convertible Promissory Note by and between the Prepetition Lender and the Debtor, dated as of April 30, 2012 (as amended, the “**Note**”), and that certain Security Agreement dated October 11, 2010 by and among the Debtor and CYMI Technologies, LLC (as predecessor in interest to the Prepetition Lender) (as amended, the “**Security Agreement**”). In support of the Security Agreement, the Debtor and CYMI Technologies, LLC also entered into that certain Intellectual Property Security Agreement, dated October 11, 2010 (as amended), and that certain Deposit Account Control Agreement, dated October 6, 2010 (and, together with the Note, the Security Agreement, and each of the other agreements, documents, and instruments executed in connection with the foregoing, the “**Prepetition Loan Documents**”).

9. As of the Petition Date, there is approximately \$36,700,000 in principal and interest outstanding (the “**Prepetition Debt**”) under the Prepetition Loan Documents. The Prepetition Debt is validly secured with a first priority lien on substantially all of the Debtor’s assets (the “**Prepetition Collateral**”), including all cash and cash equivalents of the Debtor or proceeds thereof (the “**Cash Collateral**”). Pursuant to the Prepetition Loan Documents, the Prepetition Debt matured on June 30, 2017.

**CONCISE STATEMENT OF THE MATERIAL  
TERMS OF THE INTERIM ORDER**

10. The following chart contains a summary of the material terms of the Interim Order, in accordance with Bankruptcy Rule 4001(b)(1) and Local Rule 4001-2.<sup>2</sup>

<b>Material Terms</b>	<b>Summary of Material Terms</b>	<b>Interim Order ¶</b>
<b>Cross Collateralization</b> <i>Del. Bankr. L.R. 4001-2(a)(i)(A)</i>	None.	N/A
<b>Findings Regarding Validity/Perfection/Debt Amount/Challenge Period</b> <i>Del. Bankr. L.R. 4001-2(a)(i)(B)</i>	The Interim Order, at Paragraphs D, E, and F, contains certain stipulated findings of fact, including those related to the validity and enforceability of the Debtor's Prepetition Loan Documents, subject only to the limitations contained in Paragraph 7.b) of the Interim Order.	D, E, and F
<b>506(c) Waiver</b> <i>Del. Bankr. L.R. 4001-2(a)(i)(C)</i>	Subject to entry of the Final Order granting such relief, no costs or expenses of administration which have or may be incurred in this case shall be charged against the Prepetition Lender, its claims or the Collateral pursuant to Bankruptcy Code section 506(c) without the prior written consent of the Prepetition Lender, and no such consent shall be implied from any other action, inaction or acquiescence by the Prepetition Lender.	15
<b>Prepetition Secured Creditor Liens on Chapter 5 Causes of Action</b> <i>Del. Bankr. L.R. 4001-2(a)(i)(D)</i>	None.	N/A
<b>Provisions Deeming Prepetition Debt to be Postpetition Debt</b> <i>Del. Bankr. L.R. 4001-2(a)(i)(E)</i>	None.	N/A
<b>Disparate Treatment for Committee Professionals from the Debtor's Professionals</b> <i>Del. Bankr. L.R. 4001-2(a)(i)(F)</i>	<u>Carve Out.</u> As used in the Interim Order, the " <b>Carve-Out</b> " means the sum of: (i) all allowed administrative expenses pursuant to 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Bankruptcy Court and pursuant to 28 U.S.C. § 1930(a)(6) for fees payable to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code, plus interest at the statutory rate, as determined by agreement of the U.S.	7

<sup>2</sup> Capitalized terms used but not otherwise defined in the chart have the meanings ascribed to them in the Interim Order. This summary and any other description of the Interim Order provided for in this Motion is qualified in its entirety by the actual terms of the Interim Order. The actual terms of the Interim Order will control in the event of any inconsistency between this Motion and the Interim Order.

Material Terms	Summary of Material Terms	Interim Order ¶
	Trustee or by final order of the Bankruptcy Court (without regard to whether a Termination Event has occurred); (ii) all reasonable fees and expenses up to \$5,000 incurred by a Trustee under Section 726(b) of the Bankruptcy Code; and (iii) subject to the terms and conditions of the Interim Order, (x) all Allowed Professional Fees of attorneys, accountants and other professionals retained by the Debtor and any Committee, under Bankruptcy Code sections 327 or 1103(a) (collectively, the “ <b>Professionals</b> ”) incurred prior to a Termination Event in an aggregate amount not to exceed at any time the budgeted amounts, plus (y) all Allowed Professional Fees of Professionals incurred after a Termination Event in the aggregate amount not to exceed at any time \$15,000.	
<b>Non-Consensual Priming</b>  <i>Del. Bankr. L.R. 4001-2(a)(i)(G)</i>	None.	N/A
<b>552(b) Waiver</b>  <i>Del. Bankr. L.R. 4001-2(a)(i)(H)</i>	Subject to the entry of a Final Order granting such relief, the Prepetition Lender shall be entitled to all of the rights and benefits of Bankruptcy Code section 552(b), and the “equities of the case” exception under section 552(b) shall not apply to the Prepetition Lender with respect to proceeds, products, offspring or profits of any of the Collateral, as applicable.	12
<b>Entities with Interests in the Cash Collateral</b>  <i>Bankruptcy Rule 4001(b)(1)(B)(i)</i>  <i>Del. Bankr. L.R. 4001-2(a)(ii)</i>	The Prepetition Lender is the only known party with any interest in the Cash Collateral.	N/A
<b>Purpose for the Use of Cash Collateral</b>  <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i>  <i>Del. Bankr. L.R. 4001-2(a)(ii)</i>	The Debtor seeks authority to use Cash Collateral to maintain and continue its business and to administer this case pending a going concern sale, subject to the amounts provided for in the Budget.	K
<b>Duration of Use of Cash Collateral/Events of Default</b>  <i>Bankruptcy Rule 4001(b)(1)(B)(iii)</i>  <i>Del. Bankr. L.R. 4001-2(a)(ii)</i>	<u>Termination Date.</u>  The Interim Order permits usage of Cash Collateral until the earlier of a Termination Event (as defined herein) or June 13, 2018 (the “ <b>Termination Date</b> ”).  <u>Milestones.</u>  The Debtor shall meet all of the following milestones (the “ <b>Milestones</b> ”), each of which may be modified by mutual consent of the Debtor and the Prepetition Lender:  <ul style="list-style-type: none"> <li>• February 20, 2018 - Approval of bid procedures</li> </ul>	2.c), 3, 4, 4, 9

Material Terms	Summary of Material Terms	Interim Order ¶
	<p>and a Final Order on Cash Collateral, in forms acceptable to the Prepetition Lender.</p> <ul style="list-style-type: none"> <li>• March 1, 2018 - Filing a joint plan and disclosure statement, in a form acceptable to the Prepetition Lender.</li> <li>• April 19, 2018 - Approval of a sale order, in a form acceptable to the Prepetition Lender.</li> <li>• April 23, 2018 - Entry of an order granting interim approval of the disclosure statement, approval of solicitation procedures, and scheduling a hearing on confirmation of the plan, each in a form acceptable to the Prepetition Lender.</li> <li>• April 25, 2018 - Commencement of solicitation of votes on confirmation of the plan.</li> <li>• June 7, 2018 - Entry of an order granting final approval of the disclosure statement and confirmation of the plan, in a form acceptable to the Prepetition Lender.</li> <li>• June 13, 2018 - Effective date of the plan.</li> </ul> <p><u>Termination Event.</u></p> <p>Immediately upon written notice by the Prepetition Lender to the Debtor, the U.S. Trustee, and if appointed, any Committee, the Debtor’s authorization, and the Prepetition Lender’s consent for the Debtor to use Cash Collateral shall terminate upon any of the following (each, a “<b>Termination Event</b>”): (i) the entry of an order of this Court terminating the right of the Debtor to use Cash Collateral; (ii) the dismissal of this Chapter 11 Case or the conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code; (iii) the appointment of a trustee or an examiner in this Chapter 11 Case; (iv) the entry of any order of this Court that impairs in any way the security interests, liens, priority claims or rights granted to the Prepetition Lender under the terms of the Interim Order; (v) the Interim Order shall cease, for any reason, to be in full force and effect, or the Debtor shall so assert in writing, or any liens or claims created in favor of the Prepetition Lender under the Interim Order shall cease to be enforceable and of the same effect and priority purported to be created hereby, or the Debtor shall so assert in writing; (vi) the Debtor challenges or objects to the extent, validity, enforceability, priority, perfection and/or non-avoidability of the Prepetition Loan Documents, the Obligations (as defined in the Prepetition Loan Documents) or the Prepetition Lender’s security interest in and liens upon the Collateral; (vii) an order of this Court shall be entered reversing, staying, vacating or otherwise modifying the Interim Order or any provision contained therein without the prior written consent of the Prepetition Lender; (viii) the Debtor fails to comply with the</p>	

Material Terms	Summary of Material Terms	Interim Order ¶
	<p>Budget (as defined below), including any Permitted Variances; (ix) the Debtor proposes a plan to which the Prepetition Lender does not consent; (x) any Milestone is not satisfied, (xi) the Debtor fails to provide any additional adequate protection ordered by the Court and such failure shall continue unremedied for more than three (3) business days after written notice thereof; (xii) either the Debtor or the Prepetition Lender, each in its sole discretion, does not agree to a revised Budget for the period of time that extends beyond the initial 13-week Budget attached as <u>Exhibit 1</u> to the Interim Order; and (xiii) the Debtor’s failure to perform, in any respect, any of its material obligations under the Interim Order.</p> <p><u>Relief from Automatic Stay.</u></p> <p>(a) The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to permit (i) the Debtor to implement and perform the terms of the Interim Order, and (ii) the Debtor to create, and the Prepetition Lender to perfect, the Adequate Protection Replacement Lien and any other liens granted hereunder. The Prepetition Lender shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the Adequate Protection Replacement Lien or other liens created hereunder, or to take any other actions to perfect such liens (including the Adequate Protection Replacement Lien), which shall be deemed automatically perfected by the docketing of the Interim Order by the Clerk of the Court, and deemed to be effective as of the Petition Date. If, however, the Prepetition Lender shall elect for any reason to file, record or serve any such financing statements or other documents with respect to such Liens (including the Adequate Protection Replacement Lien), then the Debtor shall execute same upon request and the filing, recording or service thereof (as the case may be) shall be deemed to have been made at the time of the commencement of this case on the Petition Date.</p> <p>(b) In addition, and without limiting the foregoing, upon the occurrence of the Termination Date or a Termination Event, and after receiving a Termination Notice, the Debtor may seek relief from the Court during the period of five (5) business days after receiving the Termination Notice for the sole purpose of determining whether a Termination Event has occurred and is continuing.</p> <p>(c) The automatic stay provisions of Bankruptcy Code section 362 and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application or order of</p>	

Material Terms	Summary of Material Terms	Interim Order ¶
	<p>the Court to the extent necessary to permit the Prepetition Lender to perform any act authorized or permitted under or by virtue of the Interim Order and the Prepetition Loan Documents, as applicable, including, without limitation, (i) to implement the arrangements authorized by the Interim Order, (ii) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the Collateral, (iii) to assess, charge, collect, advance, deduct and receive payments with respect to the Obligations, including, without limitation, all interests, fees, costs and expenses permitted under the Obligations and apply such payments to the Obligations, and (iv) following the five (5) day period referenced in paragraph (b) above, to take any action and exercise all rights and remedies provided to it by the Interim Order, the Prepetition Loan Documents or applicable law that the Prepetition Lender may deem appropriate in its discretion to proceed against and realize upon the Collateral or any other assets or properties of Debtor's estate upon which the Prepetition Lender, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all Obligations.</p>	



Material Terms	Summary of Material Terms	Interim Order ¶
<p><b>Adequate Protection</b></p> <p><i>Bankruptcy Rule 4001(b)(1)(B)(iv)</i></p> <p><i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>As adequate protection, the Interim Order provides the Prepetition Lender with a replacement lien (the “<b>Adequate Protection Replacement Lien</b>”), an allowed superpriority administrative expense claim pursuant to Bankruptcy Code sections 503 and 507(b) (the “<b>Adequate Protection Superpriority Claim</b>”), and payment of certain fees and expenses related to this case.</p> <p><u>Payment of Fees and Expenses.</u> During the Chapter 11 Case, the Debtor shall pay or reimburse in cash the Prepetition Lender for reasonable and documented fees, out-of-pocket costs, expenses, and charges on a regular monthly basis (the “<b>Prepetition Lender Fees and Expenses</b>”) consistent with the Budget.</p> <p><u>Reporting Requirements.</u> As further Adequate Protection, the Interim Order requires that the Debtor provide the Prepetition Lender with the following (the “<b>Reporting Requirements</b>”):</p> <ul style="list-style-type: none"> <li>(a) on or before the end of business on Wednesday of each calendar week commencing February 7, 2018, an updated Budget;</li> <li>(b) on or before the end of business on Wednesday of each calendar week commencing February 7, 2018: (i) a weekly cash flow comparison that compares the Debtor’s actual receipts and expenses for the prior week to the Budget with respect to such week and (ii) a compliance certificate in the form attached as <b>Exhibit 2</b> to the Interim Order, certified on behalf of the Debtor by an officer of the Debtor, relating to liquidity, cumulative disbursements, minimum collections, and other matters for the prior week; and</li> <li>(c) other periodic reports as the Prepetition Lender may request from time to time regarding efforts by the Debtor to improve revenue cycle management processes and procedures, accounting and finance, information systems, and other matters.</li> </ul> <p><u>Books and Records.</u> The Prepetition Lender shall have the right to inspect the Prepetition Collateral and the Debtor’s books and records relating thereto (the “<b>Inspection Rights</b>”).</p>	5

Material Terms	Summary of Material Terms	Interim Order ¶
	<p><u>Cash Management</u>. The Debtor shall maintain in its name the bank account at Silicon Valley Bank with an account number ending in 0461 (the “<b>Deposit Account</b>”) and shall use the Deposit Account as the Debtor’s only operating account, including depositing all funds from collection of receivables into the Deposit Account. The Debtor shall not maintain any cash in any bank account other than the Deposit Account.</p>	
<p><b>Budget</b> <i>Bankruptcy Rule 4001(b)(1)(B)(ii)</i></p>	<p>Except as otherwise expressly provided in the Interim Order, Cash Collateral may be used at the times, in the amounts, and for the purposes identified in the cash collateral budget attached to the Interim Order as <b>Exhibit 1</b> (as may be amended as provided herein, the “<b>Budget</b>”). All Cash Collateral use must be in accordance with the terms of the Budget, subject to cumulative variances for disbursements and collections of no more than 10% each per week (the “<b>Permitted Variance</b>”).</p>	2.a
<p><b>Releases</b> <i>Del. Bankr. L.R. 4001-2(a)(ii)</i></p>	<p>Upon the earlier of (a) the entry of the Final Order, or (b) the entry of an order extending the Debtor’s use of the Cash Collateral, in consideration of the Prepetition Lender permitting the Debtor to use the Prepetition Collateral (including Cash Collateral) pursuant to the provisions of the Interim Order, the Debtor, on behalf of itself and its successors and assigns (collectively, the “<b>Releasors</b>”), shall forever release, discharge and acquit the Prepetition Lender and its successors and assigns, and its present and former shareholders, affiliates, subsidiaries, divisions, predecessors, directors, officers, attorneys, employees and other representatives in their respective capacities as such (collectively, the “<b>Prepetition Releasees</b>”), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called “lender liability” claims or defenses, that Releasors had, have or hereafter can or may have against Prepetition Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof in connection with the Debtor, the Prepetition Loan Documents, or the Obligations.</p>	16

### **RELIEF REQUESTED**

11. By this Motion, and pursuant to Bankruptcy Code sections 105(a), 361, 362, 363, 506, 507(b) and 552, the Debtor requests the Court enter an order: (a) authorizing the Debtor’s

use of cash collateral, (b) approving adequate protection for the Prepetition Lender, (c) modifying the automatic stay, and (d) scheduling a final hearing to consider entry of an order granting the relief requested in the Motion on a final basis.

12. The Debtor has an immediate need to use the Prepetition Lender's Cash Collateral to operate its business during this Chapter 11 Case and administer it to a successful conclusion. Indeed, the Cash Collateral is the Debtor's sole source of current funds for operating and case administration. Absent authority to use Cash Collateral immediately, the Debtor would need to cease operations, which would irreparably harm the Debtor's estate and creditors. Thus, the Debtor's immediate access to Cash Collateral is necessary to preserve and maximize value for the benefit of all parties in interest. Without such access, the Debtor's ability to navigate through the chapter 11 process would be jeopardized to the detriment of all the Debtor's stakeholders.

13. In exchange for the consensual use of Cash Collateral, the Debtor has agreed, and the Interim Order provides, adequate protection in the form of, among other things, adequate protection liens, superpriority claims and adequate protection payments to protect the Prepetition Lender against any diminution in the value of its interests in the Prepetition Collateral resulting from the use, sale or lease of Prepetition Collateral, the subordination of the Prepetition Lender's liens to the Carve-Out (as defined in the Interim Order), and the imposition of the automatic stay.

14. In the near term, the Debtor will also need postpetition financing to accomplish its goals in this Chapter 11 Case. The Debtor intends to file a motion to approve the terms of postpetition financing from the Prepetition Lender to the Debtor in the coming weeks. For present purposes, however, the Debtor only seeks authority related to use of Cash Collateral. The Prepetition Lender has consented to the relief requested and the proposed Interim Order.

15. Access to existing Cash Collateral on an interim basis will provide the Debtor with the liquidity necessary to ensure that the Debtor has sufficient working capital and liquidity to operate its business, and thus preserve and maintain the value of the Debtor's estate, pending the filing and approval of postpetition financing. Without such access to liquidity, the Debtor's ability to navigate through this chapter 11 process will be jeopardized, to the detriment of the Prepetition Lender and the Debtor's other stakeholders. As a result, the Debtor has an immediate need to use Cash Collateral to ensure sufficient liquidity.

### **BASIS FOR RELIEF**

16. The Debtor requests authority to use Cash Collateral on the terms set forth in the proposed Interim Order, including the Debtor's proposal to grant the Prepetition Lender adequate protection in the form of, among other things, the Adequate Protection Replacement Lien, the Adequate Protection Superpriority Claim, and certain adequate protection payments. The Debtor submits that its consensual use of Cash Collateral is authorized pursuant to Bankruptcy Code section 363(c).

17. Bankruptcy Code section 363(c)(2) provides that a debtor may use cash collateral as long as (a) each entity that has an interest in such cash collateral consents; or (b) the court, after notice and a hearing, authorizes such use, sale or lease in accordance with the provisions of this section. 11 U.S.C. § 363(c)(2). Bankruptcy Code section 363(e) provides for adequate protection of interests in property when a debtor uses cash collateral. 11 U.S.C. § 363(e). Here, the Prepetition Lender has consented to the Debtor's use of Cash Collateral on the terms set forth in the Interim Order.

18. Bankruptcy Code section 362(d)(1) provides for adequate protection in property due to the imposition of the automatic stay. 11 U.S.C. § 362(d)(1); *see In re Cont'l Airlines*, 91

F.3d 553, 556 (3d Cir. 1996). Although Bankruptcy Code section 361 provides examples of forms of adequate protection, such as granting replacement liens and administrative claims, courts decide what constitutes sufficient adequate protection on a case-by-case basis. *Resolution Trust Corp. v. Swedeland Dev. Grp., Inc. (In re Swedeland Dev. Grp., Inc.)*, 16 F.3d 552, 564 (3d Cir. 1994) (“[A] determination of whether there is adequate protection is made on a case by case basis.”); *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) (“[T]he determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case . . . .”) (citation and quotation omitted).

19. The concept of adequate protection is designed to shield a secured creditor from diminution in the value of its interest in collateral during the period of a debtor’s use. *See In re Carbone Cos.*, 395 B.R. 631, 635 (Bankr. N.D. Ohio 2008) (“The test is whether the secured party’s interest is protected from diminution or decrease as a result of the proposed use of cash collateral); see also *In re Cont’l Airlines, Inc.*, 154 B.R. 176, 180-81 (Bankr. D. Del. 1993) (holding that adequate protection for use of collateral under section 363 is limited to use-based decline in value).

20. Here, the proposed adequate protection for the Prepetition Lender included in the Interim Order provides adequate protection in the form of, among other things, the Adequate Protection Replacement Lien, the Adequate Protection Superpriority Claim, adequate protection payments, the Prepetition Lender Fees and Expenses, the Reporting Requirements, the Inspection Rights, and maintenance of the Deposit Account to protect the Prepetition Lender against any diminution in the value of its interests in the Prepetition Collateral.

21. The Debtor submits that in light of the circumstances of this case, the proposed adequate protection is appropriate and sufficient to protect the Prepetition Lender from any diminution in value to its collateral during the interim period. In particular, the Cash Collateral will be used to fund the Debtor's business operations, thereby allowing for the maximization of the value of the Debtor's estate. If the Cash Collateral is not available for this purpose, the Debtor will be unable to fund payroll obligations, pay vendors or otherwise continue its business operations, thereby dissipating value to the detriment of the Prepetition Lender and other stakeholders. Thus, the use of the Cash Collateral will protect the Prepetition Lender's security interests by preserving the value of its collateral. *See In re Salem Plaza Assocs.*, 135 B.R. 753, 758 (Bankr. S.D.N.Y. 1992) (holding that a debtor's use of cash collateral to pay operating expenses, thereby "preserv[ing] the base that generates the income stream," provided adequate protection to the secured creditor).

22. In light of the foregoing, the Debtor submits that the proposed adequate protection to be provided is appropriate and necessary to protect such party against any diminution in value and is also fair and appropriate on an interim basis under the circumstances of this case and to ensure that the Debtor is able to continue using Cash Collateral in the near term, for the benefit of all parties in interest and their estates.

23. Based on the foregoing, the Debtor respectfully submits that entry of the Interim Order authorizing the interim use of Cash Collateral and scheduling a Final Hearing to approve the use of Cash Collateral on a final basis is necessary and appropriate.

**MODIFICATION OF THE AUTOMATIC STAY IS APPROPRIATE**

24. The Interim Order contemplates a modification of the automatic stay (to the extent applicable) as necessary to effectuate all of the terms and provisions of the Interim Order,

including, without limitation, to: (a) permit the Debtor to grant the Adequate Protection Replacement Lien and the Adequate Protection Superpriority Claim and to make the adequate protection payments; (b) permit the Debtor to perform such acts as the Prepetition Lender may request to assure the perfection and priority of the liens granted in the Interim Order; and (c) authorize the Debtor to make, and the Prepetition Lender to retain and apply, payments made in accordance with the terms of the Interim Order.

25. In addition, the Interim Order provides for the termination of the automatic stay to allow the Prepetition Lender to exercise remedies upon occurrence and during the continuation of an Event of Default, after giving five (5) business days' notice after the Termination Notice Date to the Debtor.

26. Stay modification provisions of this kind are ordinary and standard terms of postpetition use by debtors-in-possession of prepetition collateral, and, in the Debtor's business judgment, are reasonable under the present circumstances. *See, e.g., In re TMP Directional Mktg., LLC*, No. 11-13835 (MFW) (Bankr. D. Del. Jan. 17, 2012) (modifying automatic stay as necessary to effectuate the terms of the order); *In re Broadway 401 LLC*, No. 10-10070 (KJC) (Bankr. D. Del. Feb. 16, 2010) (same); *In re Hights Cross Commc'ns, Inc.*, No. 10-10062 (BLS) (Bankr. D. Del. Feb. 8, 2010) (same). Accordingly, the Debtor respectfully requests that the Court authorize the modification of the automatic stay in accordance with the terms set forth in the Interim Order.

### **REQUEST FOR FINAL HEARING**

27. Pursuant to Bankruptcy Rule 4001(b)(2) and Local Rule 4001-2(c), the Debtor requests that the Court set a date for the Final Hearing and fix the date and time prior to the Final Hearing for parties to file objections to the relief requested by this Motion.

**IMMEDIATE RELIEF IS NECESSARY TO AVOID  
IMMEDIATE AND IRREPARABLE HARM**

28. Bankruptcy Rule 4001(b)(2) provides that a final hearing on a motion to use collateral may not be commenced earlier than fourteen (14) days after the service of such motion. However, the court is authorized to conduct a preliminary expedited hearing on the motion and authorize the Debtor's proposed use of Cash Collateral to the extent necessary to avoid immediate and irreparable harm to a debtor's estate. See Fed. R. Bankr. P. 4001(b)(2).

29. As stated above, the Debtor has an immediate postpetition need to use Cash Collateral. The Debtor cannot maintain the value of its estate during the pendency of this case without access to cash. The Debtor will use cash to, among other things, continue operating its business and satisfy other working capital needs during this case while it pursues a sale of some or substantially all of its assets, or if no such sale occurs, to conduct an orderly liquidation of the Debtor's assets.

30. The Debtor believes that all or substantially all of its available cash constitutes Cash Collateral and is therefore unable to proceed to continue its business operations without the ability to use Cash Collateral and will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest. The Debtor's ability to finance its operations is vital to the preservation and maintenance of the value of the Debtor's assets.

31. The Debtor thus seeks immediate authority to use the Cash Collateral on an interim basis in accordance with the terms of the Interim Order to prevent immediate and irreparable harm to its estate pending the Final Hearing pursuant to Bankruptcy Rule 4001(b)(2). Accordingly, the Debtor submits that it has satisfied the requirements of Bankruptcy Rule 4001 to support an expedited preliminary hearing for the immediate access to Cash Collateral on an interim basis.



32. Moreover, Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003. The Debtor submits that for the reasons already set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtor.

**WAIVER OF ANY APPLICABLE STAY**

33. The Debtor also requests that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtor seeks in this Motion is necessary for the Debtor to operate its business without interruption and to preserve value for its estate. Accordingly, the Debtor respectfully requests that the Court waive the fourteen-day stay imposed by Bankruptcy Rule 6004(h), as the exigent nature of the relief sought herein justifies immediate relief.

**NOTICE**

34. Notice of this Motion has been given to (a) the Office of the United States Trustee for Region 3, serving the District of Delaware; (b) the parties included on the Debtor’s list of largest unsecured creditors; (c) the Prepetition Lender, (d) all parties who have filed a notice of appearance and request for service of papers pursuant to Bankruptcy Rule 2002, and (e) all parties required to be served by Local Rule 9013-l(m). In light of the nature of the relief requested herein, the Debtor respectfully submits that no further notice of this Motion is required. The Debtor submits that, under the circumstances, no other or further notice need be given.

**CONCLUSION**

The Debtor respectfully requests that this Court (a) enter an order, substantially in the form attached hereto as **Exhibit A**, authorizing the Debtor's interim use of cash collateral and providing certain adequate protection to the Prepetition Lender, (b) enter a final order approving this Motion following a final hearing, (c) schedule a final hearing, and (d) grant such other and further relief as the Court deems just and proper.

Dated: January 30, 2018  
Wilmington, Delaware

Respectfully submitted,

**POLSINELLI PC**

/s/ Christopher A. Ward

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*Proposed Counsel to the Debtor and Debtor in Possession*

**EXHIBIT A**

Proposed Interim Order

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

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

Debtor.

Chapter 11

Case No. 18-\_\_\_\_ ( )

**INTERIM ORDER (I) AUTHORIZING THE DEBTOR'S USE OF CASH  
COLLATERAL, (II) APPROVING ADEQUATE PROTECTION TO  
PREPETITION LENDER, (III) MODIFYING THE AUTOMATIC STAY,  
AND (IV) SCHEDULING A FINAL HEARING**

Upon the motion (the "**Motion**")<sup>2</sup> of the above-captioned debtor and debtor-in-possession (the "**Debtor**") for the entry of an order (a) authorizing the Debtor's interim and final use of cash collateral, (b) approving adequate protection for the Prepetition Lender, (c) modifying the automatic stay imposed by section 362 of the Bankruptcy Code to the extent necessary to implement the terms and provisions of this Interim Order, and (d) scheduling a final hearing; and it appearing that the Court has jurisdiction over this matter; and upon consideration of the Motion, the First Day Declaration and the evidence submitted or adduced and the arguments of counsel made at the interim hearing held on the Motion (the "**Interim Hearing**"); and this Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference from the United States District Court for the District of Delaware* dated February 29, 2012; and consideration of the Motion and the requested relief being a core proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of

<sup>1</sup> The Debtor's last four digits of its U.S. federal tax identification number are 6904. The address for the Debtor's headquarters is 420 Lexington Ave., Suite 408, New York, NY 10170.

<sup>2</sup> All capitalized terms used herein but not defined shall have the meanings given them in the Motion.

the Motion having been provided to the parties listed therein, and it appearing that no other or further notice need be provided; and the Interim Hearing to consider the interim relief requested in the Motion having been held and concluded; and all objections, if any, to the interim relief requested in the Motion having been withdrawn, resolved or overruled by the Court; and it appearing to the Court that granting the interim relief requested is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending the Final Hearing, and otherwise is fair and reasonable and in the best interests of the Debtor, its estate, and creditors and equity holders, and is essential for the continued operation of the Debtor's business; and after due deliberation and consideration, and for good and sufficient cause appearing therefor;

BASED UPON THE RECORD ESTABLISHED AT THE INTERIM HEARING BY THE DEBTOR, THE COURT HEREBY MAKES THE FOLLOWING FINDINGS OF FACT AND CONCLUSIONS OF LAW:

A. On January 30, 2018 (the "**Petition Date**"), the Debtor filed a voluntary petition under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the "**Court**") commencing this case. The Debtor is continuing in the management and operation of its business and properties as a debtor-in-possession pursuant to Bankruptcy Code sections 1107 and 1108. No trustee or examiner has been appointed in this case.

B. This Court has jurisdiction over the persons and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Consideration of the Motion constitutes a core proceeding under 28 U.S.C. § 157(b)(2). Venue for the case and proceedings on the Motion is proper in this district pursuant to 28 U.S.C. §§ 1408 and 1409.

C. As of the date hereof, the Office of the United States Trustee (the “**U.S. Trustee**”) has not yet appointed any official committee in the case pursuant to Bankruptcy Code section 1102 (each, a “**Committee**”).

D. The Debtor stipulates that as of the Petition Date, (1) it is truly and justly indebted and liable to the Prepetition Lender pursuant to the Prepetition Loan Documents, (2) as of the Petition Date, there is approximately \$36,700,000 in Prepetition Debt outstanding under the Prepetition Loan Documents due and owing absolutely with no portion subject to avoidance, recharacterization, recovery, attack, offset, counterclaim, defense, or claim of any kind pursuant to the Bankruptcy Code or other applicable law, and (3) the Prepetition Debt is validly secured with a first priority lien on substantially all of the Prepetition Collateral.

E. The Debtor further stipulates that all cash and cash equivalents of the Debtor are Prepetition collateral (or proceeds thereof) of the Prepetition Lender. The Debtor acknowledges that these funds constitute the “cash collateral” of the Prepetition Lender within the meaning of 11 U.S.C. § 363(a) (the “**Cash Collateral**”).

F. The Prepetition Lender is entitled to adequate protection as set forth herein pursuant to Bankruptcy Code sections 361 and 363 for any decrease in the value of its interests in the Prepetition Collateral from and after the Petition Date resulting from the subordination to the Carve Out (as defined herein), the Debtor’s use, sale or lease of such Prepetition Collateral, and the imposition of the automatic stay.

G. The Debtor has requested that the Prepetition Lender consent to the Debtor’s use of the Cash Collateral to provide funds to administer this case and effect a going-concern sale. The Prepetition Lender affirmatively consents to the use of Cash Collateral pursuant to the terms of this Interim Order and in accordance with the Budget.

H. Subject to the terms and conditions set forth in this Interim Order, the Prepetition Lender agrees to consent to the entry of this Interim Order. No finding of fact contained in this Interim Order shall or shall be construed to waive, impair, limit, or prejudice in any way the Prepetition Lender's right to contest or object to any further or other use of the Cash Collateral by the Debtor.

I. The terms of this Order and the use of Cash Collateral have been negotiated extensively at arm's length and in good faith between the Debtor and the Prepetition Lender.

J. Under the circumstances of this case, this Interim Order is a fair and reasonable response to the Debtor's request for the Prepetition Lender's consent to the use of Cash Collateral, and the entry of this Interim Order is in the best interest of Debtor's estate and its creditors. The Debtor has an immediate and critical need to use the Cash Collateral on the terms set forth herein in order for the Debtor to continue its efforts to preserve assets in anticipation of a sale and maximize value for its estate and creditors.

K. The Debtor has requested immediate entry of this Interim Order pursuant to Bankruptcy Rule 4001(b)(2). Unless the interim relief set forth in this Interim Order is granted immediately, the Debtor's estate and business will be immediately and irreparably harmed. In particular, the Debtor requires immediate use of the Cash Collateral to, among other things, preserve assets in preparation of a sale and pay basic expenses, such as payroll, professionals, and utilities. The use of the Cash Collateral, in accordance with this Interim Order, is therefore in the best interest of the Debtor's estate, its creditors, and all parties in interest.

L. Notice of this Motion will be given to the following parties (collectively, the "**Notice Parties**"): (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtor's prepetition lender; (c) the parties included on the Debtor's list of twenty (20) largest

unsecured creditors; (d) the Internal Revenue Service; (e) the Taxing Authorities; (f) the United States Attorney for the District of Delaware; (g) the Attorney General for the State of Delaware; (h) the Securities and Exchange Commission; and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. Thus, notice of the Motion was provided by the Debtor under Bankruptcy Rules 2002, 4001(b) and (d), and 9014, Local Rule 9013-1(m), and Bankruptcy Code sections 102(1) and 363.

M. This Interim Order constitutes findings of fact and conclusions of law under Bankruptcy Rule 7052 and will take effect and be fully enforceable as of the Petition Date.

**IT IS HEREBY ORDERED THAT:**

1. Motion Granted. The Motion is GRANTED on an interim basis to the extent set forth herein. Any objection to the Motion, to the extent not withdrawn, waived or resolved, is hereby overruled.

2. Authorization to Use Cash Collateral.

- a. Pursuant to Bankruptcy Code sections 105(a), 363(b), and 363(c)(2), the Debtor is authorized to use Cash Collateral on an interim basis in the amounts and for the purposes identified in the cash collateral budget attached hereto as **Exhibit 1** (as may be amended, the “**Budget**”) through and including February 20, 2018 (the “**Interim Period**”); *provided, however*, that the aggregate amount of such payments made during the interim period shall not exceed \$137,000.
- b. All cash collateral use must be in accordance with the terms of the Budget, subject to cumulative variances of no more than 10% each per week for disbursements and collections (the “**Permitted Variance**”).
- c. Through the earlier to occur of (i) five (5) business days following receipt (via email, facsimile, or courier) by the Debtor, the Debtor’s counsel, the U.S. Trustee, and counsel to any Committee of a notice of the occurrence of a Termination Event (as defined below) and such Termination Event remains uncured and the Prepetition Lender terminates the use of Cash Collateral; and (ii) on June 13, 2018 (the “**Termination Date**”), the Debtor is authorized to use Cash Collateral in accordance with the Budget. Following (i) or (ii), or as otherwise ordered by the Court or subsequently



extended by written agreement of the Debtor and the Prepetition Lender, the Debtor's authority to use Cash Collateral shall automatically terminate.

3. Milestones. The Debtor shall meet all of the following milestones (the "**Milestones**"), each of which may be modified by mutual consent of the Debtor and the Prepetition Lender:

- a. February 20, 2018 - Approval of bid procedures and a Final Order on Cash Collateral, in forms acceptable to the Prepetition Lender.
- b. March 1, 2018 - Filing a joint plan and disclosure statement, in a form acceptable to the Prepetition Lender.
- c. April 19, 2018 - Approval of a sale order, in a form acceptable to the Prepetition Lender.
- d. April 23, 2018 - Entry of an order granting interim approval of the disclosure statement, approval of solicitation procedures, and scheduling a hearing on confirmation of the plan, each in a form acceptable to the Prepetition Lender.
- e. April 25, 2018 – Commencement of solicitation of votes on confirmation of the plan.
- f. June 7, 2018 - Entry of an order granting final approval of the disclosure statement and confirmation of the plan, in a form acceptable to the Prepetition Lender.
- g. June 13, 2018 - Effective date of the plan.

4. For purposes of this Order, a "**Termination Event**" shall mean:

- a. the entry of an order of this Court terminating the right of the Debtor to use Cash Collateral;
- b. the dismissal or the conversion of this Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code;
- c. the appointment of a trustee or an examiner in this Chapter 11 Case;
- d. the entry of any order of this Court that impairs in any way the security interests, liens, priority claims or rights granted to the Prepetition Lender under the terms of this Interim Order;

- e. this Interim Order shall cease, for any reason, to be in full force and effect, or the Debtor shall so assert in writing, or any liens or claims created in favor of the Prepetition lender under this Interim Order shall cease to be enforceable and of the same effect and priority purported to be created hereby, or the Debtor shall so assert in writing;
- f. the Debtor challenges or objects to the extent, validity, enforceability, priority, perfection and/or non-avoidability of the Prepetition Loan Documents and Obligations (as defined in the Prepetition Loan Documents) or the Prepetition Lender's security interest in and liens upon the Collateral;
- g. an order of this Court shall be entered reversing, staying, vacating or otherwise modifying this Interim Order or any provision contained therein without the prior written consent of the Prepetition Lender;
- h. the Debtor's failure to comply with the Budget, including any Permitted Variances;
- i. the Debtor proposes a plan to which the Prepetition Lender does not consent;
- j. any Milestone is not satisfied;
- k. the Debtor's failure to provide any additional adequate protection to the Prepetition Lender or any party order by the Court and such failure shall continue unremedied for more than three (3) business days after written notice thereof; or
- l. either the Debtor or the Prepetition Lender, each in its sole discretion, does not agree to a revised Budget for the period of time that extends beyond the initial 13-week Budget attached hereto as Exhibit 1;
- m. the Debtor's failure to perform, in any respect, any of its material obligations under the Interim Order.

5. Adequate Protection.

- a. In consideration for the use of the Cash Collateral, the Debtor shall provide the following adequate protection to the Prepetition Lender, to the extent there is a diminution in value of the interests of the Prepetition Lender in the Collateral from and after the Petition Date, which is a result of, or arises from, or is attributable to, the imposition of the automatic

stay, the Carve Out, the use of such Cash Collateral, or the grant of a lien under Bankruptcy Code section 364:

- i. Replacement Lien. Pursuant to Bankruptcy Code sections 361, 363(e), and 364, and except as to otherwise validly perfected and unavoidable liens existing as of the Petition Date, a replacement security interest and lien in the assets of the Debtor to the same extent and priority granted to the Prepetition Lender pursuant to the Prepetition Loan Documents (the “**Adequate Protection Replacement Lien**”). For the avoidance of doubt, nothing in this Interim Order shall encumber any causes of action available under Chapter 5 of the Bankruptcy Code.
- ii. Superpriority Claim. As and to the extent provided by Bankruptcy Code sections 503 and 507(b), an allowed superpriority administrative expense claim in the case and any successor bankruptcy case (the “**Adequate Protection Superpriority Claim**”). The Adequate Protection Superpriority Claim shall be subordinate to the Carve Out solely to the extent set forth in this Interim Order, but otherwise shall have priority over all administrative expense claims, including administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 503(b) and 507(b), and unsecured claims against the Debtor and its estate now existing or hereafter arising, of any kind or nature whatsoever.
- iii. Reporting Requirements. The Debtor shall provide the Prepetition Lender with the following (the “**Reporting Requirements**”):
  1. On or before the end of business on Wednesday of each calendar week commencing February 7, 2018, an updated Budget;
  2. On or before the end of business on Wednesday of each calendar week commencing February 7, 2018: (x) a weekly cash flow comparison that compares the Debtor’s actual receipts and expenses for the prior week to the Budget with respect to such week and (y) a compliance certificate in the form attached as **Exhibit 2** hereto, certified on behalf of the Debtor by an officer of the Debtor, relating to liquidity, cumulative disbursements, minimum collections, and other matters for the prior week; and
  3. Other periodic reports as the Prepetition Lender may request from time to time regarding efforts by the Debtor to improve

revenue cycle management processes and procedures, accounting and finance information systems, and other matters.

- iv. Books and Records. The Prepetition Lender shall have the right to inspect the Prepetition Collateral and the Debtor's books and records relating thereto.
- v. Cash Management. The Debtor shall maintain in its name the bank account at Silicon Valley Bank with an account number ending in 0461 (the "**Deposit Account**"). The Debtor shall use the Deposit Account as the Debtor's only operating account, including depositing all funds from collection of receivables into the Deposit Account. The Debtor shall not maintain any cash in any bank account other than the Deposit Account.

- b. In consideration, and as a requirement, for obtaining the consent of the Prepetition Lender to the entry of this interim Order and as further adequate protection for the Debtor's consensual use of Cash Collateral as provided herein, the Debtor shall pay or reimburse in cash the Prepetition Lender for reasonable and documented fees and any and all reasonable and documented out-of-pocket costs, expenses, and charges (including the reasonable and documented out-of-pocket and documented fees, costs, and expenses of counsel for the Prepetition Lender), on a regular monthly basis during this case, without further notice, motion, application, hearing or order of this Court. The Prepetition Lender shall provide copies of invoices (which may be redacted to preserve confidentiality, attorney-client privilege, and all other similar rules and privileges) to (i) counsel for the Debtor; (ii) the Office of the United States Trustee (the "**U.S. Trustee**"); and (iii) counsel to any Committee (as defined below, and together with (i) and (ii), the "**Notice Parties**"), for any such fees and

expenses sought under this paragraph. The Notice Parties shall have ten (10) days to object to the fees and expenses sought under this paragraph.

- c. As further adequate protection for any use or diminution in the value of the Prepetition Lender's interest in the Prepetition Collateral (including, without limitation, the Cash Collateral), the Debtor will comply with the Budget and shall not make any disbursements other than those set forth in the Budget, subject to the Permitted Variance. The Budget may be modified with the Prepetition Lender's prior written consent, without further order of the Court, or upon order of the Court as necessary. Each modified budget shall be filed with the Court.
- d. As further adequate protection of the Prepetition Secured Lender's interest, the Debtor will not grant a lien on any of its assets, except as may otherwise be agreed to in writing by the Prepetition Lender.
- e. The Prepetition Lender reserves the right to file with the Court a motion to seek additional adequate protection of its interest.

6. Credit Bid. In connection with the sale or other disposition, whether under Bankruptcy Code sections 363 or 1129 or otherwise, of all or any portion of the Prepetition Collateral in which the Prepetition Lender has an interest, pursuant to Bankruptcy Code section 363(k), the Prepetition Lender shall have the right to use the Prepetition Debt or any part thereof to credit bid with respect to any bulk or piecemeal sale of all or any portion of the Prepetition Collateral.

7. Carve Out.

- a. Notwithstanding anything to the contrary, the liens on the Prepetition Collateral will be subject to the right of payment of the following expenses (collectively, the “**Carve Out**”):
- i. all allowed administrative expenses pursuant to 28 U.S.C. § 156(c) for fees required to be paid to the Clerk of the Bankruptcy Court and pursuant to 28 U.S.C. § 1930(a)(6) for fees payable to the U.S. Trustee under section 1930(a) of title 28 of the United States Code, plus interest at the statutory rate;
  - ii. all reasonable fees and expenses up to \$5,000 incurred by a Trustee under Bankruptcy Code section 726(b); and
  - iii. subject to the terms and conditions of this Interim Order, (x) all allowed Professional Fees of attorneys, accountants and other professionals retained by the Debtor and any Committee, under Sections 327 or 1103(a) of the Bankruptcy Code (each a “**Professional**” and collectively the “**Professionals**”) incurred prior to a Termination Event in an aggregate amount not to exceed at any time the budgeted amounts, plus (y) all allowed Professional Fees of Professionals incurred after a Termination Event in the aggregate amount not to exceed at any time \$15,000.
- b. Carve Out Usage. No portion of the Carve Out and no Prepetition Collateral (or proceeds thereof) may be used to pay any fees or expenses incurred by any entity, including the Debtor, any Committee or the Professionals, in connection with claims or causes of action adverse to the Prepetition Lender’s interest in the Prepetition Collateral, including (1) preventing, hindering, or delaying the Prepetition Lender’s enforcement or realization upon any of the Prepetition Collateral once notice of a Termination Event has been received; (2) using or seeking to use Cash Collateral or incurring indebtedness in violation of the terms hereof, or

selling any Prepetition Collateral without the consent of the Prepetition Lender; or (3) objecting to or contesting in any manner, or in raising any defenses to, the validity, extent, amount, perfection, priority, or enforceability of the Prepetition Debt or any liens or security interests with respect thereto or any other rights or interest of the Prepetition Lender, or in asserting any claims or causes of action, including, without limitation, any actions under chapter 5 of the Bankruptcy Code, against the Prepetition Lender (any such claim, a “**Challenge**”); *provided, however*, that up to \$10,000 of the Carve Out may be used to pay fees and expenses incurred by the Committee Professionals in connection with the investigation of the Prepetition Debt and the liens on and security interests in the Prepetition Collateral and in connection with negotiation, preparation, and entry of this Order or any amendment hereto consented to by the Prepetition Lender.

- c. Each of the provisions in this Paragraph 7, to the extent it allows for the use of Cash Collateral to make payment to Professionals, shall expire upon the Termination Date, but the accrued and unpaid fees and amounts subject to the Carve Out shall be permitted to be paid from Cash Collateral to the extent approved by the Court and consistent with the Budget, and the Prepetition Lender reserves the right to object to any provisions related to the payment of administrative expenses that may be sought for any period after the Termination Date.

8. Proof of Claim. The Prepetition Lender will not be required to file proofs of claim or requests for approval of administrative expenses in this case. The acknowledgement by the Debtor of the Prepetition Debt and the liens, rights, priorities and protections granted to or in favor of the Prepetition Lender in respect of the Prepetition Collateral as set forth herein and in the Prepetition Loan Documents shall be deemed a timely filed proof of claim on behalf of the Prepetition Lender.

9. Relief from the Automatic Stay.

- a. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby modified to permit (i) the Debtor to implement and perform the terms of this Interim Order, and (ii) the Debtor to create, and the Prepetition Lender to perfect, the Adequate Protection Replacement Lien and any other liens granted hereunder. The Prepetition Lender shall not be required to file UCC financing statements or other instruments with any other filing authority to perfect the Adequate Protection Replacement Lien and any other liens granted by this Interim Order or to take any other actions to perfect such liens (including the Adequate Protection Replacement Lien), which shall be deemed automatically perfected by the docketing of the Interim Order by the Clerk of the Court, and deemed to be effective as of the Petition Date. If, however, the Prepetition Lender shall elect for any reason to file, record or serve any such financing statements or other documents with respect to such liens (including the Adequate Protection Replacement Lien), then the Debtor shall execute same upon request and the filing, recording or service thereof (as the case



may be) shall be deemed to have been made at the time of the commencement of this case on the Petition Date.

- b. In addition, and without limiting the foregoing, upon the occurrence of the Termination Date or a Termination Event, and after receiving a Termination Notice, the Debtor may seek relief from the Court during the period of five (5) business days after receiving the Termination Notice for the sole purpose of determining whether a termination Event has occurred and is continuing.
- c. The automatic stay provisions of section 362 of the Bankruptcy Code and any other restriction imposed by an order of the Court or applicable law are hereby modified without further notice, application or order of the Court to the extent necessary to permit the Prepetition Lender to perform any act authorized or permitted under or by virtue of this Interim Order and the Prepetition Loan Documents, as applicable, including, without limitation, (i) to implement the arrangements authorized by this Interim Order, (ii) to take any act to create, validate, evidence, attach or perfect any lien, security interest, right or claim in the Collateral, (iii) to assess, charge, collect, advance, deduct and receive payments with respect to the Prepetition Loan Documents, including, without limitation, all interests, fees, costs and expenses permitted under the Prepetition Loan Documents and apply such payments to the Obligations, and (iv) following the five (5) day period referenced in paragraph 9(b), to take any action and exercise all rights and remedies provided to it by this Interim Order, the Prepetition

Loan Documents or applicable law that the Prepetition Lender may deem appropriate in its discretion to proceed against and realize upon the Collateral or any other assets or properties of Debtor's estate upon which the Prepetition Lender, has been or may hereafter be granted liens or security interests to obtain the full and indefeasible repayment of all Obligations.

10. Reversal, Modification, Vacatur, or Stay. Any reversal, modification, vacatur, or stay of any or all of the provisions of this Interim Order (other than in accordance with the Final Order) shall not affect the validity or enforceability of the Adequate Protection Replacement Lien, the Adequate Protection Superpriority Claim or any claim, lien, security interest, or priority authorized or created hereby with respect to the Adequate Protection Replacement Lien or the Adequate Protection Superpriority Claim, incurred prior to the effective date of such reversal, modification, vacatur or stay. Notwithstanding any reversal, modification, vacatur, or stay (other than in accordance with the Final Order), (a) this Interim Order shall govern, in all respects, any use of Cash Collateral or Adequate Protection Replacement Lien or Adequate Protection Superpriority Claim incurred by the Debtor prior to the effective date of such reversal, modification, vacatur, or stay, and (b) the Prepetition Lender shall be entitled to all the benefits and protections granted by this Interim Order with respect to any such use of Cash Collateral or such Adequate Protection Replacement Lien or Adequate Protection Superpriority Claim incurred by the Debtor.

11. No Waiver for Failure to Seek Relief. The failure or delay of the Prepetition Lender to seek relief or otherwise exercise any of its rights and remedies under this Interim

Order, the Prepetition Loan Documents, or applicable law, as the case may be, shall not constitute a waiver of any rights hereunder, thereunder, or otherwise, by the Prepetition Lender.

12. Marshalling. In no event shall the Prepetition Lender be subject to the equitable doctrine of “marshalling” or any similar doctrine with respect to the Collateral. Subject to the entry of a Final Order granting such relief, the Prepetition Lender shall be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the “equities of the case” exception under section 552(b) of the Bankruptcy Code shall not apply to the Prepetition Lender with respect to proceeds, products, offspring or profits of any of the Collateral, as applicable.

13. Binding Effect. This Interim Order is binding on all parties in interest in the case and their respective successors and assigns, including, without limitation, any subsequently appointed chapter 11 or chapter 7 trustee of the Debtor (“**Trustee**”), except that (i) any Trustee will have the right to terminate this Interim Order after notice and a hearing, subject to the terms and conditions of this Interim Order and (ii) a party in interest (other than the Debtor, but including the Committee and a Trustee, if any) may commence a Challenge (x) no later than 60 days after formation of the Committee or (y) in the case of any other party in interest other than the Committee, no later than 75 days after the entry of this Interim Order ((x) and (y) together, the “**Challenge Period**”) and, in either (x) or (y), this Court rules in favor of the Challenge. If a Trustee is appointed prior to the expiration of the Challenge Period, the Trustee may move for an extension of the Challenge Period, but the Prepetition Lender and all other parties in interest reserve the right to object to such requested extension. If this Interim Order does not become a final nonappealable order, if a Trustee terminates this Interim Order, or if any of the provisions of this Interim Order are hereafter modified, amended, vacated, or stayed by any subsequent order of this Court or any other court, such termination or subsequent order shall not affect the

priority, validity, enforceability, or effectiveness of any lien, security interest, or other benefit or claim authorized hereby with respect to Cash Collateral used prior to the effective date of such termination or subsequent order. All such liens, security interests, claims, and other benefits will be governed in all respects by the original provisions of this Interim Order.

14. Validity of Adequate Protection Replacement Lien. This Interim Order shall be sufficient and conclusive evidence of the validity, enforceability, and perfection, of the Adequate Protection Replacement Lien without the necessity of (a) filing or recording any financing statement, deed of trust, mortgage, or other instrument or document that may otherwise be required under the law of any jurisdiction, (b) obtaining “control” (as defined in any applicable Uniform Commercial Code or other law) over any applicable collateral or (c) taking any other action to validate or perfect the Adequate Protection Liens.

15. Section 506(c) Claims. Subject to entry of the Final Order granting such relief, no costs or expenses of administration which have been or may be incurred in the case shall be charged against the Prepetition Lender, its claims or the Collateral pursuant to section 506(c) of the Bankruptcy Code without the prior written consent of the Prepetition Lender, and no such consent shall be implied from any other action, inaction or acquiescence by the Prepetition Lender.

16. Releases. Upon the earlier of (a) the entry of the Final Order, or (b) the entry of an order extending the Debtor’s use of the Cash Collateral, in consideration of the Prepetition Lender permitting the Debtor to use the Pre-Petition Collateral (including Cash Collateral) pursuant to the provisions of this Interim Order, the Debtor, on behalf of itself and its successors and assigns (collectively, the “**Releasers**”), shall forever release, discharge and acquit the Prepetition Lender and its successors and assigns, and present and former shareholders, affiliates,

subsidiaries, divisions, predecessors, directors, officers, attorneys, employees and other representatives in their respective capacities as such (collectively, the “**Pre-Petition Releasees**”), of and from any and all claims, demands, liabilities, responsibilities, disputes, remedies, causes of action, indebtedness and obligations, of every kind, nature and description, including, without limitation, any so-called “lender liability” claims or defenses, that Releasers had, have or hereafter can or may have against Pre-Petition Releasees as of the date hereof, in respect of events that occurred on or prior to the date hereof in connection with the Debtor, the Prepetition Loan Documents or the Obligations.

17. Discharge Waiver. Subject to the entry of the Final Order, the Debtor expressly stipulates, and the Court finds and adjudicates that, neither the Adequate Protection Replacement Lien or the Adequate Protection Superpriority Claim shall be discharged by the entry of an order confirming any plan of reorganization, notwithstanding section 1142(d) of the Bankruptcy Code, unless (i) the order is entered with the prior written consent of the Prepetition Lender or (ii) the Adequate Protection Superpriority Claim has been paid in full in cash on or before the effective date of such plan.

18. Other Actions. The Debtor is hereby authorized and empowered to take such actions as may be necessary and appropriate to implement the terms of this Interim Order.

19. Final Hearing. The hearing to consider entry of an order granting the relief requested in the Motion on a final basis shall be held on \_\_\_\_\_, **2018 at \_\_:00 .m. (ET)** (the “**Final Hearing Date**”); and any objections to entry of such order shall be in writing, filed with this Court, and served upon (i) counsel to the Debtor, (ii) the Prepetition Lender, (iii) the U.S. Trustee, and (iv) counsel for any statutory committee appointed in these Chapter 11

Cases, in each case so as to be received no later than **4:00 p.m. (ET) on \_\_\_\_\_, 2018.**

20. Notice. The Debtor shall promptly serve a notice of the entry of this Interim Order, by regular mail upon (i) the U.S. Trustee, (ii) the creditors holding the 30 largest unsecured claims against the Debtor, (iii) counsel to the Prepetition Lender, and (iv) any other party which has filed a request with this Court for notice in the Debtor's case and served such request upon the Debtor's counsel.

21. Immediate Effectiveness. This Interim Order shall constitute findings of fact and conclusions of law and shall take effect immediately upon entry hereof, and there shall be no stay of effectiveness of this Interim Order.

22. Retention of Jurisdiction. The Court shall retain jurisdiction over any matters arising from or relating to the implementation and interpretation of this interim Order.

Dated: \_\_\_\_\_, 2018  
Wilmington, Delaware

\_\_\_\_\_  
THE HONORABLE \_\_\_\_\_  
UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

Budget

Ensequence Cash Collateral Budget														13-week
Week Ended	1 2-Feb	2 9-Feb	3 16-Feb	4 23-Feb	5 2-Mar	6 9-Mar	7 16-Mar	8 23-Mar	9 30-Mar	10 6-Apr	11 13-Apr	12 20-Apr	13 27-Apr	TOTAL
<b>Opening Cash Balance</b>	\$ 667,034	\$ 548,864	\$ 507,551	\$ 512,051	\$ 441,748	\$ 412,663	\$ 379,895	\$ 138,895	\$ 92,058	\$ 97,308	\$ 226,354	\$ 230,854	\$ 95,620	\$ 667,034
<b>Anticipated DIP Funding*</b>	-	-	-	-	-	-	-	50,000	30,000	-	-	160,000	10,000	250,000
<b>Receipts</b>														
Comcast (Watermarking/Discovery)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Comcast (Watermarking/Fox)	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Comcast (Watermarking/Scripps)	-	-	-	-	-	-	-	-	-	210,000	-	-	-	210,000
Viacom (Frontier)	-	4,500	-	-	4,500	-	-	-	4,500	-	-	-	-	13,500
Viacom (Verizon)	-	-	4,500	-	-	-	4,500	-	-	-	4,500	-	-	13,500
Showtime	15,000	-	-	-	15,000	-	-	-	15,000	-	-	-	-	45,000
HBO	16,750	-	-	-	16,750	-	-	-	16,750	-	-	-	-	50,250
Sony/Pixelworks	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Non-operating receipts	-	-	-	4,166	-	-	-	4,166	-	-	-	4,166	-	12,498
<b>Total Receipts</b>	31,750	4,500	4,500	4,166	36,250	-	4,500	4,166	36,250	210,000	4,500	4,166	-	344,748
<b>Disbursements</b>														
Payroll	-	36,827	-	36,827	-	31,742	-	31,742	-	26,782	-	26,782	-	190,703
Payroll Benefits	14,720	-	-	14,042	-	-	-	14,042	-	-	-	14,042	-	56,847
Employee T&E	-	600	-	600	2,000	600	-	600	2,000	600	-	525	-	7,525
Rent - NYC	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Rent - Portland	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Insurance	-	-	-	-	-	-	-	54,619	50,000	-	-	-	-	104,619
Taxes	-	-	-	7,000	-	-	-	-	7,000	-	-	-	7,000	21,000
Consulting	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Legal & Accounting	-	425	-	-	1,000	425	-	-	-	1,425	-	12,850	-	16,125
Corporate	10,000	-	-	-	10,000	-	-	-	-	10,000	-	-	-	30,000
General Payables	-	7,960	-	-	15,335	-	-	-	-	6,960	-	-	-	30,255
<b>Total Disbursements</b>	24,720	45,812	-	58,470	28,335	32,767	-	101,004	59,000	45,767	-	54,199	7,000	457,075
<b>Total Operating Cash</b>	7,030	(41,312)	4,500	(54,304)	7,915	(32,767)	4,500	(96,838)	(22,750)	164,233	4,500	(50,033)	(7,000)	(112,327)
<b>Restructuring Expenses</b>														
Debtor	122,200	-	-	-	35,000	-	108,000	-	-	35,000	-	107,700	-	407,900
Lender	-	-	-	-	-	-	137,500	-	-	-	-	137,500	-	275,000
UCC	-	-	-	-	-	-	-	-	-	-	-	-	-	-
Chapter 11 Fees	3,000	-	-	-	2,000	-	-	-	2,000	-	-	-	2,000	9,000
DIP Interest & Fees	-	-	-	16,000	-	-	-	-	-	187	-	-	-	16,187
<b>Total Restructuring Fees</b>	125,200	-	-	16,000	37,000	-	245,500	-	2,000	35,187	-	245,200	2,000	708,087
<b>TOTAL CASH FLOW</b>	(118,170)	(41,312)	4,500	(70,304)	(29,085)	(32,767)	(241,000)	(96,838)	(24,750)	129,046	4,500	(295,233)	(9,000)	(820,413)
<b>Beginning Cash Balance</b>	\$ 667,034	\$ 548,864	\$ 507,551	\$ 512,051	\$ 441,748	\$ 412,663	\$ 379,895	\$ 138,895	\$ 92,058	\$ 97,308	\$ 226,354	\$ 230,854	\$ 95,620	\$ 667,034
<b>Cash Flow</b>	(118,170)	(41,312)	4,500	(70,304)	(29,085)	(32,767)	(241,000)	(96,838)	(24,750)	129,046	4,500	(295,233)	(9,000)	(820,413)
<b>Financing</b>	-	-	-	-	-	-	-	50,000	30,000	-	-	160,000	10,000	250,000
<b>Ending Cash Balance</b>	\$ 548,864	\$ 507,551	\$ 512,051	\$ 441,748	\$ 412,663	\$ 379,895	\$ 138,895	\$ 92,058	\$ 97,308	\$ 226,354	\$ 230,854	\$ 95,620	\$ 96,620	\$ 96,620

\* Subject to negotiation with DIP Lender and Bankruptcy Court approval.  
Budget assumes DIP facility repayment during forecast period with sale of Company assets.



**Exhibit 2**

Form of Compliance Certificate

COMPLIANCE CERTIFICATE  
Ensequence, Inc.

Date: \_\_\_\_\_, 2018

This Compliance Certificate (this "Certificate") is given by Ensequence, Inc., a Delaware corporation ("Ensequence"), pursuant to that certain [interim / final] order authorizing Ensequence's use of cash collateral, entered by the United States Bankruptcy Court for the District of Delaware on \_\_\_\_\_, 2018 in Ensequence's bankruptcy case (Case No. 18-\_\_\_\_\_) (the "Cash Collateral Order"). Capitalized terms used but not defined herein shall have the meanings set forth in the Cash Collateral Order.

The officer executing this Certificate on behalf of Ensequence is duly authorized to execute and deliver this Certificate on behalf of Ensequence. By executing this Certificate, such officer hereby certifies to the Prepetition Lender, on behalf of Ensequence, that:

(a) Delivered with this Certificate in accordance with the Cash Collateral Order, Ensequence has provided the Prepetition Lender with a weekly cash flow comparison (the "Weekly Cash Flow Comparison") that compares Ensequence's actual receipts and expenses for the week ending \_\_\_\_\_, 2018 (the "Subject Date") to the Budget with respect to such week, which comparison is correct and complete and fairly presents, in all material respects and in accordance with GAAP, the financial position and the results of operations of Ensequence as of the dates of and for the periods covered by such comparison;

(b) Ensequence's aggregate liquidity as of the Subject Date was \$\_\_\_\_\_, and a correct and complete report supporting the calculation of this aggregate liquidity amount is attached to this Certificate;

(c) Ensequence's aggregate liquidity has not been less than \$300,000 for more than 5 consecutive business days at any time since entry of the Cash Collateral Order;

(d) Ensequence's aggregate cumulative disbursements for the one-week period ending on the Subject Date totaled \$\_\_\_\_\_, and a correct and complete report supporting the calculation of this aggregate cumulative disbursements amount is attached to this Certificate;

(e) Ensequence's cumulative disbursements set forth in the Weekly Cash Flow Comparison for the one-week period ending on the Subject Date do not exceeded the Permitted Variance;

(f) Ensequence's aggregate cumulative collections for the one-week period ending on the Subject Date was \$\_\_\_\_\_, and a correct and complete report supporting the calculation of this aggregate cumulative collections amount is attached to this Certificate; and

(g) Ensequence's aggregate cumulative collections set forth in the Weekly Cash Flow Comparison for the one-week period ending on the Subject Date are not less than the Permitted Variance.

IN WITNESS WHEREOF, the Ensequence has caused this Certificate to be executed by one of its duly authorized officers this \_\_\_\_ day of \_\_\_\_\_, 2018.

**ENSEQUENCE, INC.**

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