

IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

In re:	)	
	)	Chapter 11
	)	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90901 (MI)
	)	
Debtors.	)	(Joint Administration Requested)
	)	(Emergency Hearing Requested)

**DEBTORS’ EMERGENCY MOTION FOR ENTRY  
OF INTERIM AND FINAL ORDERS (I) AUTHORIZING  
THE DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF  
(A) CRITICAL VENDORS, (B) LIEN CLAIMANTS, (C) FOREIGN VENDORS, AND  
(D) 503(B)(9) CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF**

**Emergency relief has been requested. Relief is requested not later than 3:30 p.m. (prevailing Central Time) on November 9, 2023.**

**If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.**

**A hearing will be conducted on this matter on November 9, 2023 at 3:30 p.m. (prevailing Central Time) in Courtroom 404, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.**

**Audio communication will be by use of the Court’s dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Isgur’s conference room number is 954554. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Isgur’s home page. The meeting code is “JudgeIsgur.” Click the settings icon in the upper right corner and enter your name under the personal information setting.**

**Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Isgur’s home page. Select the case name, complete the required fields and click “submit” to complete your appearance.**

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors’ chapter 11 cases are not proposed to be consolidated with Party City Holdco Inc. and its affiliate debtors (collectively, “Party City”) which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.



The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion:

**Relief Requested**

1. The Debtors seek entry of interim and final orders substantially in the forms attached hereto as **Exhibit A** (the “Interim Order”) and **Exhibit B** (the “Final Order”), respectively, (a) authorizing, but not directing, the Debtors to pay, in the ordinary course of business, certain prepetition claims held by (i) certain essential vendors and service providers (each, a “Critical Vendor”), (ii) Lien Claimants (as defined below), (iii) certain foreign claimants (the “Foreign Claimants”), and (iv) vendors whose claims may be entitled to priority under section 503(b)(9) of title 11 of the United States Code, 11 U.S.C. §§ 101 *et seq.* (the “Bankruptcy Code”) (each, a “503(b)(9) Claimant” and, collectively with the Critical Vendors, the Lien Claimants and the Foreign Claimants, the “Trade Claimants” and, the claims of such Trade Claimants, the “Trade Claims”); (b) confirming the administrative expense priority status of Outstanding Orders (as defined herein); and (c) granting related relief.

2. In addition, the Debtors request that the Court (as defined herein) schedule a final hearing to consider approval of this motion on a final basis.

**Jurisdiction and Venue**

3. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of Texas*, dated May 24, 2012 (the “Amended Standing Order”). This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order by the Court.

4. Venue is proper pursuant to 28 U.S.C. § 1408.

5. The statutory bases for the relief requested herein are sections 105(a), 363, 503(b), 507, 1107(a), and 1129 of the Bankruptcy Code, rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 1075-1 and 9013-1 of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

### **Background**

6. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their property as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. The Debtors have filed a motion requesting procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b) substantially contemporaneously herewith. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases, and no committees have been appointed or designated.

7. A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Adrian Frankum in Support of Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed substantially contemporaneously herewith and incorporated herein by reference.<sup>2</sup>

### **Trade Claims Overview**

8. As described in the First Day Declaration, the Debtors are world innovators and leaders in foil balloons and inflated décor, selling their products in over 40 countries worldwide. During the ordinary course of their business, the Debtors incur numerous fixed, liquidated and

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<sup>2</sup> Capitalized terms used but not defined in this motion have the meanings ascribed to them in the First Day Declaration.

undisputed payment obligations to the Trade Claimants. The Trade Claimants provide the Debtors with goods and services essential to the smooth operation of the Debtors' businesses, including, among other things: products essential to the manufacture of the Debtors' products, parts and equipment used in the Debtors' manufacturing process, hand assembly work, shipping and warehousing services, logistics, quality control and product safety testing services, leases of equipment, and maintenance and repair services, among others.

9. Based on the essential nature of the goods and services provided by Trade Claimants, the Debtors therefore request authorization to pay certain outstanding prepetition Trade Claims, subject to the limitations set forth in the Interim Order and the Final Order. The Debtors intend to apply their business judgment and discretion on a case-by-case basis and pay only Trade Claims of Trade Claimants that are critical to maintaining the smooth operation of the Debtors' business and provide the Debtors with favorable postpetition terms. The following table summarizes the types of claimants that the Debtors request authority to pay pursuant to this motion.

<b>Category</b>	<b>Description of Claims</b>	<b>Estimated Amount to Be Paid Prior to Entry of Final Order</b>	<b>Total Estimated Amount<sup>3</sup></b>
Critical Vendors	Suppliers of specialized goods and services that are critical to maintain the Debtors' day-to-day operations, or which are sole or limited-source providers of the goods and services necessary for the uninterrupted operations of the Debtors' businesses	\$2,500,000	\$3,100,000
Foreign Claimants	Suppliers of essential goods or services that are based outside of the United States	\$1,400,000	\$1,400,000
Lien Claimants	Suppliers of goods and services that may assert mechanic's, possessory, or other similar liens	\$200,000	\$200,000
503(b)(9) Claimants	Suppliers that provided goods to the Debtors that were received within twenty days before the Petition Date (to the extent not included above) <sup>4</sup>	\$1,600,000	\$1,600,000

<sup>3</sup> The amounts listed in this column include amounts to be approved under the Interim Order.

<sup>4</sup> The total amount of 503(b)(9) Claims that the Debtors seek authority to pay herein (including Critical Vendor Claims, Foreign Claims and Lien Claims) is approximately \$4,200,000.

Category	Description of Claims	Estimated Amount to Be Paid Prior to Entry of Final Order	Total Estimated Amount <sup>3</sup>
<b>Total Trade Claims:</b>		\$5,700,000	\$6,300,000

### **I. The Critical Vendors**

10. The Debtors' core business is selling foil balloons and inflated décor in over 40 countries worldwide. The viability of the Debtors' businesses depends on their uninterrupted access to critical goods and services provided by their network of Trade Claimants and the Debtors' timely delivery of products to their customers around the world. The Debtors also rely on timely delivery from their Critical Vendors to meet their obligations to customers. If the Debtors are unable to pay the Critical Vendors in a timely manner, such Critical Vendors may refuse to continue doing business with the Debtors on prepetition terms. In certain instances, alternative vendors may not be available to the Debtors and, in any event, the production delays and concomitant business disruptions associated with finding alternative vendors would detrimentally affect the Debtors' financial performance, irreparably harm the Debtors' businesses, and threaten the Debtors' ability to successfully implement and execute a value-maximizing sale transaction. Authorization to pay the Critical Vendors in the ordinary course of business, or pursuant to any other extensions or arrangements made with the applicable Critical Vendors, is therefore necessary to minimize disruption to the Debtors' operations for the benefit of all parties in interest.

11. In light of these concerns, the Debtors have identified Critical Vendors that supply products and services that are vital to the Debtors' go-forward operations. These products and services generally fall into the following categories (collectively, the "Critical Vendor Products and Services"): (a) suppliers of manufacturing materials and supplies, (b) co-packing and packaging supplies, and (c) outsourced manufacturing. Specifically, certain of the Critical Vendors

supply materials that are essential to the Debtors' ongoing sales, from which the Debtors realize their revenue. Under these circumstances, any delay or interruption in the Debtors' ability to place orders and pay their Critical Vendors may have a ripple effect on the Debtors' liquidity.

12. Most of the Critical Vendor Products and Services are available from only a limited number of vendors. Other Critical Vendor Products and Services are provided by a sole-source vendor such that no commercially reasonable alternative sources are available. For example, the process of qualifying film and ink suppliers for balloon manufacturing typically take months to complete. Similarly, the Debtors use a specific resin from a particular supplier which would also take months to qualify for production if replaced. Further, not only do the Debtors rely heavily on the Critical Vendors to deliver current orders, but they also rely on their relationships with such Critical Vendors for future supply. In other words, more than the current orders would be at risk if these Critical Vendors are not paid—the Debtors could lose or damage entire vendor relationships essential to their businesses. Given that the Debtors rely on products and inputs that are exceedingly difficult to source, in some cases there may be no true replacement available if a relationship with a Critical Vendor falters. Even where potential alternative vendors may exist, the time and costs associated with switching from one vendor to another would likely be significant and detrimental to the Debtors' estates given the extensive planning that goes into creating comprehensive and innovative balloon offerings. Accordingly, any interruption in the provision of such Critical Vendor Products and Services could jeopardize the Debtors' sales and overall success.

13. Moreover, the Debtors believe that jeopardizing their relationships with the Critical Vendors and attempting to procure the Critical Vendor Products and Services from replacement vendors, if possible, would impose a severe strain on their business operations and would likely

result in significant revenue loss. Even a temporary interruption of the provision of Critical Vendor Products and Services could result in a lack of the Debtors' goods, leading to the Debtors not being able to fulfill customer orders (which, in turn, would negatively affect the customer's shelves and kickstart a negative cycle that could seriously damage or eliminate the Debtors' relationships with their customers). The cumulative impact of such events could have a significant adverse effect on the Debtors' operations and, particularly, on the ability of the Debtors to maintain business-as-usual.

## **II. The Critical Vendor Analysis**

14. With the assistance of their advisors, the Debtors have spent significant time reviewing and analyzing their books and records, consulting operations managers and purchasing personnel, reviewing contracts and supply agreements, and analyzing historical practice to identify certain critical business relationships and suppliers of goods and services—the loss of which would immediately and irreparably harm their businesses, by, among other things, shrinking their market share, reducing enterprise value, and ultimately impairing the Debtors' viability as a going-concern. In this process, the Debtors considered a variety of factors, including:

- whether certain specifications or contract requirements prevent, directly or indirectly, the Debtors from obtaining goods or services from alternate sources;
- whether a vendor is a sole-source, limited-source, or high-volume supplier of goods or services critical to the Debtors' business operations;
- whether an agreement exists by which the Debtors could compel a vendor to continue performing on prepetition terms;
- whether alternate vendors are available that can provide requisite volumes of similar goods or services on equal (or better) terms and, if so, whether the Debtors would be able to continue operating while transitioning business thereto;

- the degree to which replacement costs (including pricing, transition expenses, professional fees, and lost sales or future revenue) exceed the amount of a vendor's prepetition claim;
- whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor;
- the likelihood that a temporary interruption in the vendor's relationship with the Debtors could be remedied through use of the tools available in these chapter 11 cases;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to hold goods owned by the Debtors, or refuse to ship goods or to provide critical services on a postpetition basis; and
- whether failure to pay a particular vendor could result in contraction of trade terms as a matter of applicable non-bankruptcy law or regulation.

15. As of the Petition Date, the Debtors believe they owe the Critical Vendors approximately \$3,100,000, approximately \$2,500,000 of which is due or will become due prior to the entry of the Final Order. Accordingly, the Debtors request authorization, but not direction, to pay all outstanding prepetition claims of the Critical Vendors (the "Critical Vendor Claims"), but only as such amounts come due in the ordinary course of business or as may be necessary to secure a Critical Vendor's agreement to continue business with the Debtors on Customary Trade Terms (as defined herein).

16. The interruption of the Debtors' business with, or the absence of, the Critical Vendors would reduce the efficiency and the value proposition of the Debtors' operations. Any material interruption in the provision of the Critical Vendor Products and Services, however brief, would disrupt the Debtors' operations and could cause irreparable harm to the Debtors' go-forward businesses, goodwill, employees, customer base, and market share. Such harm would likely far

outweigh the cost of payment of the Critical Vendor Claims.<sup>5</sup> Accordingly, to maintain stability during this critical stage of these chapter 11 cases and to avoid jeopardizing the Debtors' sales process and business operations going forward, the Debtors request authority to pay the Critical Vendors as described herein.

### **III. Foreign Claimants**

17. A critical component of the Debtors' businesses involves transacting with certain Foreign Claimants who provide foil balloons, plastic overpack bags and quality testing services to the Debtors. The Foreign Claimants supply goods and services to the Debtors that are crucial for the continuation of their businesses in the ordinary course during these chapter 11 cases. Due to the broad international reach of the Debtors' businesses, it is often logistically impracticable and/or cost prohibitive for the Debtors to purchase goods and services from a U.S.-based vendor rather than Foreign Claimants. Moreover, many of the Debtors' Foreign Claimants are irreplaceable either due to the specialized and customized nature of their products and services specific to the Debtors' operations or because the favorable pricing arrangements with the applicable Foreign Claimant would be impossible to replicate. For example, one of the Foreign Claimants provides balloons which are custom-made to the Debtors' specifications. Failure to pay prepetition claims held by certain Foreign Claimants and accrued in the ordinary course of business (the "Foreign Claims") could cause such Foreign Claimants to refuse to provide the goods and services necessary for the Debtors to continue business operations.

18. Many of the Foreign Claimants lack meaningful, if any, contacts with the United States. Thus, the Foreign Claimants may consider themselves beyond the jurisdiction of the Court

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<sup>5</sup> Notwithstanding the relief requested herein, the Debtors reserve all of their rights and remedies under the Bankruptcy Code and other applicable law to pursue any cause of action against any Critical Vendor on account of, among other things, any violation of the automatic stay pursuant to section 362(a)(6) of the Bankruptcy Code.

and, therefore, may disregard the automatic stay, notwithstanding the automatic stay's global effect. Lawsuits in non-U.S. courts and efforts to exercise other remedies in non-U.S. jurisdictions, including the assertion of liens by the Foreign Claimants, could result from a failure to make payment to such parties in the ordinary course, including on account of prepetition claims. It would be unduly time-consuming and burdensome for the Debtors to seek to enforce an order of the court in the creditor's home country in many instances, thereby compounding the loss and disruption in services.

19. The Debtors estimate that, as of the Petition Date, approximately \$1,400,000 is outstanding on account of Foreign Claims, all of which is due or will become due prior to the entry of the Final Order. To maintain access to the critical goods and services provided by the Foreign Claimants, the Debtors request authority to pay the prepetition Foreign Claims as they become due and payable in the ordinary course of business. For the avoidance of doubt, the Debtors intend to pay prepetition Foreign Claims only where they believe, in their business judgment, that the benefits to their estates from making such payments will exceed the costs.

#### **IV. Lien Claimants**

20. The Debtors routinely transact with third-parties that may be able to assert a variety of statutory, common law, or possessory liens against the Debtors and their property if the Debtors fail to pay for certain goods delivered or services rendered (the "Third- Party Contractors"). These Third-Party Contractors provide key goods and services for the Debtors in the maintenance and operation of their businesses, including (a) installation, repair, renovation or construction of the Debtors' facilities and property and equipment therein and (b) equipment leases. Non-payment of the Third-Party Contractors could lead to shortages of skilled labor, labor disputes, work stoppages, and disputes with contractors or subcontractors. Any of these contingencies would

affect the Debtors' anticipated costs, timeline for merchandise production, and ability to operate their businesses.

21. Further, the Debtors transact with various suppliers to supply merchandise and raw materials, and then ship such goods to manufacturing and distribution facilities operated by the Debtors. The Debtors operate their own warehouses and distribution centers. The supply chain depends on services provided by, among others, various freight forwarders, common carriers, and custom brokers (collectively, the "Shippers and Warehousemen" and, together with the Third-Party Contractors and any other provider of goods or services who may be able to assert a lien on the Debtors' assets, the "Lien Claimants").

22. Certain suppliers ship merchandise and other goods to the Debtors. The Debtors remit fees<sup>6</sup> to and rely on transportation vendors to maintain their efficient supply chain, including parcel shippers, long and short distance freight carriers, and freight pooling carriers. These transportation vendors are integral to the Debtors' operations and, without them, the Debtors would be entirely unable to procure their products and stock their warehouse. No matter the method of transportation, vendors transporting the goods may refuse (and have in the past refused) to release merchandise or other goods for shipment if they are not paid current.

23. Under certain non-bankruptcy laws, such Lien Claimants may be able to assert liens on the goods in their possession to secure payment of the charges or expenses incurred in connection with these prepetition obligations (collectively, "Lien Claims"). Accordingly, in the event these claims remain unpaid, the Lien Claimants could attempt to assert such possessory liens and refuse to deliver or release goods in their possession until their claims are satisfied and their

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<sup>6</sup> The Debtors remit any charges, customs duties, tariffs, excise taxes and freight forwarding and servicing costs directly to the applicable Shippers and Warehousemen and do not pay such amounts directly to any governmental entity.

liens redeemed. The Lien Claimants' possession (and retention) of the Debtors' goods and supplies would disrupt the Debtors' operations and affect the Debtors' ability to efficiently administer these chapter 11 cases. The cost of such disruption to the Debtors' estates in many cases would likely be greater than the applicable Lien Claims. Further, pursuant to section 363(e) of the Bankruptcy Code, the Lien Claimants may be entitled to adequate protection of any valid possessory lien, which would drain estate assets.

24. Thus, to maintain access to manufacturing inputs that are essential to the continued viability of the Debtors' operations, the Debtors seek authority to pay outstanding amounts owed to Lien Claimants. As of the Petition Date, the Debtors estimate that they owe an aggregate amount of approximately \$200,000 on account of Lien Claims, all of which will come due prior to the entry of the Final Order. To maintain access to the critical goods and services provided by the Lien Claimants, the Debtors request authority to pay the prepetition Lien Claims as they become due and payable in the ordinary course of business. For the avoidance of doubt, the Debtors seek authority to pay only those amounts that they determine, in their sole discretion, are necessary or appropriate to (a) obtain release of critical or valuable goods, (b) maintain a reliable, efficient, and smooth distribution system, and (c) induce the Lien Claimants to continue performing and otherwise supporting the Debtors' operations on a postpetition basis.

**V. 503(b)(9) Claimants.**

25. The Debtors may have received certain goods, and/or materials from various vendors within the twenty-day period immediately preceding the Petition Date, thereby giving rise to claims, some of which relate to Critical Vendors, that are accorded administrative priority under section 503(b)(9) of the Bankruptcy Code (the "503(b)(9) Claims"). Many of the Debtors' relationships with the 503(b)(9) Claimants are not governed by long-term contracts. Rather, the Debtors obtain goods, and other materials from such claimants on an order-by-order basis. As a

result, a 503(b)(9) Claimant may refuse to supply new orders without payment of its 503(b)(9) Claims. Such refusal could negatively affect the Debtors' estates as the Debtors' businesses are dependent on the steady flow of raw materials to manufacture the balloons that the Debtors ultimately sell to their customers worldwide.

26. Certain of the 503(b)(9) Claimants are Critical Vendors, Foreign Claimants or Lien Claimants or otherwise may supply goods or materials to the Debtors that are crucial to the Debtors' ongoing operations. Even though the manufacture and supply of certain manufacturing inputs and goods may be completed, the 503(b)(9) Claimants may refuse to ship postpetition unless the Debtors pay some or all of the claims owing to such vendors. Any interruption in the flow of these goods and materials would be highly disruptive to the Debtors' operations and would be value-destructive for the Debtors' businesses. In light of these consequences, the Debtors concluded that payment of the 503(b)(9) Claimants is essential to avoid disruptions to the Debtors' operations.

27. The estimated amounts owing to the 503(b)(9) Claimants pale in comparison to the potential damage to the Debtors' businesses if the Debtors' operations were to experience significant disruption. The Debtors believe that as of the Petition Date, they owe approximately \$1,600,000 on account of goods and materials delivered within the twenty days immediately preceding the Petition Date, excluding Critical Vendor Claims, Foreign Claims and Lien Claims, the value of which may be entitled to administrative priority under section 503(b)(9) of the Bankruptcy Code.

#### **VI. Customary Trade Terms Condition**

28. Subject to the Court's approval, the Debtors intend to pay the Trade Claims only to the extent necessary to preserve the value of their estates. To that end, in return for paying the Trade Claims either in full or in part, the Debtors propose that they be authorized, but not directed,

to require the Trade Claimants to provide favorable trade terms for the postpetition procurement of their goods and services. Specifically, the Debtors seek authorization, but not direction, to condition payment of Trade Claims upon each Trade Claimant's agreement to (a) continue or recommence providing goods and/or services to the Debtors in accordance with trade terms (including credit limits, pricing, timing of payments, availability, and other terms) at least as favorable to the Debtors as those in place during the twelve months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment (the "Customary Trade Terms") and (b) agree that they shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide such goods and/or services to the Debtors during the course of these chapter 11 cases. The Debtors also seek authorization, but not direction, to require certain Trade Claimants to enter into a contractual agreement evidencing such Customary Trade Terms, the form of which is attached to each of the Interim Order and the Final Order as Exhibit I (the "Trade Agreement"). The Debtors reserve the right to require, at their discretion, that the Customary Trade Terms conditions to payment be made in writing, either by use of the Trade Agreement or e-mail.

29. In addition, the Debtors request that if any party accepts payment pursuant to the relief requested by this motion and thereafter ceases to provide goods and services in accordance with the Customary Trade Terms: (a) the Debtors may take any and all appropriate steps to recover from such Trade Claimant any payments made to it on account of its prepetition claim to the extent that such payments exceed the postpetition amounts then owing to such party; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment on account thereof had not been made; and (c) if any outstanding postpetition balance is due from the Debtors to such party, (i) the Debtors may elect to recharacterize and apply any payment made pursuant to

the relief requested by this motion to such outstanding postpetition balance and (ii) such party will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

## **VII. Outstanding Orders**

30. Before the Petition Date and in the ordinary course of business, the Debtors may have ordered goods that will not be delivered until after the Petition Date (collectively, the “Outstanding Orders”). To avoid becoming general unsecured creditors of the Debtors’ estates with respect to such goods, certain suppliers may refuse to ship or transport such goods (or may recall such shipments) with respect to such Outstanding Orders unless the Debtors issue substitute purchase orders postpetition. To prevent any disruption to the Debtors’ business operations, and given that goods delivered after the Petition Date are afforded administrative expense priority under section 503(b) of the Bankruptcy Code, the Debtors seek an order (a) granting administrative expense priority under section 503(b) of the Bankruptcy Code to all undisputed obligations of the Debtors arising from the acceptance of goods subject to Outstanding Orders and (b) authorizing, but not directing, the Debtors to satisfy such obligations in the ordinary course of business.

### **Basis for Relief**

#### **I. The Court Should Authorize the Debtors to Pay Trade Claims**

31. Courts have recognized that it is appropriate to authorize the payment of prepetition obligations where necessary to protect and preserve the estate, including a business’s going-concern value. *See, e.g., In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002) (“Cases cited by Debtors that refer to necessity of payment to preserve going concern value imply such a rule, and this Court is prepared to apply the Doctrine of Necessity to authorize payment of prepetition claims in appropriate cases.”); *see also In re Scotia Dev., LLC*, 2007 WL 2788840, at

\*2 (Bankr. S.D. Tex. Sep. 21, 2007) (outlining the factors for when a critical vendor payment is necessary); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (“The ability of a Bankruptcy Court to authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept.”). In so doing, these courts acknowledge that several legal theories rooted in sections 105(a), 363(b), and 1107(a) of the Bankruptcy Code support the payment of prepetition claims as provided herein.

32. Section 363(b) of the Bankruptcy Code permits a debtor, subject to court approval, to pay prepetition obligations where a sound business purpose exists for doing so. *See Ionosphere Clubs*, 98 B.R. at 175 (noting that section 363(b) provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession is given the same rights and powers as a trustee appointed in a bankruptcy case, including the “implied duty of the debtor-in-possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *See, e.g., In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *CoServ, L.L.C.*, 273 B.R. at 497). Moreover, under section 105(a) of the Bankruptcy Code, “[t]he Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code].” 11 U.S.C. § 105(a); *CoServ, L.L.C.*, 273 B.R. at 497 (“These are simply examples of claims that may require satisfaction for the debtor in possession to perform its fiduciary obligations. In such instances, it is only logical that the bankruptcy court be able to use Section 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”); *In re CEI Roofing, Inc.*, 315 B.R. at 56 (citing *In re Mirant Corp.*, 296 B.R. 427 (Bankr. N.D. Tex. 2003)); *In re Mirant Corp.*, 296 B.R. 427. No provision of the Bankruptcy Code expressly prohibits the postpetition payment of prepetition trade

claims. Indeed, the above-referenced sections of the Bankruptcy Code authorize such payments when the payments are critical to preserving the going-concern value of the debtor's estate, as is the case here.

33. Moreover, courts have noted that there are instances in which debtors in possession can fulfill their fiduciary duties “only . . . by the preplan satisfaction of a prepetition claim.” *CoServ, L.L.C.*, 273 B.R. at 497. The *CoServ* court specifically noted that the preplan satisfaction of prepetition claims would be a valid exercise of a debtor's fiduciary duty when the payment “is the only means to effect a substantial enhancement of the estate,” *id.*, and also when the payment was to “sole suppliers of a given product.” *Id.* at 498. Courts in the Fifth Circuit, including the Southern District of Texas, have followed *CoServ*'s three-part test to determine whether a prepetition claim of a “critical vendor” may be paid outside of the plan process on a postpetition basis:

First, it must be critical that the debtor deal with the claimant. Second, unless it deals with the claimant, the debtor risks the probability of harm, or, alternatively, loss of economic advantage to the estate or the debtor's going concern value, which is disproportionate to the amount of the claimant's pre-petition claim. Third, there is no practical or legal alternative by which the debtor can deal with the claimant other than by payment of the claim.

*CoServ, L.L.C.*, 273 B.R. at 498; see also *In re Scotia Dev., LLC*, 2007 WL 2788840, at \*2; *In re Mirant Corp.*, 296 B.R. at 429-30.

34. Allowing the Debtors to pay the Trade Claims is especially appropriate where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving the going concern value for the Debtors' businesses and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat'l Trust & Savs. Ass'n*, 526 U.S. at 453 (describing a reconciliation of “the two recognized policies underlying Chapter 11 . . . preserving going concerns and maximizing property available to satisfy creditors”). Reflecting the

recognition that payment of prepetition claims of certain essential suppliers and vendors is, in fact, both critical to a debtor's ability to preserve going-concerns and maximize creditor recovery, courts regularly grant relief consistent with that which the Debtors are seeking. *See CoServ, L.L.C.*, 273 B.R. at 497 (noting that "it is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate").

**A. The Court Should Authorize Payment of the Critical Vendor Claims**

35. The Debtors require a steady provision of the Critical Vendor Products and Services to maintain operational stability. Without the Critical Vendor Products and Services, the Debtors could be forced to unexpectedly halt operations while they search for substitute vendors and service providers and may have to forego existing favorable trade terms as a result in their haste to find new vendors, thereby preventing the Debtors from capturing revenue. Importantly, any disruption to the Debtors' supply chain could result in a significant loss of operational efficiency, decreasing the value of the Debtors' businesses, which could impair stakeholder value.

**B. The Court Should Authorize the Payment of Foreign Claims**

36. The Debtors believe that each of the Foreign Claimants is based outside the United States. The Foreign Claimants may lack minimum contacts with the United States. Thus, there is significant risk that the Foreign Claimants consider themselves beyond the jurisdiction of the Court and, therefore, may disregard the automatic stay, notwithstanding the automatic stay's global effect. Failure to make payment to such parties in the ordinary course could lead to a proliferation of lawsuits in foreign courts and efforts to exercise other detrimental remedies overseas. In many instances, it would be unduly time-consuming and expensive to seek to enforce an order of the Court in the claimant's home country.

37. Accordingly, non-payment of any claims owing to Foreign Claimants could lead to immediate and significant disruption to the Debtors' businesses that would heavily outweigh the cost of paying such parties in connection with their prepetition claims, and continuing to pay them on a postpetition basis, in the ordinary course of business. The Debtors believe that paying prepetition claims of Foreign Claimants is necessary to protect the Debtors' business and ensure that the Debtors are able to maximize the value of their estates during these chapter 11 cases.

**C. The Court Should Authorize Payment of the Lien Claims**

38. As noted above, certain Lien Claimants may be entitled under applicable non-bankruptcy law to assert certain possessory liens on the Debtors' goods or equipment in their possession (notwithstanding the automatic stay under section 362 of the Bankruptcy Code) in an attempt to secure payment of their prepetition claim. Under section 362(b)(3) of the Bankruptcy Code, the act of perfecting such liens, to the extent consistent with section 546(b) of the Bankruptcy Code, is expressly excluded from the automatic stay.<sup>7</sup> As a result, the Debtors anticipate that certain of the Lien Claimants may assert or perfect liens, simply refuse to turn over goods in their possession, or stop performing their ongoing obligations. Even absent a valid lien, to the extent certain Lien Claimants have possession of the Debtors' goods, equipment, or products, mere possession or retention could disrupt the Debtors' operations.

39. Furthermore, paying the Lien Claims should not impair unsecured creditor recoveries in these chapter 11 cases. In instances where the amount owed to a Lien Claimant is less than the value of the goods that could be held to secure a Lien Claimant's claim, such party may be a fully-secured creditor of the Debtors' estates. In such instances, payment provides such

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<sup>7</sup> See 11 U.S.C. § 546(b)(1)(A) (providing that a debtor's lien avoidance powers "are subject to any generally applicable law that . . . permits perfection of an interest in property to be effective against an entity that acquires rights in such property before the date of perfection").

party with what they might be entitled to receive under a plan of reorganization, without any interest costs that might otherwise accrue during these chapter 11 cases. Conversely, all creditors will benefit from the seamless transition of the Debtors' operations into chapter 11 bankruptcy.

**D. The Court Should Authorize the Payment of 503(b)(9) Claims**

40. Additionally, section 503(b)(9) provides administrative priority for the “value of any goods received by the debtor within [twenty] days before the date of commencement of a case under this title in which goods have been sold to the debtor in the ordinary course of such debtor’s business.” The 503(b)(9) Claims must be paid in full for the Debtors to confirm a chapter 11 plan. *See* 11 U.S.C. § 1129(a)(9)(A). Consequently, payment of such claims now only provides such parties with what they would be entitled to receive under a chapter 11 plan unless they consented otherwise. Moreover, the timing of such payments also lies squarely within the Court’s discretion. *See In re Global Home Prods., LLC*, 2006 WL 3791955, at \*3 (Bankr. D. Del. Dec. 21, 2006) (agreeing with parties that “the timing of the payment of that administrative expense claim is left to the discretion of the Court”). The Debtors’ ongoing ability to obtain goods as provided herein is key to their survival and necessary to preserve the value of their estates. Absent payment of the 503(b)(9) Claims at the outset of these chapter 11 cases—which merely accelerates the timing of payment and not the ultimate treatment of such claims—the Debtors could be denied access to the goods necessary to maintain the Debtors’ business operations and maximize the value of the Debtors’ estates.

**II. The Court Should Confirm That Outstanding Orders Are Administrative Expense Priority Claims and That Payment of Such Claims Is Authorized**

41. Pursuant to section 503(b)(1) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of goods and services, including goods ordered prepetition, are administrative expense priority claims because they benefit the estates postpetition.

*See* 11 U.S.C. § 503(b)(1)(A) (providing that the “actual [and] necessary costs and expenses of preserving the estate” are administrative expenses); *see also In re John Clay & Co.*, 43 B.R. 797, 809-10 (Bankr. D. Utah 1984) (holding that goods ordered prepetition but delivered postpetition are entitled to administrative priority). Thus, the granting of the relief sought herein with respect to the Outstanding Orders will not afford such claimants any greater priority than they otherwise would have if the relief requested herein were not granted, and will not prejudice any other party in interest.

42. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Orders to provide certain suppliers with assurance of such administrative priority status. The disruption to the continuous and timely flow of critical raw materials to the Debtors would force the Debtors to potentially halt operations and production, damage the Debtors’ business reputation, erode the Debtors’ customer base, and ultimately lead to a loss of revenue, all to the detriment of the Debtors and their creditors. Accordingly, the Debtors submit that the Court should confirm the administrative expense priority status of the Outstanding Orders and should authorize, but not direct, the Debtors to pay the Outstanding Orders in the ordinary course of business.

### **III. The Court Should Authorize the Debtors’ Financial Institutions to Honor and Process the Debtors’ Payments**

43. The Debtors have sufficient funds to pay the amounts described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations, anticipated access to cash collateral, and proceeds of the DIP Notes Facility and the DIP ABL Facility. Additionally, under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Accordingly, the Debtors believe that checks or wire transfer requests,

other than those relating to authorized payments, will not be honored inadvertently. Therefore, the Debtors respectfully request that the Court authorize and direct all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested in this motion.

**Emergency Consideration**

44. Pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first 21 days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm,” and Bankruptcy Local Rule 9013-1(i), the Debtors respectfully request emergency consideration of this motion. An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors’ operations. Failure to obtain the requested relief during the first 21 days of these chapter 11 cases would imperil the Debtors’ restructuring. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and, therefore, respectfully request that the Court approve the relief requested in this motion on an emergency basis.

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

45. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

46. Nothing contained herein is intended to be or should be construed as: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors’ or any other party in interest’s right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined

in this motion or any order granting the relief requested by this motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

**Notice**

47. The Debtors will provide notice of this motion to the following parties or their respective counsel: (a) the Office of the United States Trustee for the Southern District of Texas; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the ABL Agent and to the agent under the DIP ABL Facility; (d) counsel to the Ad Hoc Group; (e) counsel to the First Lien Notes Trustee; (f) counsel to the Second Lien Notes Trustee; (g) counsel to the PC Noteholder Group; (h) counsel to the trustee under the DIP Notes Facility; (i) the United States Attorney's Office for the Southern District of Texas; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the state attorneys general for states in which the Debtors conduct business; (m) other regulatory agencies having a regulatory or statutory interest in these cases; (n) counsel to Party City; (o) counsel to

Barings, LLC, Arnold & Porter Kaye Scholer LLP, 70 West Madison Street Suite 4200, Chicago, IL 60602-4231, Attn: Tyler Nurnberg (Tyler.Nurnberg@arnoldporter.com) and Alex Hevia (alexander.hevia@arnoldporter.com); and (p) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

*[Remainder of page intentionally left blank]*

WHEREFORE, the Debtors respectfully request that the Court enter an order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

November 8, 2023

Respectfully submitted,

By: /s/ Tom A. Howley

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*Proposed Counsel to the Debtors and the Debtors  
in Possession*

**Certificate of Accuracy**

I certify that the facts and circumstances described in the above pleading giving rise to the emergency request for relief are true and correct to the best of my knowledge, information, and belief. This statement is made pursuant to Bankruptcy Local Rule 9013-1(i).

*/s/ Tom A. Howley* \_\_\_\_\_

Tom A. Howley

**Certificate of Service**

I certify that on November 8, 2023, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

*/s/ Tom A. Howley* \_\_\_\_\_

Tom A. Howley

**Exhibit A**

**Interim Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
ANAGRAM HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90901 (MI)
Debtors.	)	(Jointly Administered)
	)	
	)	

**INTERIM ORDER (I) AUTHORIZING THE  
DEBTORS TO PAY CERTAIN PREPETITION CLAIMS OF  
(A) CRITICAL VENDORS, (B) LIEN CLAIMANTS, (C) FOREIGN VENDORS, AND  
(D) 503(B)(9) CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE  
PRIORITY OF OUTSTANDING ORDERS, AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”) (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business certain prepetition claims held by (i) Critical Vendors, (ii) Lien Claimants, (iii) Foreign Claimants, and (iv) 503(b)(9) Claimants (and together with the Critical Vendors, Lien Claimants and Foreign Claimants, the “Trade Claimants”); (b) confirming the administrative expense priority status of Outstanding Orders; (c) scheduling a hearing to consider approval of the Motion on a final basis, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended

<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors’ chapter 11 cases are not proposed to be consolidated with the Party City debtors which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

Standing Order; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The final hearing on the Motion shall be on \_\_\_\_\_, 2023, at \_\_:\_\_.m., prevailing Central Time. Any objections or responses to entry of a final order on the motion shall be filed on or before 4:00 p.m., prevailing Central Time, on [\_\_\_], 2023. If no objections to entry of the Final Order on the Motion are timely received, the Court may enter such Final Order without need for the final hearing.

2. The Debtors are authorized, but not directed, in the ordinary course of business and consistent with their past practices, to pay the prepetition Trade Claims (or a portion thereof) comprising Critical Vendor Claims, Foreign Claims, Lien Claims and 503(b)(9) Claims in an aggregate amount not to exceed \$5,700,000. In the event the Debtors will exceed the aggregate amounts in any category as detailed in the Motion during the interim period, the Debtors shall file a notice with the Court describing the category and overage amount. Nothing herein shall prejudice

the Debtors' ability to seek a further order from this Court authorizing the Debtors to exceed the aggregate amounts of any category as set forth herein during the interim period.

3. The Debtors are authorized, but not directed, to pay all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

4. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amounts of the Trade Claims. The Debtors do not concede that any claims satisfied pursuant to this Interim Order are valid, and the Debtors expressly reserve all rights to contest the extent, validity, or perfection or to seek the avoidance of all such liens or the priority of such claims.

5. As a condition to receiving payment pursuant to this Interim Order on account of a Trade Claim, the Debtors, in the exercise of their reasonable business judgment, may require Trade Claimants to (a) continue or recommence supplying goods and/or services to the Debtors on customary trade terms that are at least as favorable to the Debtors as those in effect during the twelve months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment, and (b) agree that they shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide such goods and/or services to the Debtors during the course of these chapter 11 cases. The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim.

6. Any party that accepts payment from the Debtors on account of a Trade Claim shall be deemed to have agreed to the terms and provisions of this Interim Order. The Debtors may, in their reasonable business judgment, (a) negotiate, amend, or modify the form of Trade Agreement and (b) condition or decline to condition payment of Trade Claims upon the execution of a Trade

Agreement. Prior to making any payment pursuant to this Interim Order to a Trade Claimant, the Debtors shall make reasonable efforts to provide such Trade Claimant with a copy of this Interim Order (unless previously provided to such Trade Claimant).

7. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code; *provided* that nothing in this Interim Order shall determine the pre-Petition Date or post-Petition Date status of goods in transit as of the Petition Date.

8. The form of Trade Agreement, substantially in the form attached hereto as Exhibit I, is approved in its entirety. The Debtors are authorized, but not directed, to enter into any such Trade Agreements.

9. Regardless of whether a Trade Agreement has been executed or if the parties have agreed in writing that Customary Trade Terms are a condition to payment, if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with terms at least as favorable to the Debtors as the Customary Trade Terms then, subject to the entry of a final order on the Motion from this Court: (a) the Debtors may take any and all appropriate steps to recover from such Trade Claimant any payments made to it on account of its prepetition claim to the extent that such payments exceed the postpetition amounts then owing to such party, (b) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors; (c) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (d) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief

requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to pay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding from the Debtors to such supplier or vendor without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

10. The Debtors shall maintain a matrix summarizing amounts paid, subject to the terms and conditions of this Interim Order, including the following information: (a) the names of payee; (b) the amount of payment; (c) the category or type of payment as further described and classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date (the “Critical Vendor Matrix”). The Debtors shall provide, on a confidential basis, a copy of the Critical Vendor Matrix to the advisors to the Ad Hoc Group, the U.S. Trustee and any statutory committee appointed in these cases by the last day of each calendar month.

11. The banks and financial institutions on which checks were drawn or electronic fund transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors’ designation of any particular check or electronic fund transfer requests as approved by this Interim Order.

12. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

13. For the avoidance of doubt, this Interim Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) or affiliates of an

insider, of the Debtors. Nothing herein shall impair or prejudice the rights of the U.S. Trustee or any other party in interest to object to and seek the return of any payment made pursuant to this Interim Order to an insider of the Debtors, and all rights of the Debtors and the relevant insider are reserved to respond to any such objection.

14. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in the Motion or this Interim Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

15. Notwithstanding the relief granted in the Motion or this Interim Order, any payment made or to be made by the Debtors pursuant to the authority granted herein, and any relief or authorization granted herein, shall be subject to and in compliance with each interim and final

order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens And Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief*, filed substantially contemporaneously herewith (collectively, such interim and final orders, the "DIP Order"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order, the DIP Notes Documents (as defined in the DIP Order), or the DIP ABL Agreement (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order and the terms of this Interim Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

16. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

17. Notice of the Motion as provided therein is hereby deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

18. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Interim Order are immediately effective and enforceable upon its entry.

19. The Debtors are authorized, but not directed, to take all actions necessary to effectuate the relief granted in this Interim Order in accordance with the Motion.

20. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Interim Order.

Houston, Texas

Dated: \_\_\_\_\_, 2023

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit I**

**Form Trade Agreement**

**THIS TRADE AGREEMENT IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN. ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT FOR ANY SUCH CHAPTER 11 PLAN. THE INFORMATION IN THIS TRADE AGREEMENT STATEMENT IS SUBJECT TO CHANGE. THIS TRADE AGREEMENT STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

## **TRADE AGREEMENT**

[Anagram Holdings, LLC] (the “Company”), on the one hand, and the supplier identified in the signature block below (the “Supplier”), on the other hand, hereby enter into the following trade agreement (this “Trade Agreement”) dated as of the latest date in the signature blocks below.

### **Recitals**

WHEREAS, on November 8, 2023 (the “Petition Date”), Anagram Holdings, LLC and certain of its indirect and direct subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

WHEREAS, on [●], 2023, the Court entered its *Interim Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (a) Critical Vendors, (b) Lien Claimants, (c) Foreign Vendors, and (d) 503(b)(9) Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “Trade Claimant Order”) [Docket No. [●]] authorizing the Debtors on an interim basis, under certain conditions, to pay the prepetition claims of certain suppliers, including the Supplier, subject to the terms and conditions set forth therein.<sup>1</sup>

WHEREAS, prior to the Petition Date, the Supplier delivered goods to the Company and/or performed services for the Company, and the Company paid the Supplier for such goods and/or services, according to Customary Trade Terms (as defined herein).

WHEREAS, the Company and the Supplier (each a “Party” and, collectively, the “Parties”) agree to the following terms as a condition of payment on account of certain prepetition claims the Supplier may hold against the Company.

### **Agreement**

1. Recitals. The foregoing recitals are incorporated herein by reference as if set forth at length herein.

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the Trade Claimant Order.

2. Supplier Payment. The Supplier represents and agrees that, after due investigation, the sum of all amounts currently due and owing by the Company to the Supplier is \$[\_\_\_] (the “Agreed Supplier Claim”). Following execution of this Trade Agreement, the Company shall pay the Supplier \$[\_\_\_] on account of its Agreed Supplier Claim (the “Supplier Payment”) (without interest, penalties, or other charges), as such invoices become due and payable, which such Supplier Payments shall reduce the agreed amount of the Agreed Supplier Claim dollar-for-dollar.

3. Agreement to Supply.

a. The Supplier shall supply goods to and/or perform services for the Company, and the Company shall accept and pay for goods and/or services from the Supplier (to the extent the Company seeks such services), for the duration of the Debtors’ chapter 11 cases based on the following terms (the “Customary Trade Terms”): those trade terms at least as favorable to the Company as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances (as may be incorporated or contemplated by any agreements between the Parties or based on historic practice, as applicable), product mix, availability, and other programs) in place in the twelve months prior to the Petition Date, or are otherwise acceptable to the Company in light of customary industry practices, except for any partial payments or other payments (or assurances) the Company made with respect to any unfinished product. “Duration of the Debtors’ chapter 11 cases” means the earlier of: (i) the effective date of a chapter 11 plan in the Company’s chapter 11 cases; (ii) the closing of a sale of all or a material portion of the Company’s assets pursuant to Bankruptcy Code section 363 resulting in a cessation of the Company’s business operations; or (iii) the liquidation of the Company or conversion of the Debtor’s chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

b. The Customary Trade Terms may not be modified, adjusted, or reduced in a manner adverse to the Company except as agreed to in writing by the Parties.

c. The Supplier shall continue to honor any existing allowances, credits, contractual obligations, or balances that were accrued as of the Petition Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

d. The Supplier shall continue all shipments of goods in the ordinary course and shall fill orders for goods requested by the Company in the ordinary course of business pursuant to the Customary Trade Terms.

e. The Supplier shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide services to the Debtors for the duration of the Debtors’ chapter 11 cases.

4. Other Matters.

a. The Supplier agrees that it shall not require a lump-sum payment upon the effective date of a plan in the Company’s chapter 11 cases on account of any outstanding administrative claims the Supplier may assert arising from the delivery of postpetition goods or services, to the extent that payment of such claims is not yet due. The Supplier agrees that such claims will be paid in the ordinary course of business after confirmation of a plan pursuant to the

Customary Trade Terms then in effect (the “Supplier Payment”). The Supplier Payment will be made concurrently with payment of other outstanding administrative claims as provided in a confirmed plan.

b. The Supplier will not separately seek payment from the Company on account of any prepetition claim (including, without limitation, any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code) outside the terms of this Trade Agreement or a plan confirmed in the Company’s chapter 11 case.

c. The Supplier will not file or otherwise assert against the Company, its assets, or any other person or entity or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to the Supplier by the Company arising from prepetition agreements or transactions. Furthermore, if the Supplier has taken steps to file or assert such a lien prior to entering into this Trade Agreement, the Supplier will promptly take all necessary actions to remove such liens.

5. Breach.

a. If the Supplier fails to satisfy its undisputed obligations arising under this Trade Agreement (a “Supplier Breach”), upon written notice to the Supplier, the Supplier shall promptly pay to the Company immediately available funds in an amount equal to, at the election of the Company, the Supplier Payment or any portion of the Supplier Payment which cannot be recovered by the Company from the postpetition receivables then owing to the Supplier from the Company.

b. If the Company recovers the Supplier Payment pursuant to Section 5(a) hereof or otherwise, the Agreed Supplier Claim shall be reinstated as if the Supplier Payment had not been made. The Supplier agrees and acknowledges that irreparable damage would occur in the event of a Supplier Breach and remedies at law would not be adequate to compensate the Company. Accordingly, the Supplier agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to an injunction or injunctions to prevent breaches of the provisions of this Trade Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Trade Agreement. The Supplier hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance, or other equitable remedies.

6. Notice.

If to the Supplier, then to the person and address identified in the signature block hereto.

If to the Company:

[Anagram Holdings, LLC]  
7700 Anagram Drive

Eden Prairie, Minnesota 55344  
Attn: Christopher Wiles and Alan Dalsass  
E-mail: wilesc@anagramintl.com; alan.dalsass@ankura.com

-and-

If to Proposed Co-Counsel to the Debtors:

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Facsimile: (212) 455-2502  
Attn: Sunny Singh, Nicholas E. Baker, Moshe A. Fink, Ashley M. Gherlone  
E-mail: Sunny.Singh@stblaw.com  
NBaker@stblaw.com  
Moshe.Fink@stblaw.com  
Ashley.Gherlone@stblaw.com

7. Representations and Acknowledgements. The Parties agree, acknowledge and represent that:

a. the Parties have reviewed the terms and provisions of the Trade Claimant Order and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Trade Claimant Order;

b. any payments made on account of the Agreed Supplier Claim shall be subject to the terms and conditions of the Trade Claimant Order;

c. if the Supplier refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Trade Claimant Order, the Bankruptcy Code, or applicable law; and

d. upon any disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, in which event, no action may be taken by either Party, including, but not limited to, the discontinuing of shipment of goods from the Supplier to the Company, until a ruling of the Court is obtained.

8. Confidentiality. In addition to any other obligations of confidentiality between the Supplier and Company, the Supplier agrees to hold in confidence and not disclose to any party: (a) this Trade Agreement; (b) any and all payments made by the Company pursuant to this Trade Agreement; (c) the terms of payment set forth herein; and (d) the Customary Trade Terms (collectively, the "Confidential Information"); *provided* that if any party seeks to compel the Supplier's disclosure of any or all of the Confidential Information, through judicial action or otherwise, or the Supplier intends to disclose any or all of the Confidential Information, the Supplier shall immediately provide the Company with prompt written notice so that the Company

may seek an injunction, protective order or any other available remedy to prevent such disclosure; *provided, further* that if such remedy is not obtained, the Supplier shall furnish only such information as the Supplier is legally required to provide.

9. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Trade Agreement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Trade Agreement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Trade Agreement.

b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them. This Trade Agreement may not be changed, modified, amended or supplemented, except in a writing signed by both Parties. Moreover, the Supplier agrees to vote all claims now or hereafter beneficially owned by Supplier in favor of, and not take any direct or indirect action to oppose or impede confirmation of, any chapter 11 plan on a timely basis in accordance with the applicable procedures set forth in any related disclosure statement and accompanying solicitation materials, and timely return a duly-executed ballot to the Debtors in connection therewith, if such chapter 11 plan provides for a treatment of any Agreed Supplier Claim that is materially consistent with this Agreement.

c. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.

d. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

e. The Parties hereby submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement.

f. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature Page Follows]

AGREED AND ACCEPTED AS OF THE LATEST DATE SET FORTH BELOW:

**[COMPANY]**

**[SUPPLIER]**

---

By: [●]  
Title: [●]

---

By:  
Title:  
Address:

Date:

**Exhibit B**

**Final Order**

**IN THE UNITED STATES BANKRUPTCY COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION**

In re:	)	
	)	Chapter 11
	)	
ANAGRAM HOLDINGS, LLC, <i>et al.</i> , <sup>1</sup>	)	Case No. 23-90901 (MI)
	)	
Debtors.	)	(Jointly Administered)
	)	

**FINAL ORDER (I) AUTHORIZING THE  
DEBTORS TO PAY CERTAIN PREPETITION  
CLAIMS OF (A) CRITICAL VENDORS, (B) LIEN CLAIMANTS,  
(C) FOREIGN VENDORS AND (D) 503(B)(9) CLAIMANTS, (II) CONFIRMING  
ADMINISTRATIVE EXPENSE PRIORITY OF OUTSTANDING ORDERS,  
AND (III) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Final Order”) (a) authorizing, but not directing, the Debtors to pay in the ordinary course of business certain prepetition claims held by (i) Critical Vendors, (ii) Lien Claimants, (iii) Foreign Claimants, and (iv) 503(b)(9) Claimants (and together with the Critical Vendors, Lien Claimants and Foreign Claimants, the “Trade Claimants”); (b) confirming the administrative expense priority status of Outstanding Orders; and (c) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334 and the Amended Standing Order; and this Court having found that this is a core proceeding pursuant

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<sup>1</sup> The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s federal tax identification number, are: Anagram Holdings, LLC (8535); Anagram International, Inc. (2523) and Anagram International Holdings, Inc. (5837). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 7700 Anagram Drive, Eden Prairie, MN 55344. For the avoidance of doubt, the Debtors’ chapter 11 cases are not proposed to be consolidated with the Party City debtors which emerged from chapter 11 cases in this Court on October 12, 2023. *See In re Party City Holdco Inc., et. al.*, Case No. 23-90005 (MI) (Bankr. S.D. Tex). Any reference herein to the Debtors does not include the debtor-entities that were administered in the Party City chapter 11 cases.

<sup>2</sup> Capitalized terms used but not defined herein have the meanings ascribed to them in the Motion.

to 28 U.S.C. § 157(b)(2); and this Court having found that it may enter a final order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. § 1408; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court; and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. The Debtors are authorized, but not directed, in the ordinary course of business and consistent with their past practices, to pay the prepetition Trade Claims (or a portion thereof) comprising Critical Vendor Claims, Foreign Claims, Lien Claims and 503(b)(9) Claims.

2. The Debtors are authorized, but not directed, to pay all undisputed amounts related to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

3. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their sole discretion, the extent, perfection, priority, validity, or amounts of the Trade Claims. The Debtors do not concede that any claims satisfied pursuant to this Final Order are valid, and the Debtors expressly reserve all rights to contest the extent, validity, or perfection or to seek the avoidance of all such liens or the priority of such claims.

4. As a condition to receiving payment pursuant to this Final Order on account of a Trade Claim, the Debtors, in the exercise of their reasonable business judgment, may require Trade Claimants to (a) continue or recommence supplying goods and/or services to the Debtors on customary trade terms that are at least as favorable to the Debtors as those in effect during the twelve months prior to the Petition Date, or as otherwise agreed by the Debtors in their reasonable business judgment, and (b) agree that they shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide such goods and/or services to the Debtors during the course of these chapter 11 cases. The Debtors reserve the right to require additional favorable trade terms with any Trade Claimant as a condition to payment of any Trade Claim.

5. Any party that accepts payment from the Debtors on account of a Trade Claim shall be deemed to have agreed to the terms and provisions of this Order. The Debtors may, in their reasonable business judgment, (a) negotiate, amend, or modify the form of Trade Agreement and (b) condition or decline to condition payment of Trade Claims upon the execution of a Trade Agreement. Prior to making any payment pursuant to this Final Order to a Trade Claimant, the Debtors shall make reasonable efforts to provide such Trade Claimant with a copy of this Final Order (unless previously provided to such Trade Claimant).

6. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(A) of the Bankruptcy Code; *provided* that nothing in this Final Order shall determine the pre-Petition Date or post-Petition Date status of goods in transit as of the Petition Date.

7. The form of Trade Agreement, substantially in the form attached hereto as Exhibit I, is approved in its entirety. The Debtors are authorized to enter into any such Trade Agreements on a final basis.

8. Regardless of whether a Trade Agreement has been executed or if the parties have agreed in writing that Customary Trade Terms are a condition to payment, if any party accepts payment hereunder and does not continue supplying goods or services to the Debtors in accordance with terms at least as favorable to the Debtors as the Customary Trade Terms then, subject to the entry of a final order on the Motion from this Court: (a) the Debtors may take any and all appropriate steps to recover from such Trade Claimant any payments made to it on account of its prepetition claim to the extent that such payments exceed the postpetition amounts then owing to such party, (b) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' sole discretion, an improper postpetition transfer and, therefore, recoverable by the Debtors in cash upon written request by the Debtors; (c) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (d) if there exists an outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to pay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding from the Debtors to such supplier or vendor without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

9. The Debtors shall maintain a matrix summarizing amounts paid, subject to the terms and conditions of this Final Order, including the following information: (a) the names of payee; (b) the amount of payment; (c) the category or type of payment as further described and classified in the Motion; (d) the Debtor or Debtors that made the payment; and (e) the payment date (the "Critical Vendor Matrix"). The Debtors shall provide, on a confidential basis, a copy of

the Critical Vendor Matrix to the advisors to the Ad Hoc Group, the U.S. Trustee and any statutory committee appointed in these cases by the last day of each calendar month.

10. The banks and financial institutions on which checks were drawn or electronic fund transfer requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic fund transfer requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic fund transfer requests as approved by this Final Order.

11. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein.

12. For the avoidance of doubt, this Final Order does not authorize payments to insiders (as such term is defined in section 101(31) of the Bankruptcy Code) or affiliates of an insider, of the Debtors. Nothing herein shall impair or prejudice the rights of the U.S. Trustee or any other party in interest to object to and seek the return of any payment made pursuant to this Interim Order to an insider of the Debtors, and all rights of the Debtors and the relevant insider are reserved to respond to any such objection.

13. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, nothing in the Motion or this Final Order shall be deemed: (a) an admission as to the amount of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy law; (b) a waiver of the Debtors' or any other party in interest's right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an

implication or admission that any particular claim is of a type specified or defined in the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens.

14. Notwithstanding the relief granted in the Motion or this Final Order, any payment made or to be made by the Debtors pursuant to the authority granted herein, and any relief or authorization granted herein, shall be subject to and in compliance with each interim and final order entered by the Court in respect of the *Debtors' Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing, (B) Use Cash Collateral, and (C) Grant Liens And Superpriority Administrative Expense Claims, (II) Granting Adequate Protection to Certain Prepetition Secured Parties, (III) Modifying the Automatic Stay, (IV) Scheduling a Final Hearing, and (V) Granting Related Relief*, filed substantially contemporaneously herewith (collectively, such interim and final orders, the "DIP Order"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Order, the DIP Notes Documents

(as defined in the DIP Order), or the DIP ABL Agreement (as defined in the DIP Order). To the extent there is any inconsistency between the terms of the DIP Order and the terms of this Final Order or any action taken or proposed to be taken hereunder, the terms of the DIP Order shall control.

15. Notice of the Motion as provided therein is hereby deemed good and sufficient notice of such Motion, and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

16. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Final Order are immediately effective and enforceable upon its entry.

17. The Debtors are authorized, but not directed, to take all actions necessary to effectuate the relief granted in this Final Order in accordance with the Motion.

18. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Final Order.

Houston, Texas

Dated: \_\_\_\_\_, 2023

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit I**

**Form Trade Agreement**

**THIS TRADE AGREEMENT IS NOT A SOLICITATION OF ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN. ACCEPTANCE OR REJECTION OF A CHAPTER 11 PLAN MAY NOT BE SOLICITED UNTIL A DISCLOSURE STATEMENT HAS BEEN APPROVED BY THE BANKRUPTCY COURT FOR ANY SUCH CHAPTER 11 PLAN. THE INFORMATION IN THIS TRADE AGREEMENT STATEMENT IS SUBJECT TO CHANGE. THIS TRADE AGREEMENT STATEMENT IS NOT AN OFFER TO SELL ANY SECURITIES AND IS NOT SOLICITING AN OFFER TO BUY ANY SECURITIES.**

## **TRADE AGREEMENT**

[Anagram Holdings, LLC] (the “Company”), on the one hand, and the supplier identified in the signature block below (the “Supplier”), on the other hand, hereby enter into the following trade agreement (this “Trade Agreement”) dated as of the latest date in the signature blocks below.

### **Recitals**

WHEREAS, on November 8, 2023 (the “Petition Date”), Anagram Holdings, LLC and certain of its indirect and direct subsidiaries (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the Southern District of Texas (the “Court”).

WHEREAS, on [●], 2023, the Court entered its *Final Order (I) Authorizing the Debtors to Pay Certain Prepetition Claims of (a) Critical Vendors, (b) Lien Claimants, (c) Foreign Vendors, and (d) 503(b)(9) Claimants, (II) Confirming Administrative Expense Priority of Outstanding Orders, and (III) Granting Related Relief* (the “Trade Claimant Order”) [Docket No. [●]] authorizing the Debtors on a final basis, under certain conditions, to pay the prepetition claims of certain suppliers, including the Supplier, subject to the terms and conditions set forth therein.<sup>1</sup>

WHEREAS, prior to the Petition Date, the Supplier delivered goods to the Company and/or performed services for the Company, and the Company paid the Supplier for such goods and/or services, according to Customary Trade Terms (as defined herein).

WHEREAS, the Company and the Supplier (each a “Party” and, collectively, the “Parties”) agree to the following terms as a condition of payment on account of certain prepetition claims the Supplier may hold against the Company.

### **Agreement**

1. Recitals. The foregoing recitals are incorporated herein by reference as if set forth at length herein.
2. Supplier Payment. The Supplier represents and agrees that, after due investigation, the sum of all amounts currently due and owing by the Company to the Supplier is \$[\_\_\_] (the

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<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings set forth in the Trade Claimant Order.

“Agreed Supplier Claim”). Following execution of this Trade Agreement, the Company shall pay the Supplier \$[ ] on account of its Agreed Supplier Claim (the “Supplier Payment”) (without interest, penalties, or other charges), as such invoices become due and payable, which such Supplier Payments shall reduce the agreed amount of the Agreed Supplier Claim dollar-for-dollar.

3. Agreement to Supply.

a. The Supplier shall supply goods to and/or perform services for the Company, and the Company shall accept and pay for goods and/or services from the Supplier (to the extent the Company seeks such services), for the duration of the Debtors’ chapter 11 cases based on the following terms (the “Customary Trade Terms”): those trade terms at least as favorable to the Company as those practices and programs (including credit limits, pricing, cash discounts, timing of payments, allowances (as may be incorporated or contemplated by any agreements between the Parties or based on historic practice, as applicable), product mix, availability, and other programs) in place in the twelve months prior to the Petition Date, or are otherwise acceptable to the Company in light of customary industry practices, except for any partial payments or other payments (or assurances) the Company made with respect to any unfinished product. “Duration of the Debtors’ chapter 11 cases” means the earlier of: (i) the effective date of a chapter 11 plan in the Company’s chapter 11 cases; (ii) the closing of a sale of all or a material portion of the Company’s assets pursuant to Bankruptcy Code section 363 resulting in a cessation of the Company’s business operations; or (iii) the liquidation of the Company or conversion of the Debtor’s chapter 11 cases to cases under chapter 7 of the Bankruptcy Code.

b. The Customary Trade Terms may not be modified, adjusted, or reduced in a manner adverse to the Company except as agreed to in writing by the Parties.

c. The Supplier shall continue to honor any existing allowances, credits, contractual obligations, or balances that were accrued as of the Petition Date and shall apply all such allowances, credits, or balances towards future orders in the ordinary course of business.

d. The Supplier shall continue all shipments of goods in the ordinary course and shall fill orders for goods requested by the Company in the ordinary course of business pursuant to the Customary Trade Terms.

e. The Supplier shall not be permitted to cancel any contract, agreement, or arrangement pursuant to which they provide services to the Debtors for the duration of the Debtors’ chapter 11 cases.

4. Other Matters.

a. The Supplier agrees that it shall not require a lump-sum payment upon the effective date of a plan in the Company’s chapter 11 cases on account of any outstanding administrative claims the Supplier may assert arising from the delivery of postpetition goods or services, to the extent that payment of such claims is not yet due. The Supplier agrees that such claims will be paid in the ordinary course of business after confirmation of a plan pursuant to the Customary Trade Terms then in effect (the “Supplier Payment”). The Supplier Payment will be

made concurrently with payment of other outstanding administrative claims as provided in a confirmed plan.

b. The Supplier will not separately seek payment from the Company on account of any prepetition claim (including, without limitation, any reclamation claim or any claim pursuant to section 503(b)(9) of the Bankruptcy Code) outside the terms of this Trade Agreement or a plan confirmed in the Company's chapter 11 case.

c. The Supplier will not file or otherwise assert against the Company, its assets, or any other person or entity or any of their respective assets or property (real or personal) any lien, regardless of the statute or other legal authority upon which the lien is asserted, related in any way to any remaining prepetition amounts allegedly owed to the Supplier by the Company arising from prepetition agreements or transactions. Furthermore, if the Supplier has taken steps to file or assert such a lien prior to entering into this Trade Agreement, the Supplier will promptly take all necessary actions to remove such liens.

5. Breach.

a. If the Supplier fails to satisfy its undisputed obligations arising under this Trade Agreement (a "Supplier Breach"), upon written notice to the Supplier, the Supplier shall promptly pay to the Company immediately available funds in an amount equal to, at the election of the Company, the Supplier Payment or any portion of the Supplier Payment which cannot be recovered by the Company from the postpetition receivables then owing to the Supplier from the Company.

b. If the Company recovers the Supplier Payment pursuant to Section 5(a) hereof or otherwise, the Agreed Supplier Claim shall be reinstated as if the Supplier Payment had not been made. The Supplier agrees and acknowledges that irreparable damage would occur in the event of a Supplier Breach and remedies at law would not be adequate to compensate the Company. Accordingly, the Supplier agrees that the Company shall have the right, in addition to any other rights and remedies existing in its favor, to an injunction or injunctions to prevent breaches of the provisions of this Trade Agreement and to enforce its rights and obligations hereunder not only by an action or actions for damages but also by an action or actions for specific performance, injunctive relief and/or other equitable relief. The right to equitable relief, including specific performance or injunctive relief, shall exist notwithstanding, and shall not be limited by, any other provision of this Trade Agreement. The Supplier hereby waives any defense that a remedy at law is adequate and any requirement to post bond or other security in connection with actions instituted for injunctive relief, specific performance, or other equitable remedies.

6. Notice.

If to the Supplier, then to the person and address identified in the signature block hereto.

If to the Company:

[Anagram Holdings, LLC]  
7700 Anagram Drive  
Eden Prairie, Minnesota 55344

Attn: Christopher Wiles and Alan Dalsass  
E-mail: wilesc@anagramintl.com; alan.dalsass@ankura.com

-and-

If to Proposed Co-Counsel to the Debtors:

Simpson Thacher & Bartlett LLP  
425 Lexington Avenue  
New York, New York 10017  
Facsimile: (212) 455-2502  
Attn: Sunny Singh, Nicholas E. Baker, Moshe A. Fink, Ashley M. Gherlone  
E-mail: Sunny.Singh@stblaw.com  
NBaker@stblaw.com  
Moshe.Fink@stblaw.com  
Ashley.Gherlone@stblaw.com

7. Representations and Acknowledgements. The Parties agree, acknowledge and represent that:

- a. the Parties have reviewed the terms and provisions of the Trade Claimant Order and this Trade Agreement and consent to be bound by such terms and that this Trade Agreement is expressly subject to the procedures approved pursuant to the Trade Claimant Order.
- b. any payments made on account of the Agreed Supplier Claim shall be subject to the terms and conditions of the Trade Claimant Order;
- c. if the Supplier refuses to supply goods or services to the Company as provided herein or otherwise fails to perform any of its obligations hereunder, the Company may exercise all rights and remedies available under the Trade Claimant Order, the Bankruptcy Code, or applicable law; and
- d. upon any disagreement between the Parties regarding whether a breach has occurred, either Party may apply to the Court for a determination of their relative rights, in which event, no action may be taken by either Party, including, but not limited to, the discontinuing of shipment of goods from the Supplier to the Company, until a ruling of the Court is obtained.

8. Confidentiality. In addition to any other obligations of confidentiality between the Supplier and Company, the Supplier agrees to hold in confidence and not disclose to any party: (a) this Trade Agreement; (b) any and all payments made by the Company pursuant to this Trade Agreement; (c) the terms of payment set forth herein; and (d) the Customary Trade Terms (collectively, the "Confidential Information"); *provided* that if any party seeks to compel the Supplier's disclosure of any or all of the Confidential Information, through judicial action or otherwise, or the Supplier intends to disclose any or all of the Confidential Information, the Supplier shall immediately provide the Company with prompt written notice so that the Company may seek an injunction, protective order or any other available remedy to prevent such disclosure;

*provided, further* that if such remedy is not obtained, the Supplier shall furnish only such information as the Supplier is legally required to provide.

9. Miscellaneous.

a. The Parties hereby represent and warrant that: (i) they have full authority to execute this Trade Agreement on behalf of the respective Parties; (ii) the respective Parties have full knowledge of, and have consented to, this Trade Agreement; and (iii) they are fully authorized to bind that Party to all of the terms and conditions of this Trade Agreement.

b. This Trade Agreement sets forth the entire understanding of the Parties regarding the subject matter hereof and supersedes all prior oral or written agreements between them. This Trade Agreement may not be changed, modified, amended or supplemented, except in a writing signed by both Parties. Moreover, the Supplier agrees to vote all claims now or hereafter beneficially owned by Supplier in favor of, and not take any direct or indirect action to oppose or impede confirmation of, any chapter 11 plan on a timely basis in accordance with the applicable procedures set forth in any related disclosure statement and accompanying solicitation materials, and timely return a duly-executed ballot to the Debtors in connection therewith, if such chapter 11 plan provides for a treatment of any Agreed Supplier Claim that is materially consistent with this Agreement.

c. Signatures by facsimile or electronic signatures shall count as original signatures for all purposes.

d. This Trade Agreement may be executed in counterparts, each of which shall be deemed to be an original, but all of which shall constitute one and the same agreement.

e. The Parties hereby submit to the exclusive jurisdiction of the Court to resolve any dispute with respect to or arising from this Trade Agreement.

f. This Trade Agreement shall be deemed to have been drafted jointly by the Parties, and any uncertainty or omission shall not be construed as an attribution of drafting by any Party.

[Signature Page Follows]

AGREED AND ACCEPTED AS OF THE LATEST DATE SET FORTH BELOW:

**[COMPANY]**

**[SUPPLIER]**

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By: [●]  
Title: [●]

---

By:  
Title:  
Address:

Date: