

**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> , ¹)	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”)² 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

¹ 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.

² 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. The form of Trade Agreement, substantially in the form attached hereto as Exhibit I (the "Trade Agreement"), is approved in its entirety.

6. As a condition to receiving payment pursuant to this Interim Order on account of a Trade Claim, a Trade Claimant must enter into a Trade Agreement with the Debtors. The Debtors are authorized to negotiate, modify, or amend the form of a Trade Agreement, provided that any such modification or amendment must require the Trade Claimant 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.

7. 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. 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).

8. 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.

9. 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 reserve their rights to exercise any available remedies under the Bankruptcy Code, (b) 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, (c) 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; (d) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (e) 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

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.¹

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.

¹ 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:

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. The form of Trade Agreement, substantially in the form attached hereto as Exhibit I (the "Trade Agreement"), is approved in its entirety.

~~56.~~ 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~~ a Trade Claimant must enter into a Trade Agreement with the Debtors. The Debtors are authorized to negotiate, modify, or amend the form of a Trade Agreement, provided that any such modification or amendment must require the Trade Claimants to (a) continue or recommence supplying goods and/or services to the Debtors on ~~e~~Customary ~~t~~Trade ~~t~~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.

67. 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).

78. 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~~ 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 reserve their rights to exercise any available remedies under the Bankruptcy Code, (b) 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)(c) 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; (e)(d) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (e)(e) 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