UNITED STATES BANKRUPTCY COURT
DISTRICT OF MASSACHUSETTS
(EASTERN DIVISION)

In re:	
VANTAGE TRAVEL SERVICE, INC.	Chapter 11
Debtor.	Case No. 23-11060-JEB

INTERIM ORDER ON DEBTOR'S MOTION FOR INTERIM AND FINAL ORDERS AUTHORIZING SECURED FINANCING PURSUANT TO 11 U.S.C. § 364(d) AND USE OF CASH COLLATERAL, AND RELATED RELIEF

On June 29, 2023 (the "Petition Date"), Vantage Travel Service, Inc. (the "Debtor") filed its *Motion for Interim and Final Orders Authorizing Secured Financing Pursuant to 11 U.S.C. § 364(d) and Use of Cash Collateral, and Related Relief* [Dkt. No. 7] (the "Financing Motion"), whereby the Debtor sought: (A) pursuant to Sections 363 and 364 of the Bankruptcy Code, Fed. R. Bankr. P. 4001, and MLBR 4001-2 and 9013-1(g), this Court's interim order entered on or before July 5, 2023 authorizing the Debtor to obtain secured debtor-in-possession financing of up to $440,895 (the "Initial Advance") from United Travel Pte. Ltd., a Singapore corporation ("Purchaser"), which has agreed to acquire the Debtor's business operations and assets pursuant to its asset purchase agreement with the Debtor that is the subject of the Debtor's sale motion filed concurrently with the Financing Motion (the "Proposed Sale"), and to use the cash collateral of the Debtor's prepetition senior secured lenders, the Henry R. Lewis Trust dated November 24, 2004 (the "HRL Trust") and Henry R. Lewis (together with the HRL Trust, the "Prepetition Lender"), in accordance with the 13-week cash flow budget attached to the Financing Motion as Exhibit A (the "Budget" and also referred to as the "Initial Budget")), the proposed Interim Order

attached to the Financing Motion as Exhibit B, and that certain Debtor-in-Possession Secured Multi-Draw Term Promissory Note attached to the Financing Motion as Exhibit C (the "Purchaser DIP Note") (the "Requested Interim Relief"); and (B) pursuant to Sections 363 and 364(d) of the Bankruptcy Code, Fed. R. Bankr. P. 4001, and MLBR 4001-2 and 9013-1(g), this Court's final order entered by July 20, 2023 authorizing the Debtor to use the Prepetition Lender's cash collateral and to obtain secured postpetition financing in the total amount of up to $1,000,000, including up to $750,000 from the Purchaser (inclusive of the $440,895 Initial Advance) pursuant to the Purchaser DIP Note, and up to $250,000 from the HRL Trust pursuant to that certain Debtor-in-Possession Secured Multi-Draw Term Promissory Note attached to the Financing Motion as Exhibit D (the "HRL Trust DIP Note"), in accordance with the Budget and this Court's final order approving the requested financing arrangements described in the Financing Motion, such final order to be substantially in the form of the proposed Interim Order and to be filed by the Debtor at least two (2) business days before the final hearing on the Financing Motion (the "Requested Final Relief"); this Court having scheduled an emergency hearing on the Financing Motion for July 5, 2023 for consideration of the Requested Interim Relief (the "Interim Hearing"); the Debtor at the Court's direction having provided notice of the Interim Hearing to the United States Trustee and the Debtor's secured creditors, 20 largest unsecured creditors, and taxing authorities, as evidenced by the Debtor's certificate of service of such notice filed with this Court; the United States Trustee having filed on July 5, 2023 the United States Trustee's Omnibus Objection to Debtor's First Day Motions [Dkt. No. 38] (the "UST Objection"), whereby the United States Trustee objected to the Requested Interim Relief; the Court having permitted other objections to be raised at the Interim Hearing, this Court having reviewed and considered the Financing Motion and its exhibits (the Budget, proposed Interim Order, and the Purchaser DIP Note and the HRL Trust DIP Note

(together with the Purchaser DIP Note, the "DIP Notes")), the supporting declarations of Gregory DelGreco (the Debtor's COO/CFO) and Lawton W. Bloom (the Debtor's financial advisor) [Dkt. Nos. 14 and 17] (the "Supporting Declarations"), the UST Objection, the other objections raised at the Interim Hearing, the pleadings filed with the Court, the evidence submitted and arguments proffered or adduced at the hearing held having conducted the Interim Hearing to consider the Requested Interim Relief, and having determined that the Requested Interim Relief is necessary for the continued operation of the Debtor's business and preservation of the value of the Debtor's assets, and to avoid immediate and irreparable harm to the Debtor and its estate pending the Court's consideration of the Requested Final Relief and the Proposed Sale, and otherwise is fair and reasonable and in the best interests of the Debtor, its estate, and its creditors, and represents a sound exercise of the Debtor's business judgment, and after due deliberation and consideration, and for good and sufficient cause appearing therefor,

THE COURT FINDS AND CONCLUDES THAT:

A. **Petition Date**. On June 29, 2023 (the "Petition Date"), the Debtor filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the District of Massachusetts (the "Court") thereby commencing the Chapter 11 Case.

B. **Debtor-in-Possession**. The Debtor continues in possession of and is managing its business and properties as debtor in possession pursuant to section 1107 and 1108 of the Bankruptcy Code. No trustee or examiner has been appointed in any of the Chapter 11 Case.

C. **Jurisdiction and Venue**. This Court has core jurisdiction over the Chapter 11 Cases, the Financing Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157 and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The bases for relief sought in the Financing Motion are sections 105, 361, 362, 363, 364, 503, 506, 507

and 552 of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6003, 6004 and 9014, and Local Rule4001-2.

D. **Statutory Committee**. As of the date hereof, no official committee (a "Committee") of unsecured creditors, equity interest holders, or other parties in interests has been appointed in the Chapter 11 Case.

E. **Notice**. Upon the record presented to the Court at the Interim Hearing, and under the exigent circumstances set forth therein, notice of the Financing Motion and the relief requested thereby and this Interim Order has been provided in accordance with Bankruptcy Rules 4001(b) and 4001(c)(1) to (i) the United States Trustee; (ii) the Office of the United States Attorney for the District of Massachusetts; (iii) those creditors holding the twenty (20) largest unsecured claims against the Debtor; (iv) the Internal Revenue Service; (v) counsel to the Prepetition Lender; (vi) the attorney general for each state in which the Debtor operates; (vii) counsel the DIP Lenders; (vii) all secured creditors of record; and (ix) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). No further notice of, or hearing regarding, the entry of this Interim Order and the relief set forth therein is necessary or required. The interim relief granted herein is necessary to avoid immediate and irreparable harm to the Debtor and its estate pending a Final Hearing.

F. **Findings Regarding Interim Postpetition Financing.**

(i) Request for Postpetition Financing. The Debtor, as borrower, seeks authority to (a) enter into and perform under the Purchaser DIP Note and obtain the funding available thereunder; and (b) following entry of the Final Order, enter into and perform under the HRL Trust DIP Note and obtain the funding available thereunder; with the proceeds of such borrowings under the DIP Notes (the "DIP Loans") to be made available to pay operating expenses

and expenses associated with sale of the Debtor's business in accordance with the Budget, the DIP Notes and this Interim Order. At the Final Hearing, the Debtor will seek final approval of the terms of the DIP Loans as set forth in the DIP Notes pursuant to a proposed final order (the "Final Order"). Notice of the Final Hearing and Final Order will be provided in accordance with this Interim Order.

(ii) Granting of First-Priority Priming Liens. The granting of liens pursuant to the Purchaser DIP Note (the "Purchaser DIP Liens") and the HRL Trust DIP Note (the "HRL Trust DIP Liens" and, together with the Purchaser DIP Liens, the "DIP Liens") on substantially all assets of the Debtor to the extent set forth in the DIP Notes and this Interim Order (the "DIP Collateral"), on a priming, first-priority basis (subject to the senior priority of the Purchaser DIP Liens), under section 364(d) of the Bankruptcy Code, as contemplated by the DIP Notes, will enable the Debtor to obtain the funding available through the DIP Loans and continue to operate its business pending a successful sale of its business and for the benefit of its estate and creditors, and the Debtor would not be able to obtain debtor-in-possession financing in a sufficient amount without granting such liens.

(iii) Immediate Need for Financing. Access to the funding available through the DIP Loans is necessary, and vital to the preservation and maintenance of the going concern value of the Debtor. The ability of the Debtor to finance its operations, to preserve and maintain the value of the Debtor's assets, and to maximize a return for all creditors requires the availability of working capital from the DIP Loans, the absence of which would immediately and irreparably harm the Debtor, its estate, creditors, equity holders, and the possibility for a successful reorganization or sale of the Debtor's assets.

(iv) Business Judgment and Good Faith Pursuant to Section 364(e) of the Bankruptcy Code. Based on the Financing Motion, the Supporting Declarations, and the record presented to the Court at the Interim Hearing, the terms and conditions of the DIP Loans and the DIP Notes (i) are fair, reasonable, and the best available under the circumstances, (ii) reflect the Debtor's exercise of prudent business judgment consistent with its fiduciary duties, and (iii) are supported by reasonably equivalent value and consideration. The terms of the DIP Loans were negotiated in good faith and at arms' length between the Debtor and the DIP Lenders, and the use of the proceeds to be extended under the DIP Loans will be so extended in good faith, and for valid business purposes and uses, as a consequence of which the DIP Lenders are entitled to the protections and benefits of section 364(e) of the Bankruptcy Code. the Debtor's entry into the DIP Notes reflects the Debtor's exercise of prudent business judgment, and is supported by reasonably equivalent value and fair consideration.

(v) No Credit Available on More Favorable Terms. Based on the Financing Motion, the Supporting Declarations, and the record presented to the Court at the Interim Hearing, the terms of each DIP Loan represent the most favorable source of debtor-in-possession financing available to the Debtor. Given its dire financial condition, financing arrangements, and capital structure, and the circumstances of the Chapter 11 Case, the Debtor has been and continues to be unable to obtain financing from sources other than the DIP Lenders on terms more favorable than the DIP Notes. Further, the Prepetition Lender has consented to granting of the DIP Liens on the DIP Collateral, only on the terms of and subject to the conditions set forth in the DIP Notes and this Interim Order. The Debtor is unable to obtain unsecured credit allowable under section 503(b)(1) of the Bankruptcy Code as an administrative expense. The Debtor has also been unable to obtain: (a) unsecured credit having priority over that of administrative expenses of the kind

specified in sections 503(b), 507(a), and 507(b) of the Bankruptcy Code; (b) credit secured solely by a lien on property of the Debtor that is not otherwise subject to a lien; or (c) credit secured solely by a junior lien on property of the Debtor that is subject to a lien. Financing on a postpetition basis is not otherwise available without granting the DIP Lenders: (1) perfected security interests in and liens on (each as provided herein) all of the DIP Collateral with the priorities set forth herein, (2) superpriority claims and priming liens to the extent set forth in this Interim Order, the DIP Notes, and (3) the other protections set forth in this Interim Order.

(vi) Consent to Incurrence of DIP Loans. The Prepetition Lender has consented to the Debtor's entry into the DIP Notes, in accordance with and subject to the terms and conditions in this Interim Order and the DIP Notes and the Budget.

G. **Findings Regarding Use of Cash Collateral**.

(i) Request for Use of Cash Collateral. The Debtor seeks authority to use Cash Collateral of the Prepetition Lender on the terms described herein to administer its Chapter 11 Case and fund their operations in accordance with the Budget and this Interim Order.

(ii) Adequate Protection. Consistent with the requirements of section 364(d) of the Bankruptcy Code, the Prepetition Lender shall receive adequate protection as set forth in this Interim Order, pursuant to sections 361, 363, and 364 of the Bankruptcy Code, for any decrease in the value of its interest in the Prepetition Collateral (including Cash Collateral) resulting from (A) the use, sale, or lease by the Debtor of the Prepetition Collateral from and after the Petition Date through the date of the Final Hearing (hereinafter defined), (B) the DIP Liens and the Carve-Out pursuant to the DIP Notes and this Interim Order, or (C) the imposition of the automatic stay pursuant to section 362 of the Bankruptcy Code (such potential diminution, collectively, "Diminution"). The adequate protection provided in this Interim Order and other benefits and

privileges contained herein are consistent with and authorized by the Bankruptcy Code. Adequate protection is granted only to the extent that the liens held by the Prepetition Lender are valid, perfected and enforceable.

(iii) Consent to use of Cash Collateral. Based on the Financing Motion, the Supporting Declarations, and the record presented to the Court at the Interim Hearing, absent an order of this Court and the provision of adequate protection as set forth herein, consent of the Prepetition Lender is required for the Debtor's use of Cash Collateral and the other Prepetition Collateral. The Prepetition Lender has consented to the Debtor's use of Cash Collateral in accordance with and subject to the terms and conditions in this Interim Order and the DIP Notes as modified by this Order.

(iv) Immediate Need for Use of Cash Collateral. Based on the Financing Motion, the Supporting Declarations, and the record presented to the Court at the Interim Hearing, the Debtor has an immediate and critical need to use the Cash Collateral, to the extent generated from the Prepetition Collateral, in order to, among other things, (a) pay the fees, costs, and expenses incurred in connection with the Chapter 11 Case, (b) permit the orderly operation and liquidation of the Debtor's business, (d) maintain business relationships with customers, vendors, and suppliers, (e) fund employee expenses, (f) satisfy other working capital and operational needs, and (g) maximize the value of its estate. The use of Cash Collateral is necessary and vital to the preservation and maintenance of the going concern value of the Debtor. The adequate protection provided in this Interim Order and other benefits and privileges contained herein are consistent with and authorized by the Bankruptcy Code.

(v) Relief Essential; Best Interest**.** The relief requested in the Financing Motion (and as provided in this Interim Order) is necessary, essential, and appropriate for the continued

operation of the Debtor's business and the management and preservation of the Debtor's assets and personal property. It is in the best interest of Debtor's estate that the Debtor be allowed to obtain the funding available through the DIP Notes and use the Prepetition Lender's Cash Collateral, if any, on the terms and conditions described in the Financing Motion and herein. The Debtor has demonstrated good and sufficient cause for the interim relief requested in the Financing Motion through the entry of this Interim Order. The Prepetition Lender has indicated that it assents to the relief requested in the Financing Motion, subject to entry of a Final Order.

(vi) Good Cause. Based on the Financing Motion, the Supporting Declarations, and the record presented to the Court at the Interim Hearing, good cause has been shown for immediate entry of this Interim Order, and the entry of this Interim Order is in the best interests of the Debtor, its estate, and other parties in interest in order to avoid immediate, irreparable harm to the value of the Debtor's estate.

(vii) Immediate Entry, No Stay. Sufficient cause exists for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the applicable Local Rules and for waiving any statutory or other stay applicable to the entry of this Interim Order.

NOW, THEREFORE, based upon the foregoing findings and conclusions, the Financing Motion and the record before the Court with respect to such Motion, and after due consideration and good and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

Financing Motion Granted.

1. The Financing Motion is granted on an interim basis in accordance with the terms and conditions set forth in this Interim Order.

DIP Facility Authorization

2. **Authorization of the Interim DIP Financing**. Incurrence by the Debtor of the DIP Obligations in accordance with the terms of the DIP Notes as modified by this Interim Order is authorized and approved, on an interim basis, subject to the terms and conditions set forth in this Interim Order. All objections to the Financing Motion and entry of this Interim Order to the extent not withdrawn, waived, settled or resolved, and all reservations of rights included therein, are hereby denied and overruled on the merits without prejudice to being reasserted in connection with the Final Hearing.

3. The Debtor is expressly and immediately authorized and empowered to execute and deliver the DIP Notes, and to incur and to perform the DIP Obligations in accordance with, and subject to, the terms of this Interim Order and the DIP Notes, and to execute, deliver and perform under all instruments, certificates, agreements, and documents which may be required or necessary for the performance by the Debtor under the DIP Notes and the creation and perfection of the DIP Liens described in and provided for by this Interim Order and the DIP Notes; *provided, however*, that the Debtor is not authorized to borrow under the HRL Trust DIP Note until such time as this Court has approved the Financing Motion through entry of the Final Order granting the Requested Final Relief. The Debtor is further authorized to incur and pay, in accordance with this Interim Order, any principal, interest, fees, expenses, and other amounts described in the DIP Notes and this Interim Order, as such amounts become due and owing, without need to obtain further Court approval (except as otherwise provided in this Interim Order) subject to and in accordance with the terms thereof, and to take any other actions that may be necessary or appropriate, all to the extent provided in this Interim Order. Upon execution and delivery, the DIP Notes shall represent legal, valid and binding obligations of the Debtor, enforceable against the Debtor and its estate in

accordance with their terms. Notwithstanding the foregoing, except as may be provided in any final or further order on the Financing Motion, the fees and expenses of the DIP Lenders shall be subject to the review of the Court for reasonableness.

4. **Authorization to Borrow on Interim Basis**. To prevent immediate and irreparable harm to the Debtor's estate, and to enable the Debtor to continue to operate its business and preserve and maximize the value of its estate, subject to the terms and conditions set forth in the DIP Notes and this Interim Order, the Debtor is authorized to borrow up to $500,000 from the Purchaser under the Purchaser DIP Note, in one or more advances, which borrowings shall be used solely for purposes permitted under the Initial Budget. The Initial Advance shall be made available for the purposes set forth in the Purchaser DIP Note and this Interim Order in a principal amount of up to $500,000 on or after the first business day following entry of this Interim Order.

5. **Interim DIP Obligations**. The Purchaser DIP Note and this Interim Order shall constitute and evidence the validity and binding effect of the Senior DIP Obligations to the extent of funds actually advanced by Purchaser. All such Senior DIP Obligations shall be enforceable against the Debtor, its estate, and any successors thereto, including without limitation, any trustee appointed in the Chapter 11 Case, or a case under Chapter 7 of the Bankruptcy Code upon the conversion of the Chapter 11 Case, or in any other proceedings superseding or related to any of the foregoing (collectively, the "Successor Case"). Upon entry of this Interim Order, the Senior DIP Obligations will include all loans, fees, costs, reimbursement obligations, and any other indebtedness or obligations, contingent or absolute, liquidated or unliquidated, which may now or from time to time be owing by the Debtor to the Purchaser under the Purchaser DIP Note, including, without limitation, all principal, accrued interest, costs, charges, fees, expenses and other amounts under the Purchaser DIP Note. The Senior DIP Obligations shall become due and

payable, without notice or demand, on the Maturity Date in accordance with the Purchaser DIP Note.

6. **DIP Collateral**. To secure the Senior DIP Obligations, effective immediately upon entry of this Interim Order, pursuant to sections 361, 362, 364(c)(2), 364(c)(3), and 364(d) of the Bankruptcy Code, the Purchaser is hereby granted the Purchaser DIP Liens, which shall be continuing, valid, binding, enforceable, non-avoidable, and automatically and properly perfected postpetition security interests in and liens on the DIP Collateral. For clarity, the term "DIP Collateral" shall have the meaning ascribed in the Purchaser DIP Note and shall include the proceeds, products, rents, accession and profits of the foregoing Property, including but not limited to (i) all assets constituting Prepetition Collateral (in which the Purchaser DIP Liens shall be *priming, first priority Liens*), (ii) the Cash Collateral, (iii) subject to entry of the Final Order, to the extent provided therein, all Property of the Debtor that, as of the Petition Date, was not otherwise subject to a security interest, including any assets constituting excluded property under the Prepetition Loan Documents, (iv) to the extent a DIP Lien is not permitted by law to attach to any property of any Debtor or its estate, the proceeds of such property; *provided, however*, that the DIP Collateral shall not include, and shall specifically exclude, any proceeds or property recovered, unencumbered or otherwise from all of the Debtor's claims and causes of action under Sections 502(d), 544, 545, 547, 548, 549, and 550 of the Bankruptcy Code and under any applicable state Uniform Voidable Transactions Act, Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, and similar statutes or common law (collectively, "Avoidance Actions").

7. **Purchaser DIP Liens**. The Purchaser DIP Liens secure the Senior DIP Obligations and are enforceable, valid, automatically perfected, non-avoidable, priming, senior in priority, and

superior to any security, mortgage, collateral interest, lien or claim to any of the DIP Collateral, except that the Purchaser DIP Liens shall be subject to payment of the Carve-Out, on the terms described herein, in the event of a Termination Event pursuant to the Purchaser DIP Note. The Purchaser DIP Liens shall not be junior or made *pari passu* with any lien or security interest heretofore or hereinafter granted in the Chapter 11 Case or any Successor Case, and shall be valid and enforceable against any trustee appointed in the Chapter 11 Case or any Successor Case, upon the conversion of the Chapter 11 Case to a case under chapter 7 of the Bankruptcy Code (or in any other Successor Case), and/or upon the dismissal of any of the Chapter 11 Case or Successor Case. The Purchaser DIP Liens shall not be subject to section 549, or 550 of the Bankruptcy Code. No lien or interest avoided and preserved for the benefit of any of the Debtor's estate pursuant to section 551 of the Bankruptcy Code shall be *pari passu* with or senior to the Purchaser DIP Liens.

8. **Senior DIP Superpriority Claims**. Subject to the terms of this Interim Order and to the payment of the Carve-Out, upon entry of this Interim Order, the Purchaser is hereby granted, pursuant to section 364(c)(1) of the Bankruptcy Code, an allowed superpriority administrative expense claim in the Chapter 11 Case for repayment of the Senior DIP Obligations owed by the Debtor for funds actually advanced by Purchaser pursuant to the Purchaser DIP Note (the "Purchaser Superpriority Claim"), which Purchaser Superpriority Claim shall, subject to the Carve-Out, be an allowed superpriority administrative expense claim in the Chapter 11 Case and any Successor Case for all Senior DIP Obligations and (a) shall have with priority over the allowed superpriority administrative expense claim to be granted to the HRL Trust DIP Lender pursuant to the HRL Trust DIP Note and the Final Order (the "HRL Trust Superpriority Claim"), (b) shall have priority over any and all other administrative expense claims and unsecured claims against the Debtor in the Chapter 11 Case and any Successor Case, at any time existing or arising, of the

kind specified in sections 503(b) and 507(b) of the Bankruptcy Code, including, to the extent allowable under the Bankruptcy Code, administrative expenses of the kinds specified in or ordered pursuant to Bankruptcy Code sections 105, 326, 328, 330, 331, 364, 503(a), 503(b), 507(a), 507(b), 546(c), 546(d), 726, 1113, and 1114, and any other provision of the Bankruptcy Code, as provided under section 364(c)(1) of the Bankruptcy Code, and (c) shall at all times be senior to the rights of the Debtor and its estate, and any successor estate representative, to the extent permitted by law. Other than the Carve-Out, no costs or expenses of administration, including, without limitation, professional fees allowed and payable under sections 328, 330, and 331 of the Bankruptcy Code, or otherwise, that have been or may be incurred in the Chapter 11 Case, or in any Successor Case, and no priority claims are, or will be, senior to, prior to, or on a parity with the Purchaser Superpriority Claim or the Senior DIP Obligations, or with any other claims of the Purchaser arising hereunder.

9. **No Obligation to Extend Further Credit**. The Purchaser shall have no obligation to make any further loan or advance under the Purchaser DIP Note after advancing the full $500,000 of authorized interim financing pursuant to this Interim Order.

10. **Use of Proceeds of Purchaser DIP Loan**. From and after the Petition Date, the Debtor shall only use the proceeds of the Initial Advance for the purposes specifically set forth in this Interim Order and the Purchaser DIP Note, and only in compliance with the Initial Budget and the terms and conditions in this Interim Order and the Purchaser DIP Note.

11. **Section 363(k) Credit Bid Right.** The Purchaser shall have the exclusive right under Bankruptcy Code § 363(k) to credit bid the full outstanding amount of the Senior DIP Obligations due under the Purchaser DIP Note in connection with any sale of the DIP Collateral, or any portion thereof, whether in connection with a sale under § 363, a plan of reorganization, or

otherwise whether in the Chapter 11 Case or any Successor Case (the "Credit Bid Right").

12. **Further Advances**. Other than the Initial Advance, the Debtor is without authority to obtain additional funding from the DIP Lenders under the DIP Loans until and unless the Final Order enters, and only in accordance with the express provisions of the Final Order and applicable DIP Notes.

Use of Cash Collateral

13. **Authorization to Use Cash Collateral**. Subject to the terms and conditions of this Interim Order and the DIP Notes, and in accordance with the Initial Budget, the Debtor is authorized to use Cash Collateral until July 26, 2023. Nothing in this Interim Order shall authorize the disposition of any assets of the Debtor outside the ordinary course of business, or any Debtor's use of any Cash Collateral or other proceeds resulting from the disposition of any DIP Collateral or Prepetition Collateral, except as permitted by this Interim Order, the DIP Notes, and in accordance with the Budget, as applicable.

14. **Consent of Prepetition Secured Parties**. The Prepetition Lender consents to (a) the provisions of this Interim Order including the borrowing of the Initial Advance from the Purchaser pursuant to the terms of this Interim Order and the Purchaser DIP Note, (b) the granting of the DIP Liens and DIP Superpriority Claims in favor of the DIP Lenders on the terms and subject to the conditions set forth herein, and (c) the Budget.

15. **Adequate Protection for Prepetition Lender**. As adequate protection for any Diminution of the Prepetition Lender's interest in the Prepetition Collateral resulting from the granting of DIP Liens that prime and shall be senior in all respects to the Prepetition Liens, the Prepetition Lender shall receive:

a) Adequate Protection Liens. Continuing valid, binding, enforceable and perfected postpetition replacement liens pursuant to sections 361, 363(e), and 364(d)(1) of the

Bankruptcy Code on the DIP Collateral, which shall be *subject and subordinated to* the Carve-Out and which shall be *junior to and subordinate to* the Purchaser DIP Liens, but senior to the Prepetition Liens (the "Adequate Protection Liens"), and shall be valid and enforceable against any trustee appointed in any of the Chapter 11 Case or any Successor Case, and shall not be subject to sections 510, 549 or 550 of the Bankruptcy Code. Notwithstanding the foregoing, any Adequate Protections Liens and any protections provided herein shall only be granted to the extent the Prepetition Liens are valid, perfected, and enforceable.

b) Compliance with Approved Budget. The Debtor shall comply with, and shall use cash, including Cash Collateral, solely in accordance with the Budget.

Provisions Common to DIP Financing and Use of Cash Collateral

16. **Amendments of the DIP Notes**. The Debtor, the DIP Lenders, and the Prepetition Lender may enter into one or more amendments, waivers, consents, or other modifications to and under the DIP Notes, in each case in accordance with the terms of the DIP Notes and in such form as the Debtor and the such other parties agree and no further approval of this Court shall be required for any amendment, waiver, consent, or other modification to and under the DIP Notes (and any fees paid in connection therewith) that does not materially and adversely affect the Debtor or which does not (i) shorten the maturity of the DIP Loans, (ii) increase the principal amount (except with respect to any fees authorized in the DIP Notes and this Interim Order) of, the rate of interest on, or the fees payable in connection with the DIP Loans, or (iii) change any Event of Default (as defined in the DIP Notes), add any covenants, or amend the covenants to be materially more restrictive; *provided, however,* two days in advance notice of the effectiveness of any such amendment or other modification shall be filed by the Debtor with the Court and provided by the Debtor to the U.S. Trustee, the Prepetition Lender, and to any statutory committee appointed prior to entry of this Interim Order ("Committee"), to the extent reasonably practicable. No consent to any such amendment, waiver, consent, or modification shall be implied by any action, inaction, or acquiescence of the DIP Lenders and/or the Prepetition Lender. After obtaining the DIP Lenders' and the Prepetition Lender's prior written consent, the Debtor is authorized and empowered,

without further notice and hearing or approval of this Court so long as such amendment, or modification is not of the type set forth in clauses (i)–(iii) above, to amend, modify, supplement, or waive any provision of the DIP Notes in accordance with the provisions of this Interim Order.

17. **Approved Budget**. The Initial Budget is approved on an interim basis. The proceeds of the Initial Advance under the Purchaser DIP Note shall be used by the Debtor in accordance with the Initial Budget (subject to Permitted Variances) and this Interim Order, except as otherwise ordered by this Court.

18. **Budget Reporting**. The Debtor shall at all times comply with the Initial Budget (subject to the Permitted Variances). The Debtor shall comply with the reporting requirements set forth in the Purchaser DIP Note and this Interim Order. The Debtor shall by **12:00 noon on July 24, 2023,** file with the Court an actual to budget report covering the period from the Petition Date through July 21, 2023.

19. **Modification of Automatic Stay**. The automatic stay of section 362 of the Bankruptcy Code is modified to the extent necessary to permit the Debtor, the DIP Lenders and/or the Prepetition Lender to enter into the financing approved by this Order, including the grant of security and priority, and any recordings related thereto that the DIP Lenders may wish to file. Except as otherwise provided in Paragraph 23, or as may be otherwise ordered by the Court, the automatic stay remains in effect.

20. **Perfection of DIP Liens and Adequate Protection Liens**. This Interim Order shall be sufficient and conclusive evidence of the grant, creation, validity, perfection, and priority of all liens granted herein, including the DIP Liens and the Adequate Protection Liens, without the necessity of filing or recording any financing statement, mortgage, deed of trust, notice, or other instrument or document which may otherwise be required under the law or regulation of any

jurisdiction or the taking of any other action (including, for the avoidance of doubt, entering into any deposit account control agreement) or to exercise possession, dominion or control over any DIP Collateral to validate or perfect (in accordance with applicable non-bankruptcy law) the DIP Liens and the Adequate Protection Liens or to entitle the DIP Lenders and the Prepetition Lender to the existing priorities or priorities provided or granted herein. Notwithstanding the foregoing, the DIP Lenders and the Prepetition Lender are authorized, but not required, to file, as each deems necessary or advisable, such financing statements, security agreements, mortgages, notices of liens and other similar documents to perfect in accordance with applicable non-bankruptcy law or to otherwise evidence the DIP Liens and the Adequate Protection Liens, and all such financing statements, mortgages, notices and other documents shall be deemed to have been filed or recorded as of the Petition Date; *provided, however,* that no such filing or recordation shall be necessary or required in order to create or perfect the DIP Liens or the Adequate Protection Liens. The DIP Lenders and the Prepetition Lender may each, in their discretion, file an electronic copy or photocopy of this Interim Order as a financing statement with any filing or recording office or with any registry of deeds or similar office in addition to or in lieu of such financing statements, notices of lien or similar instruments. To the extent that the Prepetition Lender is, with respect to the DIP Collateral, the secured party under any security agreement, mortgage, leasehold mortgage, landlord waiver, credit card processor notices or agreements, bailee letters, custom broker agreements, financing statement, account control agreements or any other Prepetition Loan Documents or are listed as loss payee, lenders' loss payee or additional insured under any of the Debtor's insurance policies, the DIP Lenders shall also be deemed to be the secured party or mortgagee, as applicable, under such documents or to be the loss payee or additional insured, as applicable.

21. **Events of Default**. Unless waived by the Purchaser in writing and in accordance with the terms of the Purchaser DIP Note, the "Events of Default" set forth in the Purchaser DIP Note shall constitute an event of default hereunder (collectively, the "Events of Default"); *provided that*, the Debtor shall have the right to cure any breach of any representations and warranties or covenants, to the extent curable, and only in accordance with the express provisions of the Purchaser DIP Note. Notwithstanding anything in the Purchaser DIP Note to the contrary, the Purchaser confirmed at the Interim Hearing that no Event of Default will occur to the extent that the dates for hearings set by the Court are inconsistent with the date of any milestones in the Purchaser DIP Note.

22. **Rights and Remedies Upon Event of Default**. Upon the occurrence of any Event of Default, the Purchaser shall file any Notice of Event of Default with the Court and may accelerate the Purchaser DIP Note and declare the Purchaser DIP Note due. Except as otherwise provided by further order of the Court or in the final order on the Financing Motion, the Purchaser may not exercise any other rights and remedies, all of which are stayed by Section 362 of the Bankruptcy Code, without first seeking relief from the automatic stay, which may be sought on an expedited basis. All proceeds realized from any disposition of the Debtor's assets shall be applied first, to the Carve-Out, and otherwise, in the order of distribution required by Paragraph 19 of the Purchaser DIP Note.

23. **Termination Date**. On the applicable Termination Date contained in the DIP Notes, all DIP Obligations shall be immediately due and payable and, all commitments to extend credit under each DIP Loan will terminate in accordance with the terms of the DIP Notes.

24. **Carve-Out**. In all instances, the DIP Liens, the DIP Superpriority Claims, the Prepetition Liens, the Adequate Protection Replacement Liens, and the Adequate Protection

Superpriority Claim, are subordinate to the Carve-Out. The term "Carve-Out" means any (i) unpaid fees of the Clerk of the Court and of the U.S. Trustee pursuant to 28 U.S.C. § 1930; (ii) unpaid fees and expenses of any consumer privacy ombudsman appointed pursuant to Section 332 of the Bankruptcy Code (the "CPO") and the professionals of the Debtor, the CPO, and any Committee retained by an order of the Court pursuant to Section 327, 328, 363 or 1103(a) of the Bankruptcy Code (collectively, including the CPO, the "Professionals") incurred prior to written notice by either DIP Lender to counsel to the Debtor of the occurrence of an Event of Default (the "Trigger Date"), to the extent such fees and expenses are (a) within the amounts set forth in the Budget for estate professionals approved by the DIP Lender for such period, (b) subsequently allowed by the Court under Sections 330, 331 or 363 of the Bankruptcy Code, and (c) not otherwise payable from retainers or any professional expense escrow account established by the Debtor; and (iii) fees and expenses of the Professionals incurred after the Trigger Date in an aggregate amount not to exceed $25,000, to the extent such fees and expenses are (a) subsequently allowed by the Court under Sections 330, 331 or 363 of the Bankruptcy Code, and (b) not otherwise payable from retainers or any professional expense escrow account established by the Debtor. Pending the Trigger Date, the Debtor shall be authorized to fund, on a weekly basis, an escrow account for the payment of Professionals in an amount up to the amount set forth in the Budget for that week.

25. Nothing herein, including the inclusion of line items in the Budget, shall be construed as consent to the allowance of any professional fees or expenses of the Debtor, of any Committee, or of any person or shall affect the right of the DIP Lender or the Prepetition Lender to object to the allowance and payment of such fees and expenses or to permit the Debtor to pay any such amounts not set forth in the Budget.

Reservation of Third-Party Challenge Rights

26. Nothing in this Interim Order shall preclude any party from objecting to the Financing Motion, the validity, perfection or enforceability of the prepetition security interests or the claims of the Prepetition Lender. No such objection shall affect (i) the grant of security and priority for any funds actually advanced by the Purchaser under this Interim Order, or (ii) the grant of security and priority for any of the Prepetition Lender's cash collateral actually used prior to the Final Hearing, except to the extent it is subsequently determined that the Prepetition Lender does not hold a valid, perfected and enforceable prepetition security interest in the Debtor's assets.

Miscellaneous Provisions

27. **No Marshalling**. Subject to entry of the Final Order, to the extent provided therein, in no event shall the DIP Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral or the DIP Obligations, as applicable, and all proceeds shall be received and applied in accordance with this Interim Order and the DIP Notes, as applicable.

28. **Binding Effect of this Interim Order**. Immediately upon entry of this Interim Order by this Court, the terms and provisions of this Interim Order shall become effective, valid and binding upon and inure to the benefit of the Debtor, the DIP Lenders, the Prepetition Lender, all other creditors of any of the Debtor, the Committee, if any, and all other parties-in-interest and their respective successors and assigns, including any trustee or other fiduciary hereafter appointed in any of the Chapter 11 Case, any Successor Case, or upon dismissal of the Chapter 11 Case or Successor Case; *provided,* that neither the DIP Lenders nor the Prepetition Lender shall have an obligation to extend financing to any chapter 7 trustee, chapter 11 trustee or similar responsible person appointed for the Debtors' estates.

29. **Necessary Actions**. The Debtor is authorized and directed to take any and all necessary actions as are reasonable and appropriate to implement the terms of this Interim Order.

30. **No Stay of Effect**. This Interim Order shall constitute findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052 and shall take effect and be enforceable immediately upon entry thereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9014 of the Bankruptcy Rules, any applicable Local Bankruptcy Rules, or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

31. **Interim Order Controls**. In the event of any conflict or inconsistency between or among the terms or provisions of this Interim Order, any of the DIP Notes, unless such term or provision in this Interim Order is phrased in terms of "defined in" or "as set forth in" the DIP Notes, the terms and provisions of this Interim Order shall govern and control.

32. **Proofs of Claim.** The Prepetition Lender and the DIP Lenders are not required to file proofs of claim in the Chapter 11 Case or in any Successor Case in order to assert the rights they hold as secured creditors arising under the DIP Notes or any order entered with respect to the Financing Motion, including this Interim Order.

33. **Final Hearing**. The final hearing (the "Final Hearing") on the Financing Motion shall be held in person in Courtroom No. 3, John W. McCormack Courthouse, 5 Post Office Square, Boston, Massachusetts, on **July 25, 2023, at 2:00 p.m. (EDT**). Any objections or responses to entry of the Final Order on the Financing Motion (each, an "Objection") shall be filed on or before **12:00 p.m. (EDT) on July 24, 2023,** and served on the Notice Parties. By July 10, 2023, the Debtor shall serve this Order and notice of such final hearing on the Notice Parties.

34. **Retention of Jurisdiction**. The Court shall retain jurisdiction to hear, determine and, if applicable, enforce the terms of, any and all matters arising from or related to the DIP Notes and/or this Interim Order.

Dated: July 6, 2023

Janet E. Bostwick
United States Bankruptcy Judge