

UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE

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<i>In re</i>	:	Chapter 11
	:	
TECT AEROSPACE GROUP HOLDINGS,	:	Case No. 21– ____ (____)
INC., <i>et al.</i> ,	:	
	:	Joint Administration Requested
Debtors. ¹	:	
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MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO PAY PREPETITION CLAIMS OF (A) CRITICAL VENDORS, (B) FOREIGN VENDORS, AND (C) 503(b)(9) CLAIMANTS, (II) CONFIRMING ADMINISTRATIVE EXPENSE PRIORITY STATUS FOR OUTSTANDING PREPETITION PURCHASE ORDERS, AND (III) GRANTING RELATED RELIEF

TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, “TECT Aerospace” or the “Debtors”), respectfully represent as follows in support of this motion (the “Motion”):²

PRELIMINARY STATEMENT

1. By this Motion, the Debtors request authorization to pay those vendors that are crucial to the Debtors’ operations to ensure a smooth transition into chapter 11 and preserve the Debtors’ estates. The Debtors manufacture complex aerostructure components, parts and assemblies in a highly regulated industry. As such, the Debtors rely on their network of vendors to provide them with the specialized goods and services needed to satisfy the strict demands of their customers. Any interruption in such goods or services, even temporarily, would jeopardize

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202.

² Certain facts and circumstances supporting the relief requested herein are set forth in the First Day Declaration (as defined herein) filed contemporaneously herewith. Capitalized terms used but not defined herein have the respective meanings given to those terms in the First Day Declaration.



the Debtors' ability to generate value and potentially result in irreparable harm to the Debtors' estates. Accordingly, the relief requested herein is necessary to minimize any disruptions to the Debtors' chapter 11 strategy and maximize value for all parties in interest.

BACKGROUND

2. On the date hereof (the "**Petition Date**"), the Debtors commenced with this Court voluntary cases under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to continue to operate their businesses and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases.

3. Contemporaneously herewith, the Debtors have filed a motion requesting joint administration of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 1015-1 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "**Local Rules**").

4. Additional information regarding the Debtors' businesses, capital structures, and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Shaun Martin in Support of Chapter 11 Petitions and First Day Pleadings* (the "**First Day Declaration**"), filed contemporaneously herewith and incorporated herein by reference.

JURISDICTION

5. The Court has jurisdiction to consider this matter pursuant to 28 U.S.C. §§ 157 and 1334, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012. This is a core proceeding pursuant to 28 U.S.C. § 157(b). Pursuant to Local Rule 9013-1(f), the Debtors consent to the entry of a final order by

the Court in connection with this Motion to the extent it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments consistent with Article III of the United States Constitution. Venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

RELIEF REQUESTED

6. By this Motion, the Debtors, pursuant to sections 105(a), 363(b), and 503(b)(9) of the Bankruptcy Code, request (i) authority, but not direction, to pay the prepetition claims of (a) certain vendors that are critical to the Debtors' ongoing business operations (the "**Critical Vendors**"), (b) certain foreign vendors that are critical to the Debtors' ongoing business operations (the "**Foreign Vendors**"), and (c) certain vendors that have delivered goods to the Debtors in the ordinary course of business within 20 days of the Petition Date and whose prepetition claims are thus entitled to administrative expense priority status under section 503(b)(9) of the Bankruptcy Code (the "**503(b)(9) Claimants**" and together with the Critical Vendors and the Foreign Vendors, the "**Vendors**"), (ii) confirmation of the administrative expense priority status of all undisputed obligations of the Debtors arising out of outstanding prepetition purchase orders (the "**Outstanding Orders**"), and (iii) related relief. The Debtors request, pursuant to this Motion, authority to pay (a) upon entry of the Proposed Interim Order (as defined below), prepetition amounts owed to the Vendors in an amount not to exceed \$2,365,000, and (b) upon entry of the Proposed Final Order (as defined below), prepetition amounts owed to the Vendors in an amount not to exceed \$6,144,000, in each case as they become due in the ordinary course of business.

Vendor	Interim Amount	Final Amount
Critical Vendors	\$2,355,000	\$4,710,000

Vendor	Interim Amount	Final Amount
Foreign Vendors	\$10,000	\$103,000
503(b)(9) Claimants	\$0	\$1,331,000
Total	\$2,365,000	\$6,144,000

7. A proposed form of order granting the relief requested herein on an interim basis is attached hereto as **Exhibit A** (the “**Proposed Interim Order**”), and a proposed form of order granting the relief requested herein on a final basis is attached hereto as **Exhibit B** (the “**Proposed Final Order**”) and together with the Proposed Interim Order, the “**Proposed Orders**”).

THE DEBTORS’ SUPPLY CHAIN

8. The Debtors manufacture complex aerospace components, parts and assemblies, including, among other things, components and assemblies for wings, fuselage, interiors, landing gear, assist controls, and cockpit applications. As is commonplace throughout the aerospace industry, the Debtors’ business functions under a tiered supply chain structure whereby the Debtors manufacture and service specialized aerospace components that are in turn utilized and incorporated by customers into their platforms and planes. In addition, the Debtors operate in a highly-regulated business environment and are required to maintain or service components at standards necessary to meet safety and other regulations. Accordingly, the aerospace manufacturing and servicing industries necessarily have customer bases that demand highly specific and customized parts and services. The Debtors’ extensive experience in the aircraft industry, combined with their vast array of machining and assembly capabilities, allows them to respond to a wide variety of their customers’ needs. However, such responsiveness requires uninterrupted goods and services from their Vendors. The Debtors estimate that as of the Petition

Date, there are approximately \$35,000,000 of prepetition trade claims, which is subject to change as the Debtors continue to reconcile their books and records.

CRITICAL VENDORS

9. The Debtors rely on a highly customized network of essential vendors to provide them with the specialized parts, materials, and services necessary to satisfy the stringent demands of the highly regulated aerospace industry. Indeed, the Critical Vendors are essential to the Debtors' manufacturing and servicing operations such that any disruption in the supply of their respective goods or services, even for a short duration, would jeopardize the Debtors' ability to generate revenue. Moreover, due to the highly specialized and regulated goods and services that the Debtors require to meet the particular demands of their customers, as well as the expertise specific to the Debtors that the Critical Vendors have developed, many of the Critical Vendors cannot be readily replaced. For example, many of the Critical Vendors supply the Debtors with highly unique raw materials that must meet strict regulatory standards to be used in aerospace applications and would take anywhere from eight to twenty four months to resource. Moreover, given the specialized products that the Debtors manufacture and assemble, the Debtors are often contractually obligated to use specific parts produced by a specific Critical Vendor. In addition, certain Critical Vendors produce and provide parts to which they hold exclusive intellectual property rights, and therefore, they are the sole suppliers of that part. Accordingly, replacing the Critical Vendors would, in many instances, be impossible during the pendency of these chapter 11 cases, and when possible, would result in substantial additional costs for the Debtors and their estates.

10. To ensure that only those vendors that provide goods and services that are actually essential to the Debtors' businesses are the subject of the relief requested herein, the Debtors and their advisors spent significant time and effort reviewing and analyzing the Debtors' books and

records, consulting operations management and purchasing personnel, reviewing contracts and supply agreements, and analyzing applicable laws, regulations, and historical practices to identify business relationships which, if lost, could materially harm the Debtors' businesses or impair their restructuring process. In this process, the Debtors, with the assistance of their professional advisors, assessed a variety of factors, including:

- the goods or services provided by a vendor or supplier;
- whether the goods or services are essential to the Debtors' business needs;
- whether goods or services are provided pursuant to a contract or on a purchase-order or sales-order basis;
- whether failure to pay all or part of a particular vendor's claim could cause the vendor to refuse to ship inventory or provide critical services on a postpetition basis;
- whether failure to pay a particular vendor could result in contraction of trade terms;
- whether the vendor is a sole- or limited-source or high-volume supplier of traffic to the Debtors' platforms or of particular goods or services;
- whether alternative vendors are available that could 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;
- whether the Debtors' inability to pay all or part of the vendor's prepetition claim could trigger financial distress for the applicable vendor; and
- whether failure to pay the particular vendor could jeopardize the Debtors' valuable proprietary interest in the goods provided by the vendor.

11. Applying these factors, the Debtors identified the universe and type of vendors whose support remains essential to the Debtors' ability to preserve and enhance value through the seamless transition of their operations into chapter 11. In some instances, the Debtors have identified Critical Vendors who may be party to a contract with the Debtors, but who may threaten

to repudiate the contract unless the Debtors first pay such vendor's claim. The Debtors have determined that the disruption attendant to resolving a dispute with such repudiating Critical Vendor would likely exceed the payment to such vendor on account of its prepetition claim. Accordingly, the Debtors seek authority to pay such repudiating vendors as Critical Vendors.

12. Based on the foregoing, the Debtors seek authority, but not direction, to pay claims of Critical Vendors (the "**Critical Vendor Claims**") in an amount not to exceed \$2,355,000 on an interim basis, and in an amount not to exceed \$4,710,000 on a final basis.³

FOREIGN VENDORS

13. The Debtors and their advisors also analyzed the factors listed above to identify which of the Debtors' Foreign Vendors are critical to the Debtors' operations. In addition to satisfying this criteria, most of the Foreign Vendors have little or no connection to the United States. Although the scope of the automatic stay set forth in section 362 of the Bankruptcy Code is universal, the Debtors may not be able to enforce the stay in foreign jurisdictions if the creditor against whom enforcement is sought has minimal or no presence in the United States. As a result, despite the commencement of these cases and the imposition of the automatic stay, if the Foreign Vendors are not timely paid, they may be able to immediately pursue remedies and seek to collect prepetition amounts owed to them. Indeed, there is a real risk that nonpayment of even a single invoice could cause a Foreign Vendor to stop providing necessary services to the Debtors on a timely basis or sever its business relationship with the Debtors.

14. The Debtors are making every effort to avoid interruptions to their business and the adverse effects that even a temporary disruption could have on their businesses. Any short term

³ For the avoidance of doubt, the Critical Vendor Claims proposed to be paid pursuant to the Proposed Orders do not include claims of creditors whose prepetition claims are addressed in any other first-day motion filed contemporaneously herewith.

disruption could generate instability and thus jeopardize the Debtors' ability to preserve their value. In light of the potential for immediate and irreparable consequences if the Foreign Vendors do not continue to provide their services and/or take actions outside the United States, the Debtors seek authority to pay the claims of Foreign Vendors (the "**Foreign Vendor Claims**") that, in the exercise of the Debtors' business judgment, the Debtors believe are essential to avoiding costly disruptions to the Debtors' operations.

15. Accordingly, the Debtors seek authority, but not direction, to pay the Foreign Vendor Claims in an amount not to exceed \$10,000 on an interim basis, and in an amount not to exceed \$103,000 on a final basis.

503(b)(9) CLAIMANTS

16. The Debtors received goods from certain of their vendors within the 20-day period prior to the Petition Date. The Debtors are making every effort to avoid interruptions in their supply chain and the potentially devastating effects that even a temporary disruption could have on their businesses. Failure to pay the 503(b)(9) Claimants on account of their claims at the outset of these chapter 11 cases—which, due to their administrative expense priority status, must be paid in full upon the effective date of a chapter 11 plan at the latest—could result in the 503(b)(9) Claimants terminating their relationship with the Debtors. Certain 503(b)(9) Claimants may also impose stricter payment terms on the Debtors thereby reducing the value of the Debtors' estates and, in turn, creditor recoveries.

17. Accordingly, the Debtors seek authority, but not direction, to pay the claims of 503(b)(9) Claimants (the "**503(b)(9) Claims**") and, together with the Critical Vendor Claims and the Foreign Vendor Claims, the "**Vendor Claims**") in an amount not to exceed \$1,331,000 on a final basis.

CUSTOMARY TRADE TERMS

18. The Debtors propose conditioning the payment of Vendor Claims on obtaining from each Vendor their agreement to continue supplying goods and services to the Debtors on terms that are consistent with the most favorable historical trade terms in effect between the parties in the 24-month period before the Petition Date, or, if applicable, the trade terms of the agreement between the parties in effect on the Petition Date (the “**Customary Trade Terms**”). The Debtors further seek authority, but not direction, to require as a condition to payment of Vendor Claims that the applicable Vendor (including a Vendor who can be characterized as a 503(b)(9) Claimant) enter into a vendor agreement, substantially in the form annexed hereto as **Exhibit C** (each, a “**Vendor Agreement**”). A Vendor Agreement, once agreed to and accepted by a Vendor, constitutes a legally binding contractual relationship between the parties governing the commercial trade relationship as provided therein.

19. The Debtors also seek limited authority, but not direction, to pay Vendor Claims if no Vendor Agreement has been executed or if the Debtors determine, in their business judgment, that a formal Vendor Agreement is prohibitive or unnecessary to provide for the continued provision of goods or services on a postpetition basis; provided that, unless otherwise agreed by the Debtors, if any Vendor accepts payment pursuant to the relief requested by this Motion and thereafter does not continue to provide goods or services on Customary Trade Terms (regardless of whether a Vendor Agreement has been executed), and subject to any Vendor Agreement that may be executed or agreed by the Debtors: (a) the Debtors may demand repayment in cash and otherwise take all action to have such payment be deemed to be an improper postpetition transfer on account of a prepetition claim and (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made and the deadline for such party to file a reinstated claim will be the later of (i) the general bar date established by order of this

Court or (ii) 30 days after the Debtors provide written notice to the party of the reinstatement of its claim.

PAYMENT OF OUTSTANDING PREPETITION ORDERS

20. As of the Petition Date, the Debtors have certain prepetition purchase orders outstanding with various third party vendors and suppliers for goods or services requested by the Debtors that have not yet been delivered or provided to the Debtors. These third party vendors and suppliers may be concerned that because the Debtors' obligations under these Outstanding Orders arose before the Petition Date, such obligations will be treated as general unsecured claims in these chapter 11 cases. Accordingly, certain vendors and suppliers may refuse to provide goods or services to the Debtors purchased pursuant to the Outstanding Orders unless the Debtors issue substitute purchase orders postpetition or obtain an order of the Court (a) confirming that all undisputed obligations of the Debtors arising from the postpetition delivery of goods or services subject to Outstanding Orders are afforded administrative expense priority status under section 503(b) of the Bankruptcy Code and (b) authorizing the Debtors to satisfy such obligations in the ordinary course of business.

21. As discussed above and in the First Day Declaration, any delay in the shipment or delivery of goods or services could bring the Debtors' operations to a halt. While it is difficult to estimate the total amount due and owing under the Outstanding Orders for goods or services that are not scheduled to be delivered or provided until after the Petition Date, the Debtors submit that the total amount to be paid in connection therewith, if the relief requested herein is granted, is *de minimis* compared to the importance and necessity of the goods or services provided.

RELIEF REQUESTED SHOULD BE GRANTED

I. Payment of Vendor Claims is Warranted Under Sections 363(b) and 105(a) of the Bankruptcy Code

22. Section 363(b) of the Bankruptcy Code provides, in relevant part, that “[t]he [debtor], after notice and a hearing, may use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). To approve the use of assets outside the ordinary course of business pursuant to section 363(b) of the Bankruptcy Code, courts require only that the debtor “show that a sound business purpose justifies such actions.” *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999) (internal citations omitted); *see also In re Phoenix Steel Corp.*, 82 B.R. 334, 335–36 (Bankr. D. Del. 1987). Moreover, if “the debtor articulates a reasonable basis for its business decisions (as distinct from a decision made arbitrarily or capriciously), courts will generally not entertain objections to the debtor’s conduct.” *In re Johns-Manville Corp.*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986) (citation omitted); *see also In re Tower Air, Inc.*, 416 F.3d 229, 238 (3d Cir. 2005) (stating that “[o]vercoming the presumptions of the business judgment rule on the merits is a near-Herculean task”).

23. In addition, the Court has the authority, pursuant to its equitable powers under section 105(a) of the Bankruptcy Code, to authorize the relief requested herein, because such relief is necessary for the Debtors to carry out their fiduciary duties under section 1107(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code empowers bankruptcy courts to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” 11 U.S.C. § 105; *see In re Ionosphere Clubs*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (applying section 105(a) to justify an order authorizing the payment of certain prepetition wages, salaries, medical benefits, and business expense claims to debtor’s employees). Section 1107(a)

of the Bankruptcy Code “contains an implied duty of the debtor-in-possession” to act as a fiduciary to “protect and preserve the estate, including an operating business’ going-concern value,” on behalf of a debtor’s creditors and other parties in interest. *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ, L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also Unofficial Comm. of Equity Holders v. McManigle (In re Penick Pharm., Inc.)*, 227 B.R. 229, 232–33 (Bankr. S.D.N.Y. 1998) (“[U]pon filing its petition, the Debtor became debtor in possession and, through its management . . . was burdened with the duties and responsibilities of a bankruptcy trustee.”). Courts consistently have permitted payment of prepetition obligations where necessary to preserve or enhance the value of a debtor’s estate for the benefit of all creditors. *See, e.g., In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that “if payment of a claim which arose prior to reorganization is essential to the continued operation of the . . . [business] during reorganization, payment may be authorized even if it is made out of [the] corpus”).

24. The Court may also authorize the payment of prepetition claims in appropriate circumstances under section 105(a) of the Bankruptcy Code and the doctrine of necessity when such payment is essential to the continued operation of a debtor’s business. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (D. Del. 1999) (holding that section 105(a) of Bankruptcy Code provides a statutory basis for payment of prepetition claims under the doctrine of necessity and noting that “[t]he Supreme Court, the Third Circuit and the District of Delaware all recognize the court’s power to authorize payment of pre-petition claims when such payment is necessary for the debtor’s survival during chapter 11”); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (confirming that the doctrine of necessity is standard for enabling a court to authorize payment of prepetition claims prior to confirmation of a reorganization plan).

25. The relief requested by this Motion represents a sound exercise of the Debtors' business judgment, is necessary to avoid immediate and irreparable harm to the Debtors' estates, and is justified under sections 363(b) and 105(a) of the Bankruptcy Code. Authorizing the Debtors to pay the Vendor Claims in the amounts set forth herein is in the best interests of the Debtors, their estates, and their economic stakeholders. As set forth above and in the First Day Declaration, if the Vendors are unwilling to provide essential goods and services to the Debtors postpetition because of their outstanding prepetition claims, the Debtors' operations would suffer dramatically. As an initial matter, many of the Vendors are the sole providers of the goods or services required to meet the demands of the Debtors' customers. Other Vendors provide such unique goods or services that replacing them would require the Debtors to expend significant time and resources, neither of which are available to the Debtors during this critical juncture of the chapter 11 cases. Accordingly, the consequences of failing to pay even one Vendor could lead to substantial disruptions to the Debtors' delicate operations, resulting in material harm to the Debtors' estates.

II. Payment of Prepetition Claims of Foreign Vendors Is Necessary to Ensure the Debtors' Continued Operations

26. Payment of the prepetition claims of the Debtors' Foreign Vendors is essential to the Debtors' restructuring. As stated above, the limitations of the enforceability of the automatic stay, the critical nature of goods and services provided by certain of the Foreign Vendors, and the lack of qualified alternative suppliers justify the relief requested in this Motion. Absent a continued, uninterrupted supply of goods and services from Foreign Vendors, the Debtors' overall ability to operate their businesses will be jeopardized. Simply stated, payment of the Foreign Vendor Claims as proposed will assure the orderly operation of the Debtors' businesses and avoid costly disruptions and the significant loss of value and irreparable harm arising therefrom.

Further, the Foreign Vendors may take actions to collect debts outside of the U.S. The Debtors have concluded that if they do not pay Foreign Vendor Claims, their value will be reduced by amounts well in excess of amounts that the Debtors seek authorization to pay.

III. The Court Should Authorize Payment of Claims Entitled to Administrative Priority Pursuant to Section 503(b)(9) of the Bankruptcy Code

27. Section 503(b)(9) of the Bankruptcy Code provides administrative priority for the “value of any goods received by the Debtor within 20 days before the 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.” 11 U.S.C. § 503(b)(9). These claims must be paid in full for the Debtors to confirm a plan. *See id.* § 1129(a)(9)(A).

28. The Debtors anticipate having to pay approximately \$1,331,000 in 503(b)(9) Claims. Paying these claims now only provides such creditors what they would otherwise be entitled to receive under a chapter 11 plan. Thus, payment of 503(b)(9) Claims entitled to priority under section 503(b)(9) of the Bankruptcy Code will effect only a change in the timing of such payments, not the amounts or priority thereof. Instead of paying such claims on the effective date of a chapter 11 plan, the Debtors seek authority to pay the 503(b)(9) Claims in the ordinary course of business and to condition payment of 503(b)(9) Claims on claimants’ agreement to continue supplying goods and services to the Debtors on the same trade terms given to them prior to the Petition Date or upon new trade terms.

29. Absent authority to pay section 503(b)(9) Claims at the outset of these chapter 11 cases, the Debtors could be denied access to the goods necessary to maintain the Debtors’ business operations, and certain 503(b)(9) claimants may withhold support for the Debtors during the chapter 11 process or eliminate favorable trade terms. Such a result could impair the Debtors’ ability to stabilize their operations at this critical juncture to the detriment of all stakeholders.

Furthermore, authorizing the Debtors to pay the 503(b)(9) Claims entitled to priority pursuant to the terms set forth herein will eliminate the burden on this Court and the Debtors of individual motions requesting payment on account of such 503(b)(9) Claims.

30. For the foregoing reasons, payment of the Critical Vendor Claims in the amount set forth in this Motion, absent further order of the Court, including the 503(b)(9) Claims, is necessary, appropriate, and in the best interests of the Debtors, their estates, and all other parties in interest in these cases. Accordingly, the Court should authorize the Debtors to pay such claims.

IV. Claims on Account of Outstanding Prepetition Orders Are Entitled to Administrative Priority

31. Pursuant to section 503(b) of the Bankruptcy Code, obligations that arise in connection with the postpetition delivery of necessary goods and services are afforded administrative expense priority because they benefit the estate postpetition. 11 U.S.C. § 503(b)(1)(A). Accordingly, granting the relief sought herein with respect to the Outstanding Prepetition 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. Absent such relief, however, the Debtors may be required to expend substantial time and effort reissuing the Outstanding Prepetition Orders to provide certain suppliers with assurance of such administrative priority. Such a disruption to the continuous and timely flow of critical goods and materials to the Debtors could potentially force the Debtors to halt operations, 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 Prepetition Orders and should authorize the Debtors to pay the Outstanding Prepetition Orders in the ordinary course of business.

**APPLICABLE FINANCIAL INSTITUTIONS SHOULD BE
AUTHORIZED TO RECEIVE, PROCESS, HONOR, AND PAY CHECKS
ISSUED AND TRANSFERS REQUESTED TO PAY VENDOR CLAIMS**

32. The Debtors further request that this Court authorize applicable financial institutions (the “**Banks**”) to receive, process, honor, and pay any and all checks issued, or to be issued, and electronic funds transfers requested, or to be requested by or on behalf of the Debtors relating to the Vendor Claims, to the extent that sufficient funds are on deposit and standing in the Debtors’ credit in the applicable bank accounts to cover such payment. The Debtors represent that these checks are drawn on identifiable disbursement accounts and can be readily identified as relating directly to the authorized payment of Vendor Claims. Accordingly, the Debtors believe that checks other than those relating to authorized payments will not be honored inadvertently. Any such financial institution may rely on the representations of such Debtors as to which checks are issued or wire transfers are made (or, as applicable, requested to be issued or made) and authorized to be paid in accordance with this Motion without any duty of further inquiry. The Debtors also seek authority, but not direction, to issue new postpetition checks or effect new postpetition electronic funds transfers in replacement of any checks or funds transfer requests on account of Vendor Claims dishonored or rejected as a result of the commencement of the Debtors’ chapter 11 cases.

BANKRUPTCY RULE 6003(b)

33. Bankruptcy Rule 6003(b) provides that, to the extent relief is necessary to avoid immediate and irreparable harm, a bankruptcy court may issue an order granting “a motion to use, sell, lease, or otherwise incur an obligation regarding property of the estate, including a motion to pay all or part of a claim that arose before the filing of the petition” before twenty-one days after filing of the petition. Fed. R. Bankr. P. 6003(b). As explained above and in the First Day Declaration, the relief requested herein is necessary for the Debtors’ transition into chapter 11, to

continue to operate their business in the ordinary course, and to maximize the value of the Debtors' estates for the benefit of all stakeholders. Accordingly, the Debtors submit that the relief requested herein is necessary to avoid immediate and irreparable harm, and, therefore, satisfies Bankruptcy Rule 6003.

BANKRUPTCY RULE 6004(a) AND (h)

34. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion is adequate under Bankruptcy Rule 6004(a) under the circumstances, and waive the fourteen-day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h). As explained above and in the First Day Declaration, the relief requested herein is necessary for the Debtors' transition into chapter 11 and to avoid immediate and irreparable harm to the Debtors. Accordingly, ample cause exists to justify finding that the notice requirements under Bankruptcy Rule 6004(a) have been satisfied and to grant a waiver of the fourteen-day stay imposed by Bankruptcy Rule 6004(h), to the extent those requirements apply.

RESERVATION OF RIGHTS

35. Nothing contained herein is intended or shall be construed as (a) an admission as to the validity of any claim against the Debtors; (b) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors; (c) a waiver of any claim or cause of action which may exist against any creditor or interest holder; or (d) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

NOTICE

36. Notice of this Motion will be provided to (i) Office of the United States Trustee for the District of Delaware; (ii) the holders of the thirty largest unsecured claims against the Debtors on a consolidated basis; (iii) counsel to the DIP Agent; (iv) the Internal Revenue Service; (v) the United States Attorney's Office for the District of Delaware; (vi) the Securities and Exchange Commission; and (vii) any party entitled to notice under Bankruptcy Rule 2002 or Local Rule 9013-1(m) (collectively, the "**Notice Parties**"). The Debtors respectfully submit that no further notice is required. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed Orders granting the relief requested herein, and such other and further relief as the Court may deem just and appropriate.

Dated: April 5, 2021
Wilmington, Delaware

/s/ Paul N. Heath

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*Proposed Attorneys for the Debtors
and Debtors in Possession*

Exhibit A

Proposed Interim Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

-----	X	
<i>In re</i>	:	Chapter 11
	:	
TECT AEROSPACE GROUP HOLDINGS, INC., et al.,	:	Case No. 21– ____ (____)
	:	
Debtors.¹	:	Jointly Administered
	:	
	:	Re: D.I. ____
-----	X	

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

Upon the motion (the “**Motion**”)² of TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of an interim order (this “**Interim Order**”) (i) authorizing, but not directing, the Debtors to pay the prepetition claims of (a) Critical Vendors, (b) Foreign Vendors, and (c) 503(b)(9) Claimants as provided herein, (ii) confirming the administrative expense priority status of all Outstanding Orders, and (iii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202.

² Capitalized terms used but not otherwise defined herein have the meanings given to those terms in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having held a hearing to consider the interim relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates as contemplated by Bankruptcy Rule 6003, and is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on an interim basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay Critical Vendor Claims in an amount not to exceed \$2,355,000.
3. The Debtors are authorized, but not directed, to pay Foreign Vendor Claims in an amount not to exceed \$10,000.
4. The Debtors are authorized to undertake all appropriate efforts to cause a Vendor to enter into the form of Vendor Agreement, substantially in the form annexed to the Motion as **Exhibit C**, which such form of Vendor Agreement is hereby approved, and the Debtors are authorized to negotiate, modify, or amend the form of Vendor Agreement in the exercise of their reasonable business judgment after consultation with the DIP Agent, to the extent such negotiations, modifications, or amendments are not materially adverse to the Debtors.

5. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to condition payment of Vendor Claims on the agreement of Vendors to enter into Vendor Agreements.

6. If any party accepts payment pursuant to the relief requested by this Interim Order and thereafter does not continue to provide goods or services on Customary Trade Terms (regardless of whether a Vendor Agreement has been executed), and subject to any Vendor Agreement that may be executed or otherwise agreed by the Debtors: (a) the Debtors may demand repayment in cash and otherwise take all action to have such payment be deemed to be an improper postpetition transfer on account of a prepetition claim and (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made and the deadline for such party to file a reinstated claim will be the later of (i) the general bar date established by order of this Court or (ii) 30 days after the Debtors provide written notice to the party of the reinstatement of its claim.

7. All undisputed obligations of the Debtors arising under the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(a) of the Bankruptcy Code.

8. Notwithstanding anything to the contrary in this Interim Order, the Motion, or any exhibits thereto, the priority of a Vendor's claim (including that of claims arising under section 503(b)(9) of the Bankruptcy Code) shall not be affected by whether such Vendor executes a Vendor Agreement, provides goods or services to the Debtors under Customary Trade Terms, or otherwise.

9. The Debtors will provide the DIP Agent with a report of the payments made pursuant to this Interim Order seven days following the end of each week.

10. Each of the Banks at which the Debtors maintain their accounts relating to the payment of obligations on account of Vendor Claims are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

11. Nothing contained in the Motion or this Interim Order, nor any payment made pursuant to the authority granted by this Interim Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

12. The requirements of Bankruptcy Rule 6003(b) have been satisfied.

13. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Rules.

14. Notwithstanding Bankruptcy Rule 6004(h), this Interim Order shall be immediately effective and enforceable upon its entry.

15. A hearing to consider entry of an order granting the relief requested in the Motion on a final basis will be held on _____, 2021, at _____ (prevailing Eastern Time) and

any objections or responses to the Motion must be in writing and filed with the Court by no later than _____, **2021 at 4:00 p.m. (prevailing Eastern Time)**, and served on the following parties:

(i) proposed counsel for the Debtors, Richards, Layton & Finger, P.A., Daniel J. DeFranceschi (defranceschi@rlf.com), Paul N. Heath (heath@rlf.com), and Amanda R. Steele (steele@rlf.com); (ii) the Office of the United States Trustee for the District of Delaware, 844 King Street, Suite 2207, Wilmington, DE 19801, Attn: Linda Casey (Linda.Casey@usdoj.gov); (iii) counsel for the DIP Agent: (a) Perkins Coie LLP, Alan D. Smith (ADSmith@perkinscoie.com), and (b) Young Conaway Stargatt & Taylor, LLP, Kenneth J. Enos (kenos@ycst.com); and (iv) counsel for any official committee of unsecured creditors.

16. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Interim Order.

17. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Interim Order.

Exhibit B

Proposed Final Order

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF DELAWARE**

-----	X	
<i>In re</i>	:	Chapter 11
	:	
TECT AEROSPACE GROUP HOLDINGS, INC., et al.,	:	Case No. 21– ____ (____)
	:	
Debtors.¹	:	Jointly Administered
	:	
	:	Re: D.I. ____
-----	X	

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

Upon the motion (the “**Motion**”)² of TECT Aerospace Group Holdings, Inc. and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the “**Debtors**”), for entry of a final order (this “**Final Order**”) (i) authorizing, but not directing, the Debtors to pay the prepetition claims of (a) Critical Vendors, (b) Foreign Vendors, and (c) 503(b)(9) Claimants as provided herein, (ii) confirming the administrative expense priority status of all Outstanding Orders, and (iii) granting related relief, all as more fully set forth in the Motion; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157(a)–(b) and 1334(b), and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware, dated February 29, 2012; and consideration of the Motion and the requested relief being a core

¹ The Debtors in these cases, along with the last four digits of each Debtor’s federal tax identification number, are: TECT Aerospace Group Holdings, Inc. (9338); TECT Aerospace Kansas Holdings, LLC (4241); TECT Aerospace Holdings, LLC (9112); TECT Aerospace Wellington Inc. (4768); TECT Aerospace, LLC (8650); TECT Hypervelocity, Inc. (8103); and Sun Country Holdings, LLC (6079). The Debtors’ mailing address is 300 W. Douglas, Suite 100, Wichita, KS 67202..

² Capitalized terms used but not otherwise defined herein have the meanings given to those terms in the Motion.

proceeding pursuant to 28 U.S.C. § 157(b); and venue being proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409; and due and proper notice of the Motion having been provided to the Notice Parties under the circumstances, and it appearing that no other or further notice need be provided; and this Court having held a hearing, if necessary, to consider the final relief requested in the Motion (the “**Hearing**”); and upon the First Day Declaration; and the Court having determined that the legal and factual bases set forth in the Motion and at the Hearing, if any, establish just cause for the relief granted herein; and it appearing that the relief requested in the Motion is in the best interests of the Debtors, their estates, creditors, and all parties in interest; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY ORDERED THAT:

1. The Motion is granted on a final basis to the extent set forth herein.
2. The Debtors are authorized, but not directed, to pay Critical Vendor Claims in an amount not to exceed \$4,710,000.
3. The Debtors are authorized, but not directed, to pay Foreign Vendor Claims in an amount not to exceed \$103,000.
4. The Debtors are authorized, but not directed, in the reasonable exercise of their business judgment, to pay all or part of, and discharge, on a case-by-case basis, the 503(b)(9) Claims in an amount not to exceed \$1,331,000.
5. The Debtors are authorized to undertake all appropriate efforts to cause a Vendor to enter into the form of Vendor Agreement, substantially in the form annexed to the Motion as **Exhibit C**, which such form of Vendor Agreement is hereby approved, and the Debtors are authorized to negotiate, modify, or amend the form of Vendor Agreement in the exercise of their

reasonable business judgment after consultation with the DIP Agent, to the extent such negotiations, modifications, or amendments are not materially adverse to the Debtors.

6. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to condition payment of Vendor Claims on the agreement of Vendors to enter into Vendor Agreements.

7. If any party accepts payment pursuant to the relief requested by this Final Order and thereafter does not continue to provide goods or services on Customary Trade Terms (regardless of whether a Vendor Agreement has been executed), and subject to any Vendor Agreement that may be executed or otherwise agreed by the Debtors: (a) the Debtors may demand repayment in cash and otherwise take all action to have such payment be deemed to be an improper postpetition transfer on account of a prepetition claim and (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made and the deadline for such party to file a reinstated claim will be the later of (i) the general bar date established by order of this Court or (ii) 30 days after the Debtors provide written notice to the party of the reinstatement of its claim.

8. All undisputed obligations of the Debtors arising under the Outstanding Orders are granted administrative expense priority status in accordance with section 503(b)(1)(a) of the Bankruptcy Code.

9. Notwithstanding anything to the contrary in this Final Order, the Motion, or any exhibits thereto, the priority of a Vendor's claim (including that of claims arising under section 503(b)(9) of the Bankruptcy Code) shall not be affected by whether such Vendor executes a Vendor Agreement, provides goods or services to the Debtors under Customary Trade Terms, or otherwise.

10. The Debtors will provide the DIP Agent with a report of the payments made pursuant to this Final Order seven days following the end of each week.

11. Each of the Banks at which the Debtors maintain their accounts relating to the payment of obligations on account of Vendor Claims are authorized to (i) receive, process, honor, and pay all checks presented for payment and to honor all fund transfer requests made by the Debtors related thereto, to the extent that sufficient funds are on deposit in those accounts and (ii) accept and rely on all representations made by the Debtors with respect to which checks, drafts, wires, or automated clearing house transfers should be honored or dishonored in accordance with this or any other order of the Court, whether such checks, drafts, wires, or transfers are dated prior to, on, or subsequent to the Petition Date, without any duty to inquire otherwise.

12. Nothing contained in the Motion, the Interim Order, or this Final Order, nor any payment made pursuant to the authority granted by the Interim Order or this Final Order, is intended to be or shall be construed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver of the Debtors' or any appropriate party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (iii) a waiver of any claims or causes of action which may exist against any creditor or interest holder, or (iv) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy between the Debtors and any third party under section 365 of the Bankruptcy Code.

13. Under the circumstances of these chapter 11 cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a) and the Local Rules.

14. Notwithstanding Bankruptcy Rule 6004(h), this Final Order shall be immediately effective and enforceable upon its entry.

15. The Debtors are authorized to take all action necessary to effectuate the relief granted in this Final Order.

16. The Court shall retain jurisdiction to hear and determine all matters arising from or related to the implementation, interpretation, and/or enforcement of this Final Order.

Exhibit C

Vendor Agreement

[Name of Applicable Debtor]

_____, 2021

TO: [Vendor]
[Name]
[Address]

Dear Valued Supplier:

As you are aware, TECT Aerospace Group Holdings, Inc. and certain of its affiliates and subsidiaries (collectively, the “**Company**”) each filed voluntary petitions for relief under chapter 11 of the United States Bankruptcy Code in the United States Bankruptcy Court for the District of Delaware (the “**Bankruptcy Cases**” and the “**Bankruptcy Court**,” respectively) on _____, 2021 (the “**Petition Date**”). On the Petition Date, the Company requested the Bankruptcy Court’s authority to pay certain suppliers and service providers (collectively, “**Vendors**”) in recognition of the importance of the Company’s relationship with those Vendors and the Company’s desire that the Bankruptcy Cases have as little effect on certain Vendors as possible. On _____, 2021 the Bankruptcy Court entered an [interim/final] order (the “**Order**”) authorizing the Company, under certain conditions, to pay prepetition claims of certain Vendors that agree to the terms below as well as agree to be bound by the terms of the Order. A copy of the Order is annexed hereto (collectively with this letter, the “**Letter Agreement**”).

To receive payment on prepetition claims pursuant to the Order, each selected Vendor must agree to continue to supply goods or services to the Company based on “Customary Trade Terms.” As used herein and in the Order, “Customary Trade Terms” are the normal and customary trade terms, practices, and programs (including credit limits, pricing rebates, cash discounts, timing of payments, coupon reconciliation, and other applicable terms and programs), that were most favorable to the Company and in effect between the Vendor and the Company at any time within the 24-month period before the Petition Date, or, if applicable, the trade terms of the agreement between the parties in effect on the Petition Date, or such other trade terms as agreed by the Company and the Vendor.

For purposes of administration of this program, the Company and you agree as follows:

1. The estimated balance of your aggregate prepetition claim(s) against the Debtors is \$[_____] (the “**Agreed Vendor Claim**”).
2. \$[_____] of the Agreed Vendor claim is entitled to administration expense priority pursuant to section 503(b)(9) of the Bankruptcy Code (the “**Agreed 503(b)(9) Claim**”).
3. The Company will provisionally pay you \$ _____ (the “**Payment**”) on account of the Agreed Vendor Claim (net of any setoffs, credits, or discounts) of which \$ _____ will be applied toward the Agreed 503(b)(9) Claim. Such

payment will satisfy the Agreed 503(b)(9) Claim in full and ___% of the total amount of the Agreed Vendor Claim.

4. For the avoidance of doubt, payment of the Agreed 503(b)(9) Claim will extinguish any claims you may have arising under section 503(b)(9) of the Bankruptcy Code.
5. Nothing herein waives the Company's or your rights under section 365 of the Bankruptcy Code.
6. If there is an agreement in effect as of the Petition Date between you and the Company, you will continue to provide goods or services in accordance with the agreement's terms. Otherwise, you will provide Customary Trade Terms as follows (if more space is required, continuation pages are attached):

7. You agree that you shall not require a lump-sum payment upon the confirmation or consummation of a plan of reorganization in these cases on account of any administrative expense claim that you may assert, but instead agree that such claims will be paid in the ordinary course of business after confirmation of a plan under applicable Customary Trade Terms, if the plan provides for the ongoing operations of the Company.
8. You will hereafter extend to the Company all Customary Trade Terms and agree to abide by any purchase order terms and conditions between you and the Company as in effect before the Petition Date (the "**Current PO(s)**").

Payment of your Vendor Claim in the manner set forth in the Order may only occur upon execution of this Letter Agreement by a duly authorized representative of your company and the return of this letter to the Company. Your execution and return of this letter agreement constitutes an agreement between you and the Company:

- a. to the Customary Trade Terms and, subject to the reservations contained in the Order, to the amount of the Payment set forth above;
- b. that, for a period lasting until the later of 2 years from the Petition Date, or the date upon which the term of your Current PO(s) expire, you will continue to supply the Company with goods or services pursuant to Customary Trade Terms and that the Company will pay for those goods or services in accordance with Customary Trade Terms;
- c. that you will continue to supply goods or provide services, as applicable, to any non-debtor affiliate of the Company with which you do business, on the terms set forth in the applicable contracts or purchase orders;

- d. that you have reviewed the terms and provisions of the Order and consent to be bound by the same;
- e. that you will not separately seek payment for reclamation, claims pursuant to section 503(b)(9) of the Bankruptcy Code, or other similar claims outside of the terms of the Order unless your participation in the vendor payment program authorized by the Order (the “**Vendor Payment Program**”) is terminated;
- f. that, in consideration for the Payment, you agree not to file or otherwise assert against the Company, its estate, 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) on account of any remaining prepetition amounts allegedly owed to you by the Company arising from agreements entered into before the Petition Date. Furthermore, if you have taken steps to file or assert a lien before entering into this letter agreement, you agree to take all necessary steps to remove the lien as soon as possible at your sole cost and expense;
- g. that if you fail to comply with the terms and provisions of this Letter Agreement, (a) the Company may demand repayment in cash and otherwise take all action to have such payment be deemed to be an improper postpetition transfer on account of a prepetition claim and (b) upon recovery by the Company, your prepetition claim will be reinstated as if the payment had not been made, and you must file a reinstated claim by the later of (i) the general bar date established by order of this Court or (ii) 30 days after the Debtors provide written notice to the party of the reinstatement of its claim; and
- h. that you will keep the existence and the terms of this Letter Agreement confidential and will not disclose it to any person or entity without the prior written consent of Company, other than as required by law to any court or governmental authority.

The Company and you also hereby agree that any dispute concerning this Letter Agreement, the Order, or your participation in the Vendor Payment Program shall be determined by the Bankruptcy Court and that all litigation arising out of or relating to this Letter Agreement, the Order, or your participation in the Trade Payment Program or its subject matter must be commenced in the Bankruptcy Court.

If you have any questions about this Letter Agreement or our financial restructuring, do not hesitate to call.

Sincerely,
[Name of Applicable Debtor]

By: _____
Title: _____

Agreed and Accepted by:
[Vendor]

By: _____
Title: _____
Dated: _____