

UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE

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In re: : Chapter 11
  
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THQ INC., *et al.*, : Case No. 12 - 13398 ( )
  
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Debtors.<sup>1</sup> : (Joint Administration Requested)
  
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**DEBTORS' MOTION FOR ORDER AUTHORIZING THE DEBTORS TO HONOR PREPETITION OBLIGATIONS TO CUSTOMERS AND OTHERWISE CONTINUE CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

THQ Inc. (“**THQI**,” and together with its above-captioned debtor affiliates, the “**Debtors**”), as debtor and debtor in possession, hereby submits this motion (the “**Motion**”) for entry of an order, substantially in the form annexed hereto as **Exhibit A**, authorizing, but not directing, THQI to maintain and administer certain customer programs and honor prepetition obligations earned by and owing to its customers related thereto in the ordinary course of business and in a manner consistent with past practice. In support of the Motion, THQI submits the *Declaration of Brian J. Farrell in Support of the Debtors’ Chapter 11 Petitions and Requests for First Day Relief* (the “**Farrell First Day Declaration**”), which was filed with the Court concurrently herewith. In further support of this Motion, THQI respectfully represents:

**JURISDICTION**

1. The Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 1334(b) and 157, and the *Amended Standing Order of Reference* from the United States District Court for the District of Delaware dated as of February 29, 2012. This is a core

<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.



proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The statutory predicates for the relief requested herein are 105(a), 363, 1107(a), and 1108 of title 11 of the United States Code (the “**Bankruptcy Code**”), Rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “**Bankruptcy Rules**”), and Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure for the United States Bankruptcy Court for the District of Delaware (the “**Local Rules**”).

### **BACKGROUND**

2. On the date hereof (the “**Petition Date**”), each of the Debtors commenced a voluntary case under chapter 11 of the Bankruptcy Code. Pursuant to sections 1107(a) and 1108 of the Bankruptcy Code, the Debtors are continuing to manage their financial affairs as debtors in possession.

3. Contemporaneously herewith, the Debtors filed a motion seeking joint administration of their chapter 11 cases (the “**Chapter 11 Cases**”) pursuant to Bankruptcy Rule 1015(b) and Local Rule 1015-1. No trustee, examiner, or official committee of unsecured creditors has been appointed in these cases.

4. Information regarding the Debtors’ history and business operations, capital structure and primary secured indebtedness, and the events leading up to the commencement of these Chapter 11 Cases can be found in the Farrell First Day Declaration.

### **THE CUSTOMER PROGRAMS**

5. THQI markets and distributes games directly to mass merchandisers, consumer electronic stores, discount warehouses, and other national retail stores. Prior to the Petition Date, both in the ordinary course of its business and as is customary in the interactive entertainment software industry, THQI offered and engaged in certain customer and other

programs and practices (the “**Customer Programs**”) to drive customer sales, develop and sustain a positive reputation in the marketplace, engender customer loyalty, ensure customer satisfaction, meet competitive pressures, and generate goodwill for the THQ brand, thereby maximizing revenue and profitability.

6. THQI believes that assurance to its customers that all Customer Programs will be honored on an uninterrupted basis is crucial to its ongoing business operations and value as a going concern. Programs such as the Customer Programs have become standard in the highly competitive interactive entertainment software industry and customers have come to expect these types of programs to be offered in the ordinary course of business by all industry participants, including THQI. As set forth in more detail below, maintenance of the Customer Programs will serve to protect long-standing relationships with customers, protect and promote the Debtors’ competitive position in the marketplace, and preserve the continued vitality of the THQ brand for the benefit of all parties in interest. The aggregate cost to THQI to continue the Customer Programs and perform and honor prepetition obligations with respect thereto is insignificant when compared to the irreparable harm and detrimental impact their businesses would suffer if these programs are abandoned. The following are general descriptions and examples of the Customer Programs.<sup>2</sup>

7. Price Protection. In the ordinary course of business and consistent with industry practice, if consumer demand for a product drops, THQI regularly offers price protection to its customers to spur additional sales (the “**Price Protection Program**”). Under the Price Protection Program, THQI issues a credit (the “**Price Protection Credit**”) to the

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<sup>2</sup> The description of the Customer Programs is meant to be a summary of the various programs. Some of the terms comprising the Customer Programs vary customer-by-customer. To the extent of any inconsistencies between the descriptions herein and any written documents between THQI and its customers, such written documents shall control.

customer for the difference in price between the initial price at which the customer purchased the inventory and the new price for the remaining inventory. Price Protection Credits are negotiated from time to time with customers, who then deduct the agreed-upon Price Protection Credit from outstanding invoices. THQI later reconciles the deduction taken by the customer with the amount of approved Price Protection Credit. If a customer over-deducts, THQI pursues repayment from the customer.

8. To account for Price Protection Credits, THQI accrues a reserve against revenue recorded based on an internal THQI model that predicts when price drops will occur with respect to the titles in the distribution channel. THQI's accrued reserve for Price Protection Credits as of December 12, 2012 equaled approximately \$4,395,440, which amount remains subject to further reconciliation at the end of this quarter.<sup>3</sup>

9. Co-operative Advertising. In the ordinary course of business, THQI enters into agreements with certain of its customers pursuant to which each customer agrees to advertise and/or promote THQI's product by, for example, placing the product in a strategic place in the customer's store or by including the product in the customer's weekly circular. In consideration thereof, THQI will issue the applicable customer a credit equal to a certain percentage or amount of each invoice issued to the customer during the promotional period (i.e., a percentage of THQI's sales to the customer) (the "**Co-Op Credit**"), which percentage amount is agreed to up-front by the customer and THQI (the "**Co-Op Allowance**"). As with price protection, customers will typically deduct Co-op Credits from their payment to THQI based on the Co-Op Credit they believe they are entitled to at the time of payment (taking into consideration the amount purchased by the customer and the agreed upon Co-Op Allowance).

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<sup>3</sup> The Debtors' fiscal year is April 1 – March 30. The Debtors are currently in the third quarter of fiscal year 2013, which ends on December 30, 2012.

THQI later reconciles the deduction taken by the customer with the amount of approved Co-Op Credit. If a customer over-deducts, THQI pursues repayment from the customer.

10. To account for Co-Op Credits, as invoices are issued to applicable customers, THQI accrues a reserve against revenue based on the period of the promotions and the agreed upon Co-Op Allowances (the “**Co-Op Reserve**”). As of December 16, 2012, the Co-Op Reserve equaled approximately \$2.8 million. However, because a portion of the Co-Op reserve is not reconciled, THQI expects that the amount of Co-Op Credits earned but not applied to customers’ accounts as of the Petition Date will change upon reconciliation at the end of THQI’s third quarter. In the third and fourth quarters of THQI’s last fiscal year, the accrued Co-Op Credit Reserve equaled approximately \$7.1 million and \$3.5 million. In the first and second quarters of this fiscal year, the accrued Co-Op Credit Reserve equaled approximately \$2.9 million and \$2.7 million, respectively. Although sales are typically higher in the third quarter, due to declining sales in the past year, THQI anticipates, but cannot be certain, that the Co-Op Credits outstanding as of the Petition Date will be closer to the first and second quarter of this fiscal year.

11. Back-End Rebates. The back-end rebate program is typically negotiated on customer-by-customer basis. Under such an arrangement, a customer will temporarily reduce the retail price of THQI’s product and THQI will fund an agreed amount of the discount (typically 80%) for every unit sold during that time period. The portion funded by THQI for each unit sold is provided in the form of a credit to the customer (the “**Back-End Rebate**”). Such credit is not “earned” by the customer unless and until the customer actually sells the product to an end consumer.

12. To account for Back-End Rebates, THQI accrues a reserve against revenue recorded (the “**Back-End Rebate Reserve**”). THQI reconciles this reserve on a quarterly basis and, upon reconciliation, issues Back-End Rebates to the participating customers based on the customer’s sales during the given time period. As of December 16, 2012, THQI estimates that its accrued reserve for Back-End Rebates is approximately \$4.436 million, which amount remains subject to reconciliation at the end of THQI’s third quarter.

13. Defective Product Credit. THQI offers certain of its customers a 1-2% allowance, which is typically deducted off of the invoice amount, to account for the chance that the customers receive defective inventory. The deduction is given when the sale is made, and the THQI retail customer is ultimately responsible for remedying any issue with its own customers.

14. Certain other THQI customers prefer to take deductions for the actual amount of defective inventory they receive. Upon receiving a claim for defective inventory, THQI will issue the respective customer a credit on account of such claim (the “**Defective Inventory Credit**”). THQI accrues a reserve (the “**Defective Product Reserve**”) to account for known and unknown claims for defective inventory (the “**Defective Inventory Claims**”). At the end of a quarter, THQI reconciles the Defective Product Reserve and, following such reconciliation, issues Defective Inventory Credits. Because THQI does not reconcile this reserve until the end of a quarter, it is difficult for THQI to estimate the amount of the reserve as of the Petition Date. The amount of Defective Inventory Credits at the end of the third and fourth quarters of last fiscal year equaled approximately \$925,000 and \$434,000, respectively. The amount of Defective Inventory Credits at the end of the first and second quarters of this fiscal year equaled approximately \$132,000 and \$241,000, respectively. Due to declining sales, THQI

anticipates, but can be certain, that the Defective Inventory Credits outstanding as of the Petition Date will be closer to the first and second quarters of this fiscal year.

15. Freight Rebate. With respect to certain of its customers, THQI issues a per shipment rebate each time an eligible customer selects an authorized common carrier to deliver THQI inventory (the “**Freight Rebates**”). The Freight Rebates range from \$0.05 to \$0.30 per shipment. Based on shipping information THQI receives from its warehouse that details shipments by carrier for each customer, THQI accrues a reserve to account for Freight Rebates (the “**Freight Reserve**”). At the end of a quarter, THQI reconciles the Freight Reserve with the customers’ shipping activity for that quarter and, following such reconciliation, issues the Freight Rebates. Because THQI does not reconcile the Freight Reserve until the end of a quarter, it is difficult for THQI to estimate the amount of accrued and outstanding Freight Rebates as of the Petition Date. The amount of Freight Reserve at the end of the third and fourth quarters of last fiscal year equaled approximately \$38,543 and \$40,469, respectively. The amount of Freight Reserve at the end of the first and second quarters of this fiscal year equaled approximately \$48,478 and \$49,867, respectively.

16. Other Customer Programs. THQI also offers various other Customer Programs on a case-by-case basis (the “**Other Customer Programs**”). For example, THQI may offer to discount the price of one game if a customer agrees to purchase a different game or if the customer buys a certain amount of a particular product. If a customer opens a new store, THQI often offers the customer a discount on its products for the new store. THQI estimates that the amount owing as of the Petition Date on account of the Other Customer Programs, if any, is *de minimis*.

17. By this Motion, THQI seeks authority, but not direction, to pay any outstanding prepetition obligations under the Customer Programs, including the Other Customer Programs, and to continue these programs postpetition.

**RELIEF REQUESTED**

18. By this Motion, THQI seeks entry of an order authorizing THQI, in its sole discretion, to maintain and administer certain Customer Programs and to honor prepetition obligations thereunder in the ordinary course of business.

**BASIS FOR RELIEF REQUESTED**

**A. Support Exists to Authorize THQI to Continue the Customer Programs**

19. THQI believes that continuation of the Customer Programs constitutes “ordinary course of business” practices, and, therefore, does not require court approval. However, out of an abundance of caution, THQI seeks authorization, but not direction to continue, replace, implement, modify, and/or terminate the Customer Programs as it deems appropriate and in its sole discretion, in the ordinary course of business, without interruption, in accordance with its prepetition practices.

20. Sections 1107(a) and 1108 of the Bankruptcy Code authorize a debtor in possession to continue to operate its business. 11 U.S.C. §§ 1107(a), 1108. Section 363(c) Pursuant to section 503(b)(1) of the Bankruptcy Code, a debtor may incur, and the court, after notice and a hearing, shall allow as administrative expenses, among other thing, “the actual, necessary costs and expenses of preserving the estate.” *Id.* § 503(b)(1). In addition, pursuant to section 363(b) of the Bankruptcy Code, a debtor may, in the exercise of its sound business judgment and after notice and a hearing, use property of the estate outside of the ordinary course of business. *Id.* § 363(b). The Customer Programs are ordinary course programs that are



standard in the interactive entertainment software industry. Moreover, THQI believes the continuation of the Customer Programs is necessary to retain THQI's valuable and loyal customers and maintain the value of the THQ brand for the benefit of all parties in interest.

**B. Cause and Support Exists to Authorize THQI to Honor Prepetition Obligations Arising Under the Customer Programs**

21. To the extent that amounts or obligations are outstanding under the Customer Programs as of the Petition Date, THQI seeks authorization, but not direction, to honor its undisputed prepetition obligations in respect thereof in accordance with its prepetition practices. Such relief is imperative to prevent loss of customer support, confidence, or business development and to maximize the value of their estates for the benefit of all parties in interest.

22. Courts generally acknowledge that, under appropriate circumstances, they may authorize a debtor to pay (or provide special treatment for) certain prepetition obligations. *See, e.g., In re Just for Feet, Inc.*, 242 B.R. 821, 824–25 (Bankr. D. Del. 1999) (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of the debtor's business); *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (granting the debtor the authority to pay prepetition wages); *Armstrong World Indus., Inc. v. James A. Phillips, Inc.*, (In re James A. Phillips, Inc.), 29 B.R. 391, 398 (Bankr. S.D.N.Y. 1983) (granting the debtor the authority to pay prepetition claims of suppliers who were potential lien claimants). When authorizing payments of certain prepetition obligations, courts have relied upon several legal theories rooted in sections 363(b) and 105(a) of the Bankruptcy Code.

23. Consistent with a THQI's fiduciary duties, where there is a sound business purpose for the payment of prepetition obligations, and where the debtor is able to "articulate some business justification, other than the mere appeasement of major creditors," courts have authorized debtors to make such payments under section 363(b) of the Bankruptcy Code. *See*,

*e.g., Ionosphere Clubs*, 98 B.R. at 175 (finding that a sound business justification existed to pay prepetition wages); *In re James A. Phillips, Inc.*, 29 B.R. at 397 (relying upon section 363 as a basis to allow a contractor to pay the prepetition claims of suppliers who were potential lien claimants).

24. Courts have also authorized payment of prepetition claims in appropriate circumstances pursuant to section 105(a) of the Bankruptcy Code. Section 105(a) of the Bankruptcy Code, which codifies the inherent equitable powers of the bankruptcy court, empowers the bankruptcy court 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(a). Under section 105(a), courts may permit pre-plan payments of prepetition obligations when such payments are essential to the continued operation of the debtor’s business and, in particular, where nonpayment of a prepetition obligation would trigger a withholding of goods or services essential to the debtors’ business reorganization plan. *See In re UNR Indus.*, 143 B.R. 506, 520 (Bankr. N.D. Ill. 1992) (permitting the debtor to pay prepetition claims of suppliers or employees whose continued cooperation is essential to the debtors’ successful reorganization); *Ionosphere Clubs*, 98 B.R. at 177 (finding that section 105 empowers bankruptcy courts to authorize payment of prepetition debt when such payment is needed to facilitate the rehabilitation of the debtor).

25. In addition to the authority granted a debtor in possession under sections 363(b) and 105(a) of the Bankruptcy Code, courts have developed the “doctrine of necessity” or the “necessity of payment” rule, which originated in the landmark case of *Miltenberger v. Logansport, C. & S.W.R. Co.*, 106 U.S. 286 (1882). Since *Miltenberger*, courts have expanded their application of the doctrine of necessity to cover instances of a debtor’s reorganization, *see*

*Dudley v. Mealey*, 147 F.2d 268, 271 (2d Cir. 1945) (holding, in a hotel reorganization matter, that the court was not “helpless” to apply the rule to supply creditors where the alternative was the cessation of operations), including the United States Court of Appeals for the Third Circuit, which recognized the doctrine in *In re Lehigh & New England Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981).

26. In *Lehigh*, the Third Circuit held that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor. *Id.* (stating that a court may authorize payment of prepetition claims when there “is the possibility that the creditor will employ an immediate economic sanction, failing such payment”); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that the necessity of payment doctrine permits “immediate payment of claims of creditors where those creditors will not supply services or material essential to the conduct of the business until their pre-reorganization claims have been paid”); *Just for Feet*, 242 B.R. at 824–25 (noting that debtors may pay prepetition claims that are essential to continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

27. THQI submits that the relief requested herein satisfies the doctrine of necessity standard. The relief requested represents a sound exercise of THQI’s business judgment, is necessary to avoid immediate and irreparable harm to the THQI’s estate, and is therefore justified under sections 363(b) and 105(a) of the Bankruptcy Code and Bankruptcy Rule 6003. The necessity of the Customer Programs in THQI’s competitive industry cannot be overstated. Many of the Customer Programs are standard practice in the interactive entertainment software industry. If the obligations under the Customer Programs are not honored, THQI risks alienating their customers and encouraging them to obtain services from the

THQI's competitors. The failure to honor the Customer Programs could erode THQI's hard-earned reputation and customer loyalty, adversely affecting the THQI's going-concern value and prospects for a successful reorganization.

28. Courts in this district recognize that retaining patronage and customer loyalty is critical to a debtor's prospects for a successful reorganization and, accordingly, routinely approve relief similar to that requested herein. *See, e.g., In re Friendly's Ice Cream Corp.*, No. 11-13167 (Bankr. D. Del. Oct. 5, 2011) (granting immediate final relief on first-day customer programs motion); *In re Neb. Book Co.*, No. 11-12005 (Bankr. D. Del. July 25, 2011) (granting customer programs relief up to \$23 million); *In re L.A. Dodgers LLC*, No. 11-12010 (Bankr. D. Del. June 28, 2011) (granting immediate final relief on first-day customer programs motion); *In re Ambassadors Int'l, Inc.*, No. 11-11002 (Bankr. D. Del. Apr. 5, 2011) (same); *In re Ultimate Acquisition Partners, LP*, No. 11 10245 (Bankr. D. Del. Feb. 23, 2011); *In re Summit Bus. Media Holding Co.*, No. 11 10231 (Bankr. D. Del. Jan. 28, 2011); *In re Appleseed's Intermediate Holdings LLC*, No. 11 10160 (Bankr. D. Del. Jan. 20, 2011); *In re Constar Int'l Inc.*, No. 11 10109 (Bankr. D. Del. Jan. 13, 2011)

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

29. Bankruptcy Rule 6003 provides that “[e]xcept to the extent that relief is necessary to avoid immediate and irreparable harm, the court shall not, within 21 days after the filing of the petition, grant relief regarding . . . 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 . . . .” Fed. R. Bankr. P. 6003(b).

30. As detailed above and as set forth in the First Day Declaration, there is no question THQI's failure to honor the Customer Programs would likely result in immediate and

irreparable harm to THQI's customer relations. The Customer Programs are an integral part of the service and products provided by THQI to its customers. In addition, the Customer Programs are essential to THQI's success in retaining customer satisfaction, sustaining goodwill, and ensuring that THQI remains competitive notwithstanding the commencement of these Chapter 11 Cases. Failure to honor the Customer Programs could jeopardize customer relationships and irreparably harm THQI's reputation and ability to win future business. Accordingly, THQI submits that Bankruptcy Rule 6003 is satisfied.

### **REQUEST FOR WAIVER OF STAY**

31. To implement the foregoing immediately, THQI respectfully requests a waiver of the notice requirements under Bankruptcy Rule 6004(a).

32. Furthermore, to implement the foregoing immediately, THQI seeks a waiver of any stay of the effectiveness of the order approving this Motion. Pursuant to Bankruptcy Rule 6004(h), any "order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise." Fed. R. Bankr. P. 6004(h). THQI submits that it has established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h).

### **RESERVATION OF RIGHTS**

33. Nothing contained herein is intended or shall be construed as (i) an admission as to the validity of any claim against THQI, (ii) a waiver of THQI's or any party in interest's rights to dispute any claim, or (iii) an approval or assumption of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code. Likewise, if this Court grants the relief sought herein, any payment made pursuant to the Court's order is not


intended and should not be construed as an admission to the validity of any claim or a waiver of the THQI's rights to dispute such claim subsequently.

**NOTICE**

34. Notice of this Motion has been provided to: (a) the Office of the United States Trustee for the District of Delaware; (b) the Debtors' forty (40) largest unsecured creditors on a consolidated basis, as identified in their chapter 11 petitions; (c) counsel for Wells Fargo Capital Finance, LLC; (d) counsel to the ad hoc committee of the Debtors' prepetition unsecured noteholders; (e) the Banks; and (f) counsel to Clearlake Capital Group, L.P, the proposed "stalking horse" purchaser. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m). In light of the nature of the relief requested herein, THQI submits that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully requests that the Court grant the relief requested herein and such other and further relief as the Court may deem just and proper.

Dated: December 19, 2012  
Wilmington, Delaware

  
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*Proposed Counsel to the Debtors  
and Debtors in Possession*

**EXHIBIT A**  
**Proposed Order**



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

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In re: : Chapter 11  
THQ INC., *et al.*, : Case No. 12 – 13398 (\_\_\_\_)  
Debtors.<sup>1</sup> : Jointly Administered  
: RE: Docket No. \_\_\_\_  
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**ORDER AUTHORIZING THE DEBTORS TO HONOR PREPETITION  
OBLIGATIONS TO CUSTOMERS AND OTHERWISE CONTINUE  
CUSTOMER PROGRAMS IN THE ORDINARY COURSE OF BUSINESS**

Upon the motion (the “**Motion**”)<sup>2</sup> of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) for entry of an order (the “**Order**”) authorizing the Debtors to maintain and administer customer programs and honor prepetition obligations earned by and owing to their customers related thereto in the ordinary course of business and in a manner consistent with past practice, all as more fully set forth in the Motion; and upon the Farrell First Day Declaration; and the Court having found that the Court has jurisdiction over 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 as of February 29, 2012; and the Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and the Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and the Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors, and other parties in

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<sup>1</sup> The Debtors in these chapter 11 cases and the last four digits of each Debtor’s taxpayer identification number are as follows: THQ Inc. (1686); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless, Inc. (7991); Volition, Inc. (4944); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

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

interest; and the Court having found that the Debtors provided appropriate notice of the Motion and the opportunity for a hearing on the Motion under the circumstances; and the Court having reviewed the Motion and having heard the statements in support of the relief requested therein before the Court (the “**Hearing**”); 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 upon all of the proceedings had before the Court; and after due deliberation and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED, AND DECREED THAT:**

1. The Motion is granted as set forth herein.
2. The Debtors are authorized, but not directed, to maintain and administer, in the ordinary course of business and in a manner consistent with past practice, the Customer Programs, as set forth in the Motion, and to pay any prepetition amounts outstanding thereunder.
3. The Debtors are authorized to issue postpetition checks, or to affect postpetition fund transfer requests, in replacement of any checks or fund transfer requests in respect of any obligation under the Customer Programs that are dishonored or rejected.
4. In accordance with this Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the payment of the obligations described in the Motion is authorized to honor checks presented for payment of the obligations described in the Motion and all fund transfer requests made by the Debtors related thereto to the extent that sufficient funds are on deposit in such amounts.
5. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

6. Notice of the Motion as provided therein shall be deemed good and sufficient and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

7. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order shall be immediately effective and enforceable upon its entry.

8. The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

Dated: Wilmington, Delaware  
December \_\_\_\_, 2012

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United States Bankruptcy Judge