

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

-----X
 In re: : Chapter 11
 :
 THQ INC., *et al.*, : Case No. 12 - 13398 ()
 :
 Debtors.¹ : (Joint Administration Requested)
 :
 -----X

**DEBTORS' MOTION FOR INTERIM AND FINAL
ORDERS (I) AUTHORIZING THE DEBTORS TO PAY
CERTAIN PREPETITION CLAIMS OF CRITICAL VENDORS
AND (II) AUTHORIZING AND DIRECTING BANKS AND OTHER FINANCIAL
INSTITUTIONS TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

The above-captioned debtors and debtors in possession (collectively, the “**Debtors**”), hereby file this motion (the “**Motion**”) for entry of an interim order, substantially in the form annexed hereto as **Exhibit A**, and a final order, substantially in the form annexed hereto as **Exhibit B** (i) authorizing, but not directing, the Debtors, in their sole discretion, to pay certain prepetition claims of critical vendors and service providers and (ii) authorizing and directing banks and other financial institutions to honor and process related checks and transfers. In support of the Motion, the Debtors rely upon and incorporate by reference 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, the Debtors respectfully represent:

¹ 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); Volition, Inc. (4944); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless Inc. (7991); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.



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 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 sections 105(a), 363 and 503(b)(9) 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 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 title 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.

RELIEF REQUESTED

5. By this Motion, the Debtors seek entry of an interim order and a final order (i) authorizing, but not directing, the Debtors, in their sole discretion, to pay all or a portion of the Critical Vendor Claims (defined below) and (ii) authorizing and directing banks and other financial institutions to honor and process related checks and transfers.

THE DEBTORS' CRITICAL VENDORS

6. The successful operation of the Debtors' business requires them to purchase goods and services from select third-party vendors, without which the Debtors could not continue to operate their businesses, or the loss of which would result in their operation at significantly reduced profitability (collectively, the "**Critical Vendors**").² Each of the Critical Vendors provides critical and necessary goods and/or services to the Debtors (collectively, the "**Critical Goods and Services**"). The Debtors have reviewed their business relationships and identified the Critical Vendors that are so essential that the loss of their particular goods or services would cause immediate and irreparable harm to the Debtors' businesses.

7. For a vendor to be identified as critical by the Debtors it had to meet one of the following two general criteria: either (a) the vendor provides unique or specifically engineered goods or services that are crucial to the continued operation of the Debtors' businesses, and for which no ready alternative vendors can be found with reasonable diligence; or (b) the vendor provides essential goods and services, for which replacement with alternative

² The Debtors may need to identify vendors as Critical Vendors even if the Debtors' relationships with those vendors are contractual. Additionally, for contracts of a short duration or where the vendor is operating under a purchase order, there is a risk that failure to pay prepetition amounts may result in the counterparties refusing to renew those contracts or accept a new purchase order. Moreover, to the extent the Debtors' relationships with Critical Vendors are contractual, the Debtors will likely assume the contracts with those Critical Vendors later in these Chapter 11 Cases, in which case the prepetition obligations owed to those Critical Vendors would be paid in full. Accordingly, the relief requested herein should only affect the timing of payment of those Critical Vendor Claims and will not prejudice the rights of other parties in interest.

vendors would be prohibitively expensive due to the lead time required by the alternative vendors, the alternative vendors' geographical remoteness from the Debtors' operations, and/or the preferential terms that have been locked in with the current vendor. It is therefore essential to preserving the Debtors' value as a going concern that the Debtors are allowed to pay the Critical Vendors.

8. The Critical Vendors operations generally provide the following categories of Critical Goods and Services:

9. Critical Product Development Vendors and Service Providers. The Debtors cannot provide, through their own resources, all of the essential services and tools necessary to develop a game. Rather, the Debtors rely on outside service providers and vendors throughout the development process. For example, the Debtors regularly utilize the services of external game developers who are ultimately responsible for designing and building a game. A game developer assumes a unique role in the development process and, therefore, becomes extremely difficult, if not impossible, to replace without critically damaging the viability of the respective title. The Debtors also retain the services of programming specialists who are responsible for creating technical features, addressing technical issues, and providing related support. These programming specialists have unique skillsets that are difficult to find in the Debtors' industry. Without the services of the programming specialists, games in the development process may ultimately lack functionality and, therefore, be unplayable.

10. Vendors also create and provide the Debtors animation and videos that play before, during, and after a game and serve to tell the story of the game (“**Cinematics**”). The Debtors also outsource certain visual/aesthetic components of a game to third parties. Without these providers, the Debtors would not be able to create the massive amount of animation assets

required to build a game in a practical amount of time. Similarly, the Debtors also outsource audio production to third-parties who provide voice talent, audio recording professionals, and studios for the creation of audio to be used in the game and in Cinematics. Without the audio production and talent provided by these third-parties, the experience of the game would be incomplete and the Cinematics would not be functional. Finally, the Debtors use third-party vendors to provide key software components for use in the Debtors' game. This software would be too difficult, time consuming and/or expensive to develop internally.

11. Critical Operational Vendors and Service Providers. In the ordinary course of business, the Debtors enter into license agreements with platform entities (i.e., the providers of gaming consoles) (the "**Platform Entities**") to develop games that will play on the platform entities' respective gaming consoles. The Platform Entities are sole-source providers for their gaming consoles. The Platform Entities approve the quality of a game prior to authorizing the replication of the game for their respective gaming consoles. Any disruption in the Debtors' relationship with the Platform Entities would jeopardize the development and production of a game. The Debtors' critical Platform Entities require the Debtors to use certain replicators to replicate the code for the game onto discs (the "**Authorized Replicators**"). In connection with replication, the Authorized Replicators also store the finished goods for assembly and/or ship to retail customers and distribution centers. Thus, the Authorized Replicators play critical roles in the distribution and supply chain. Because the Platform Entities require the Debtors to use the services of the Authorized Replicators, the Authorized Replicators are essentially sole-source providers of their services.

12. Third-party vendors provide the raw material components for final packaging of the Debtors' product and the materials for retail displays. Such vendors' raw materials are necessary for final assembly prior to distribution.

13. Critical Marketing Service Providers. The extremely competitive nature of the interactive software entertainment industry demands a high level and degree of marketing exposure. The success of a game often depends on the promotion of the game prior to its release. In the ordinary course of business, the Debtors rely on third-party service providers to create and maintain the Debtors' corporate website, brand-specific websites for each of the Debtors' games, and social media channels and forums (the "**Internet Marketing Service Providers**"). The Debtors regularly use their online platforms to deliver updates and other information regarding their games, provide links to retailers that carry the Debtors' games, and provide social forums where users can communicate with each other and with the Debtors. Consumers from around the world utilize the Debtors' online content on a regular basis. Interruption of the services provided by the Internet Marketing Service Providers, therefore, would have a significant adverse effect on the Debtors' customer relationships and marketing efforts, thereby impacting sales and overall revenue.

14. Prior to the release of a new game, the Debtors spend a tremendous amount of resources on promoting the game, primarily through the use of promotional videos and trailers, which can be costly and time consuming to produce. The Debtors rely on third-party service providers to create the promotional videos and trailers, as well as other advertising content and promotional materials (the "**Marketing and Advertiser Providers**"). The Debtors expend an extensive amount of time and money to ensure the seamless coordination among the Debtors and the Marketing and Advertising Providers with respect to the implementation of a

promotional campaign (a “**Promotional Campaign**”) prior to a game’s release. The goal of a Promotional Campaign is to generate hype and interest in a new game before it is released to market. The development of a Promotional Campaign generally begins a year or more before the scheduled release date.

15. As set forth in the Farrell First Day Declaration, the Debtors are currently developing several new games that will be released in 2013. Marketing and Advertising Providers are currently developing and creating a Promotional Campaign, including videos and trailers, for each of such games. Certain of these Promotional Campaigns are scheduled to begin in the next few months. Because of the Marketing and Advertising Providers’ expertise and familiarity with the Debtors’ operations and the games to be released in 2013, and the resources the Debtors have already expended in connection with existing Promotional Campaigns, replacing the Marketing and Advertising Providers would be unduly burdensome, prohibitively expensive and time consuming, especially given the potential customer interactions lost in the process. To ensure that product launches are successful and on-time, it is critical that there is no disruption in the services provided by the Marketing and Advertising Providers

PAYMENT OF CRITICAL VENDOR CLAIMS

16. The Debtors and their advisors have examined whether the payment of prepetition claims of Critical Vendors for Critical Goods and Services (the “**Critical Vendor Claims**”) is necessary. Specifically, the Debtors and their advisors have reviewed their accounts payable and undertaken a process to identify those vendors who are essential to the Debtors’ operations. The Debtors have further developed certain procedures (for which they seek the Court’s approval herein) that, when implemented, will ensure that vendors receiving payment of

Critical Vendor Claims will continue to supply Critical Goods and Services necessary to the Debtors' postpetition operations.

17. The Debtors currently estimate that between the Petition Date and January 14, 2013, the outstanding amounts that will become due to Critical Vendors will total approximately \$6 million. This includes (1) postpetition accruals and (2) prepetition accruals. For suppliers of goods, a portion of the prepetition accruals may be entitled to priority pursuant to section 503(b)(9) of the Bankruptcy Code. The Debtors do not have the ability to break down the total amounts that will come due between prepetition and postpetition accruals. This estimate is based on a review of all vendor transactions, identifying all outstanding claims from the vendors that most likely fit within the criteria for Critical Vendor. Accordingly, the Debtors estimate the maximum amount needed to pay the Critical Vendor Claims during the interim period for both prepetition and administrative priority claims combined is approximately \$6 million (the "**Critical Vendor Claims Cap**").

18. To determine the amount of the Critical Vendor Claims Cap, the Debtors considered, among other things, which vendors/service providers: (a) the Debtors absolutely needed to continue to operate without disruption; (b) would be prohibitively expensive or difficult to replace under the circumstances; and (c) present an unacceptable risk should they threaten to not provide services or supplies postpetition. The Debtors also considered the financial condition of the vendors/service providers, to the extent such information was known, including each vendor's/supplier's level of dependence on the Debtors' continued business and whether such vendor/supplier is itself financially distressed. Once they accumulated this information, the Debtors estimated the amounts they believed would be required to pay each

vendor/service provider to ensure the continued supply of Critical Goods and Services. The Critical Vendor Claims Cap represents this estimated amount.

CONDITIONS TO PAYMENT OF THE CRITICAL VENDORS

19. To minimize the amount of payments required, the Debtors request authority to identify Critical Vendors in the ordinary course of their businesses rather than listing them in this Motion. Identifying the Critical Vendors now would likely cause all such vendors to demand payment in full, resulting in either a disruption in the Debtors' operations or a further depletion of estate assets.

20. The Debtors propose to pay, in their sole discretion, the Critical Vendor Claims of each Critical Vendor that agrees, to the Debtors' satisfaction, to continue to supply goods or services to the Debtors on either the Critical Vendor's "Customary Trade Terms" or on other such favorable terms as are acceptable to the Debtors. As used herein, "**Customary Trade Terms**" means, with respect to a Critical Vendor, the normal trade terms, practices, and programs that were most favorable to the Debtors in effect prior to the Petition Date.

21. If a Critical Vendor refuses to continue to supply goods or services to the Debtors on the Customary Trade Terms or on other such favorable terms as are acceptable to the Debtors, then the Debtors may, in their discretion and without further order of the Court, exercise the following rights: (a) declare the payment of the Critical Vendor Claim a voidable postpetition transfer under section 549(a) of the Bankruptcy Code that the Debtors may seek to avoid and recover in cash or goods; and (b) return the parties to their original positions (*i.e.*, immediately prior to the entry of the order approving the relief sought herein) by reinstating the Critical Vendor Claim and demanding the immediate return the Debtors' payment of the Critical

Vendor Claim (to the extent that the amounts exceed post-petition amounts owed by the Debtors without giving effect to setoff, recoupment, adjustments, etc.).

BASIS FOR RELIEF REQUESTED FOR CRITICAL VENDOR CLAIMS

22. The Critical Goods and Services provided by the Critical Vendors are vital to the Debtors' continuing business operations and their ability to maximize estate assets. If the relief sought in this Motion is not granted, Critical Vendors may attempt to assert their considerable leverage and deny the Debtors essential goods and services going forward. Accordingly, upon the exercise of their business judgment, the Debtors believe that the payment of the Critical Vendor Claims as set forth herein is necessary to prevent immediate and irreparable harm from a potentially catastrophic disruption to their business operations that would most certainly jeopardize the ability to sell the Debtors' business as a going concern.

23. The Court may authorize the Debtors to pay the prepetition Critical Vendor Claims pursuant to section 105 of the Bankruptcy Code and the "doctrine of necessity." Section 105(a) of the Bankruptcy Code empowers the Court to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of [the Bankruptcy Code]." 11 U.S.C. § 105(a). A bankruptcy court's use of its equitable powers to "authorize the payment of pre-petition debt when such payment is needed to facilitate the rehabilitation of the debtor is not a novel concept." *In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989). "Under [section] 105, the court can permit pre-plan payment of a pre-petition obligation when essential to the continued operation of the debtor." *In re NVR L.P.*, 147 B.R. 126, 127 (Bankr. E.D. Va. 1992) (citing *Ionosphere Clubs*, 98 B.R. at 177); accord *In re Just for Feet, Inc.*, 242 B.R. 821, 825 (D. Del. 1999) ("To invoke the necessity of payment doctrine, a debtor must show that payment of the prepetition claims is 'critical to the debtor's reorganization.'") (quoting *In re*

Financial News Network, Inc., 134 B.R. 732, 736 (Bankr. S.D.N.Y. 1991)); *see also In re Eagle-Picher Indus., Inc.*, 124 B.R. 1021, 1023 (Bankr. S.D. Ohio 1991) (“[T]o justify payment of a pre-petition unsecured creditor, a debtor must show that the payment is necessary to avert a serious threat to the Chapter 11 process.”).

24. The United States Court of Appeals for the Third Circuit recognized the “necessity of payment” doctrine in *In re Lehigh & New Eng. Ry. Co.*, 657 F.2d 570, 581 (3d Cir. 1981) (holding that a court could authorize the payment of prepetition claims if such payment was essential to the continued operation of the debtor); *see also In re Penn Central Transp. Co.*, 467 F.2d 100, 102 n.1 (3d Cir. 1972) (holding that 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 preorganization claims have been paid”); *In re Just for Feet, Inc.*, 242 B.R. at 824–25 (noting that, in the Third Circuit, debtors may pay prepetition claims that are essential to the continued operation of business); *In re Columbia Gas Sys., Inc.*, 171 B.R. 189, 191–92 (Bankr. D. Del. 1994) (same).

25. The “doctrine of necessity” functions in a chapter 11 case as a mechanism by which the bankruptcy court can exercise its equitable power to allow payment of critical prepetition claims not explicitly authorized by the Bankruptcy Code. *See In re Boston & Me. Corp.*, 634 F.2d 1359, 1382 (1st Cir. 1980) (recognizing the existence of a judicial power to authorize trustees to pay claims for goods and services that are indispensably necessary to the debtors’ continued operation); *In re TCI 2 Holdings, LLC*, 428 B.R. 117, 180 (Bankr. D.N.J. 2010) (“The continuation of the debtors’ gaming and hospitality business depended on their ability to continue their operations and to maintain their reputation and customer loyalty during the bankruptcy process.”). Allowing a debtor to pay prepetition claims is especially appropriate

where, as here, doing so is consistent with the “two recognized policies” of chapter 11 of the Bankruptcy Code—preserving going concern value and maximizing the value of property available to satisfy creditors. *See Bank of Am. Nat’l Trust & Savs. Assoc. v. 203 N. LaSalle St. P’Ship*, 526 U.S. 434, 453 (1999).

26. The Court may also authorize the Debtors to pay the prepetition Critical Vendor Claims pursuant to section 363 of the Bankruptcy Code. Section 363(b)(1) of the Bankruptcy Code empowers the Court to allow a debtor to “use, sell, or lease, other than in the ordinary course of business, property of the estate.” 11 U.S.C. § 363(b)(1). A debtor’s decision to use, sell or lease assets outside the ordinary course of business must be based upon the sound business judgment of that debtor. *See Official Comm. of Unsecured Creditors of LTV Aerospace & Def. Co. v. LTV Co. (In re Chateaugay Corp.)*, 973 F.2d 141, 143 (2d Cir. 1992) (holding that a court determining an application pursuant to section 363(b) must find from the evidence a good business reason to grant such application); *see also In re Ionosphere Clubs, Inc.*, 100 B.R. 670, 675 (Bankr. S.D.N.Y. 1989) (standard for determining a section 363(b) motion is whether the debtor has a “good business reason” for the requested relief). “Where 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.” *Comm. of Asbestos-Related Litigants and/or Creditors v. Johns-Manville Corp. (In re Johns-Manville Corp.)*, 60 B.R. 612, 616 (Bankr. S.D.N.Y. 1986).

27. In the instant case, the Debtors firmly believe that the uninterrupted supply of goods and services provided by Critical Vendors are imperative to their ongoing operations and viability as a going concern. As the foregoing authority amply supports, where the ability to pay promptly prepetition claims of Critical Vendors is necessary to prevent disruption to the

Debtors' business operations, courts are fully empowered to authorize such payments. Further, the satisfaction of the prepetition claims of the Critical Vendors will enable the Debtors to preserve their business operations and safeguard the confidence and goodwill of their suppliers and service providers. Without the requested relief, which is sought based on a rational exercise of the Debtors' business judgment, the interests of all creditors and the efforts to sell the Debtors' businesses as a going concern will be jeopardized. Therefore, the Debtors respectfully submit that the relief sought herein is fully justified by sections 105 and 363 of the Bankruptcy Code, as well as the "doctrine of necessity."

28. This Court has granted relief similar to that requested herein where doing so was vital to preserving the Debtors' continuing business operations so that it could be sold as a going concern. *See In re Digital Domain Media Group, Inc.* (Case No. 12-12569) (BLS) (Bankr. D. Del. Sept. 12, 2012). Indeed, this Court regularly grants relief consistent to that which the Debtors are seeking in this Motion. *See, e.g., In re Pemco World Air Services, Inc.*, Case No. 12-10799 (MFW) (Bankr. D. Del. Apr. 3, 2012); *In re Friendly Ice Cream, Corp.*, Case No. 11-13167 (KG) (Bankr. D. Del. Oct. 6, 2011); *In re Neb. Book Co., Inc.*, Case No. 11-12005 (PJW) (Bankr. D. Del. June 28, 2011); *In re Ambassadors Int'l, Inc.*, Case No. 11-11002 (KG) (Bankr. D. Del. April 5, 2011); *In re Am. Safety Razor Co., LLC*, Case No. 10-12351 (MFW) (Bankr. D. Del. Aug. 23, 2010); *In re Cooper-Standard Holdings, Inc.*, Case No. 09-12743 (PJW) (Bankr. D. Del. August 5, 2009).

**THE COURT SHOULD AUTHORIZE AND DIRECT
APPLICABLE BANKS TO HONOR CHECKS AND ELECTRONIC FUND
TRANSFERS TO PAY THE CRITICAL VENDOR CLAIMS**

29. In connection with the foregoing, the Debtors respectfully request that the Court enter an order: (i) authorizing and directing all applicable banks and other financial

institutions to receive, process, honor, and pay all checks and transfers issued by the Debtors in connection with payment of the Critical Vendor Claims, without regard to whether any check or transfer was issued before or after the Petition Date; (ii) providing that all banks and other financial institutions may rely on the representations of the Debtors with respect to whether any check or transfer issued or made by the Debtors before the Petition Date should be honored pursuant to this Motion, and such banks and other financial institutions shall not have any liability to any party for relying on such representations by the Debtors as provided for herein; and (iii) authorizing the Debtors to issue replacement checks or transfers, to the extent any check or transfer in relation to the Critical Vendor Claims is dishonored or rejected by the banks and other financial institutions.

NECESSITY FOR IMMEDIATE RELIEF AND EFFECTIVENESS OF ORDER

30. 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). As described herein, the Debtors will suffer immediate and irreparable harm without Court authorization to pay the Critical Vendor Claims. Consequently, the relief requested herein is consistent with Bankruptcy Rule 6003.

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

32. Furthermore, to implement the foregoing immediately, the Debtors seek 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). As set forth above, proposed payment of the prepetition claims of the Critical Vendors is essential to prevent potentially irreparable damages to the Debtors’ operations, value and ability to be sold as a going concern. Accordingly, the Debtors submit that ample cause exists to justify a waiver of the 14-day stay imposed by Bankruptcy Rule 6004(h).

DEBTORS’ RESERVATION OF RIGHTS

33. Nothing contained herein is intended or should be construed as an admission of the validity of any claim against the Debtors; a waiver of the Debtors’ rights to dispute any claim; or an approval, assumption or rejection of any agreement, contract, or lease under section 365 of the Bankruptcy Code. The Debtors expressly reserve their rights to contest any invoice or claim with respect to Critical Vendors in accordance with applicable non-bankruptcy law, and to assume or reject any agreements with Critical Vendors in accordance with the applicable provisions 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 as to the validity of any claim or a waiver of the Debtors’ rights to dispute such claim subsequently.

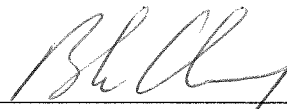
NOTICE

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) counsel to Clearlake Capital Group, L.P, the proposed “stalking horse”

purchaser; and (f) the Banks. 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, the Debtors submit that no other or further notice is necessary.

WHEREFORE, the Debtors respectfully request 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



Michael R. Nestor (No. 3526)
M. Blake Cleary (No. 3614)
YOUNG CONAWAY STARGATT & TAYLOR, LLP
Rodney Square
1000 North King Street
Wilmington, Delaware 19801
Telephone: (302) 571-6600
Facsimile: (302) 571-1253

-and-

Oscar Garza (CA No. 149790)
Jeffrey C. Krause (CA No. 94053)
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071-1512
Telephone: (213) 229-7000
Facsimile: (213) 229-7520

*Proposed Counsel to the Debtors
and Debtors in Possession*

EXHIBIT A

Interim Order

UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

-----X
In re: : Chapter 11
THQ INC., *et al.*, : Case No. 12 - 13398 (____)
Debtors.¹ : Jointly Administered
: RE: Docket No. ____
-----X

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF CRITICAL VENDORS AND (II) AUTHORIZING
AND DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) for entry of an order (this “**Interim Order**”) authorizing the Debtors to pay Critical Vendor Claims in the ordinary course of business; 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 interest; and the Court having found that the Debtors provided appropriate notice of the Motion

¹ 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); Volition, Inc. (4944); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless Inc. (7991); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in 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 at a hearing 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 on an interim basis until such time as the Court conducts a final hearing on this matter (the “Final Hearing Date”).

2. The Final Hearing Date shall be on _____, 2013 at __:__.m. (prevailing Eastern Time). Any objections or responses to the Motion shall be filed on or before seven business days prior to the Final Hearing Date and served on the parties required by Local Rule 2002-1(b)

3. The Debtors are authorized, but not directed, in the exercise of their reasonable business judgment, to pay Critical Vendor Claims to the Critical Vendors in an amount not to exceed \$6 million during the interim period from the date of this Interim Order until the date that a final order is entered in this matter, unless otherwise ordered by the Court.

4. The Debtors are authorized, in their sole discretion, to pay the Critical Vendor Claims of Critical Vendors upon such terms and in the manner provided in the Motion and this Interim Order, in the ordinary course of business, when due, and not on an accelerated basis, provided, however, that any Critical Vendor that accepts payment pursuant to the authority granted in this order agrees to supply goods and services to the Debtors postpetition on Customary Trade Terms or on other such favorable terms as are acceptable to the Debtors.

5. Any Critical Vendor that accepts payment from the Debtors on account of all or a portion of a prepetition claim pursuant to this Interim Order shall be deemed to (a) agree to the terms and provisions of this order and (b) have waived, to the extent so paid, any and all prepetition claims, of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties.

6. In accordance with this Interim Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the prepetition or postpetition obligations the Debtors are authorized to pay pursuant to this Interim Order is authorized to honor checks presented for payment and all fund transfer requests made by the Debtors related to such obligations to the extent that sufficient funds are on deposit in such accounts.

7. The Debtors are authorized to issue postpetition checks or to make additional electronic payment requests with respect to payment of the Critical Vendor Claims in the event prepetition checks or electronic payment requests are dishonored or rejected.

8. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

9. 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.

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

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

Dated: Wilmington, Delaware
December ___, 2012

United States Bankruptcy Judge

EXHIBIT B

Proposed Final Order

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

-----X
In re: : Chapter 11
: :
THQ INC., *et al.*, : Case No. 12 - 13398 (____)
: :
Debtors.¹ : Jointly Administered
: :
: RE: Docket Nos. ____
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**FINAL ORDER (I) AUTHORIZING THE DEBTORS TO PAY CERTAIN
PREPETITION CLAIMS OF CRITICAL VENDORS AND (II) AUTHORIZING
AND DIRECTING BANKS AND OTHER FINANCIAL INSTITUTIONS
TO HONOR AND PROCESS RELATED CHECKS AND TRANSFERS**

Upon the motion (the “**Motion**”)² of the above-captioned debtors and debtors-in-possession (collectively, the “**Debtors**”) for entry of a final order (this “**Final Order**”) authorizing the Debtors to pay Critical Vendor Claims in the ordinary course of business; 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 interest; and the Court having found that the Debtors provided appropriate notice

¹ 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); Volition, Inc. (4944); THQ Digital Studios Phoenix, Inc. (1056); THQ Wireless Inc. (7991); and Vigil Games, Inc. (8651). The Debtors’ principal offices are located at 29903 Agoura Road, Agoura Hills, CA 91301.

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

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 at a hearing 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, in the exercise of their reasonable business judgment, to pay Critical Vendor Claims to the Critical Vendors in an amount not to exceed \$6 million, inclusive of amounts paid pursuant to the Interim Order, upon such terms and in the manner provided in this Final Order and in the Motion.
3. The Debtors are authorized, in their sole discretion, to pay the Critical Vendor Claims of Critical Vendors upon such terms and in the manner provided in the Motion and this Final Order, in the ordinary course of business, when due, and not on an accelerated basis, provided, however, that any Critical Vendor that accepts payment pursuant to the authority granted in this order agrees to supply goods and services to the Debtors postpetition on Customary Trade Terms or on other such favorable terms as are acceptable to the Debtors.
4. Any Critical Vendor that accepts payment from the Debtors on account of all or a portion of a prepetition claim pursuant to this Final Order shall be deemed to (a) agree to the terms and provisions of this order and (b) have waived, to the extent so paid, any and all prepetition claims, of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties.

5. In accordance with this Final Order and any other order of this Court, each of the financial institutions at which the Debtors maintain their accounts relating to the prepetition or postpetition obligations the Debtors are authorized to pay pursuant to this Final Order is authorized to honor checks presented for payment and all fund transfer requests made by the Debtors related to such obligations to the extent that sufficient funds are on deposit in such accounts.

6. The Debtors are authorized to issue postpetition checks or to make additional electronic payment requests with respect to payment of the Critical Vendor Claims in the event prepetition checks or electronic payment requests are dishonored or rejected.

7. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied.

8. 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.

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

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

Dated: Wilmington, Delaware

_____, 2013

United States Bankruptcy Judge