EXHIBIT 1

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Honorable Mike K. Nakagawa
United States Bankruptcy Judge

Entered on Docket
December 02, 2019

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IN THE UNITED STATES BANKRUPTCY COURT

FOR THE DISTRICT OF NEVADA

In re: Jagged Peak, Inc., a Nevada corporation, ☒ Affects this Debtor.	Case No.: BK-S-19-15959-MKN Chapter 11 **LEAD CASE** **Jointly Administered with:**
In re: TradeGlobal, LLC, a Delaware limited liability company, ☒ Affects this Debtor.	Case No.: BK-S-19-15960-MKN Chapter 11
In re: TradeGlobal North America Holding, Inc., a Delaware corporation, ☒ Affects this Debtor.	Case No.: BK-S-19-15961-MKN Chapter 11 **Sale Hearing:** **Date: November 20, 2019** **Time: 9:30 a.m.**

AMENDED ORDER PURSUANT TO 11 U.S.C. §§ 105, 363, AND 365: (A) APPROVING THE SALE OF SUBSTANTIALLY ALL ASSETS OF JAGGED PEAK, INC. FREE AND CLEAR OF LIENS ENCUMBRANCES, CLAIMS AND INTERESTS, (B) APPROVING THE ASSUMPTION AND ASSIGNMENT OF DESIGNATED EXECUTORY CONTRACTS AND UNEXPIRED LEASES, (C) WAIVING THE REQUIREMENTS OF BANKRUPTCY RULES 6004(h) AND 6006(d), AND (D) GRANTING RELATED RELIEF

Debtors and debtors-in-possession Jagged Peak, Inc. ("Jagged Peak" or "Seller")), Trade Global LLC ("TradeGlobal"), and Trade Global North America Holding, Inc. ("TGNA," and, collectively with Jagged Peak and TradeGlobal, "Debtors"), filed *Debtors' Motion Pursuant to Sections 105(a), 363, 365, 503(b), and 507(a)(2) of the Bankruptcy Code: (I) Approving Bidding Procedures for the Sale of Substantially All Assets of One or More of the Debtors, Scheduling an Auction and Sale Hearing, and Approving the Form and Manner of Notice Thereof; (II) Approving the Sale of Assets Free and Clear of Liens, Claims, Interests, and Encumbrances, (III) Approving the Assumption and Assignment of Certain Related Executory Contracts; (IV) Waiving the Requirements of Bankruptcy Rules 6004(h) and 6006(d), and (IV) Granting Related Relief* (the "Sale Motion") [ECF No. 131] on October 22, 2019, seeking 1) entry of an order approving bidding procedures for one or more sales (the "Sales" and each, a "Sale") of the Debtors' Assets,[1] scheduling an auction and final sale hearing and approving the form and manner of notice thereof, approving procedures relating to the assumption and assignment of executory contracts and unexpired leases, including the form and manner of notices, and granting related relief, and 2) entry of an order approving one or more Sales of the Debtors' Assets free and clear of all Liens (as defined below), Claims (as defined in section 101(5) of title 11 of the United States Code (the "Bankruptcy Code")),[2] other interests and encumbrances; and (ii) the assumption and assignment of certain executory contracts and unexpired leases.

The Sale Motion came on for hearing before the above-captioned Court on October 29, 2019 (the "Bidding Procedures Hearing") and the Bankruptcy Court entered the *Order*

[1] All capitalized terms not otherwise defined herein shall have the meanings assigned to them in the Sale Motion, Bidding Procedures, or the APA (as defined herein).

[2] Unless otherwise stated, all references to "chapter" and "section" herein shall be to the Bankruptcy Code; all references to a "Bankruptcy Rule" shall refer to the Federal Rules of Bankruptcy Procedure; and all references to a "Local Rule" shall refer to the Local Rules of Bankruptcy Practice of the U.S. District Court for the District of Nevada.

(A) Approving Bidding Procedures, (B) Approving the Form and Manner of Notice Thereof, (C) Scheduling Auction and Sale Hearing, (D) Approving Procedures for the Assumption and Assignment of Contracts, and (E) Granting Related Relief on October 29, 2019 [ECF No. 198] (the "Bidding Procedures Order") which, among other things, (i) authorized Jagged Peak to accept the stalking horse bid (the "Stalking Horse Bid") of IDL Logistics US, Inc. (the "Stalking Horse Bidder") and enter into an Asset Purchase Agreement with the Stalking Horse Bidder; (ii) established procedures for the solicitation of Bids, the qualification of Qualified Bidders and Qualified Bids, and conducting the Auction (the "Bidding Procedures"), (iii) scheduled the Auction and Sale Hearing); (iv) approved procedures for the assumption and assignment of executory contracts and unexpired leases (the "Assumption and Assignment Procedures"); and (v) approved the form and manner of notices of the foregoing.

The Seller having solicited Bids in accordance with the Bidding Procedures and the Seller having received no Qualified Bids by November 13, 2019 (the "Bid Deadline"), other than the Stalking Horse Bid; and the Seller having selected the Stalking Horse Bid as the highest and best Qualified Bid and the Stalking Horse Bidder (the "Purchaser") as the Winning Bidder for the Purchased Assets and assumption of certain liabilities of the Seller identified in the APA (the "Assumed Liabilities"), pursuant to the terms and conditions set forth in the Asset Purchase Agreement dated November 11, 2019 (the "APA"), and in accordance with the Bidding Procedures and the Bidding Procedures Order, a hearing was held on November 20, 2019 to consider approval of (i) the sale of the Purchased Assets and other contracts contemplated hereunder (the "Sale") free and clear of all liens, claims, other interests and encumbrances; and (ii) the assumption and assignment of certain executory contracts and unexpired leases; and (iii) granting related relief (the "Sale Hearing").

The Seller appeared by and through its counsel, the law firms of Garman Turner Gordon and Cozen O'Connor, and all other appearances were noted on the record. It appearing that notice and an opportunity for a hearing on the Sale Motion has been given and is appropriate under the circumstances surrounding these Chapter 11 Cases (defined below) and that no other or further notice need be given; having reviewed the Sale Motion, all objections and oppositions

thereto, and the other pleadings and papers on file in the Chapter 11 Cases, and upon the record of the Bidding Procedures Hearing and the Sale Hearing, the *Declaration of Jeremy Rosenthal in Support of Debtors' Motion Pursuant to Sections 105(a), 363, 365, 503(b), and 507(a)(2) of the Bankruptcy Code (I) Approving Bidding Procedures for the Sale of Substantially All Assets of One or More of the Debtors, Scheduling an Auction and Sale Hearing, and Approving the Form and Manner of Notice Thereof; (II) Approving the sale of Assets Free and Clear of Liens, Claims, Interests, and Encumbrances; (III) Approving the Assumption and Assignment of Certain Related Executory Contracts; (IV) Waiving the Requirements of Bankruptcy Rules 6004(h) and 6006(d), and (IV) Granting Related Relief* [ECF No. 132], and the record of the Chapter 11 Cases and proceedings; and after due deliberation and sufficient cause appearing therefor,

IT IS HEREBY FOUND AND DETERMINED THAT:[3]

A. **Bankruptcy Petition**. On September 16, 2019 Debtors filed voluntary petitions for relief under Chapter 11 of the Bankruptcy Code, commencing these cases (these "Chapter 11 Cases," and each a "Chapter 11 Case").

B. **Jurisdiction and Venue**. The Bankruptcy Court has jurisdiction to hear and determine the Sale Motion pursuant to 28 U.S.C. §§ 157(b)(1) and Local Rule 1001(b)(1). This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(A), (N) and (O). Venue is proper in this District and in the Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. **Final Order and Waiver of Bankruptcy Rule 6004(h) and 6006(d) Stays**. This order ("Sale Order") constitutes a final and appealable order within the meaning of 28 U.S.C. § 158(a). Time is of the essence in closing the Sale referenced herein, the Seller and the Purchaser intend to close the Sale as soon as practicable, and there is no just reason for delay in the implementation of this Sale Order. Specifically, the Sale must be approved and consummated promptly in order to preserve the viability of the business as a going concern, and

[3] Findings of fact shall be construed as conclusions of law and conclusions of law shall be construed as findings of fact when appropriate. *See* Fed. R. Bankr. P. 7052. This Sale Order shall be deemed to incorporate any findings of fact and conclusions of law made on the record at the Sale Hearing (as defined herein) and the Bidding Procedures Hearing pursuant to Bankruptcy Rule 7052.

to maximize the value to the Seller, its estate, its creditors, and all other parties in interest. Accordingly, there is cause to waive the stays contemplated by Bankruptcy Rules 6004(h) and 6006(d).

D. **Statutory Predicates**. The statutory predicates for the relief sought in the Sale Motion are sections 105, 363, 365, 503(b), and 507(a)(2) of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, and Local Rules 2002, 6004 and 9014.

E. **Notice and Opportunity to Object**. As evidenced by the papers and pleadings in this Court's docket, timely, adequate, and sufficient notice of the Sale Motion, the Bidding Procedures Hearing, the Auction, the Sale and the terms of the APA, the assumption and assignment of the Assumed Contracts (as defined below) and proposed Cure Amounts related thereto, and the Sale Hearing has been provided in accordance with sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006 and 9014, the Bidding Procedures Order, and Local Rule 6004, and a reasonable opportunity to object and/or be heard regarding the requested relief has been afforded to all creditors of the Seller and other parties in interest in the Chapter 11 Case, including, without limitation, the following: (i) the United States Trustee for Region 17; (ii) proposed counsel to the Creditors' Committee; (iii) the Debtors' creditors; (iv) various federal, state, county and city tax and regulatory authorities; (v) all entities known to have expressed an interest in a transaction with respect to the Purchased Assets or were identified by the Seller or its advisors as a potential purchaser of the Purchased Assets; (vi) the Contract Counterparties to the Assumed Contracts; (ix) all of the Debtors' creditors, and (vii) all parties requesting notice pursuant to Bankruptcy Rule 2002. Such notice was good and sufficient and appropriate under the particular circumstances and all creditors of the Seller and other parties in interest in the Chapter 11 Case were offered a reasonable opportunity to object and be heard. No other or further notice is necessary or shall be required.

F. The Assumption and Assignment Notice has been provided to each of the counterparties (the "Contract Counterparties") to the contracts identified therein, which the Seller filed with the Bankruptcy Court on November 14, 2019 (the "Assumed Contracts and Cure Schedule"); and the executory contracts and/or unexpired leases identified therein proposed to be

assumed and assigned to the Purchaser, the "Assumed Contracts") all in accordance with the procedures for the assumption and assignment of executory contracts and/or unexpired leases (the "Assumption and Assignment Procedures") set forth in the Bidding Procedures Order.

G. The service of the Assumption and Assignment Notice was sufficient under the circumstances and no further notice need be given in respect of assumption and assignment of the Assumed Contracts or the proposed Cure Amounts related thereto, if any. The Contract Counterparties to the Assumed Contracts have had a reasonable opportunity to object to the assignment and assumption of the Assumed Contracts and the associated Cure Amounts and to be heard at the Sale Hearing.

H. The Seller continues to operate its business as debtor in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

I. No trustee or examiner has been appointed in the Chapter 11 Case.

J. The disclosures made by the Seller concerning the Sale Motion, the APA, the Sale, the Stalking Horse Bidder, and the Sale Hearing were good, complete and adequate.

K. **Title in the Purchased Assets**. The Purchased Assets constitute property of the Seller's estate and title thereto is vested in the Seller's estate within the meaning of section 541(a) of the Bankruptcy Code. The Seller is the sole and lawful owner of the Purchased Assets. The Purchased Assets do not include any property that is not property of the Seller's estate. For the avoidance of doubt, neither the Seller nor Purchaser asserts an ownership interest in or title to, and the Purchased Assets do not include, any durable product inventory held by the Seller or any logistics provider on behalf of clients of the Seller, where such durable product inventory is subject to a valid, enforceable bailment agreement.

L. **Business Justification**. The Seller has demonstrated a good and sufficient basis sell the Purchased Assets and assume and assign the Assumed Contracts to the Purchaser pursuant to the terms and conditions of the APA. Such action is an appropriate exercise of the Seller's business judgment and in the best interest of the Seller, its estate, and its creditors. Such business reasons include, but are not limited to, the facts that (i) there is substantial risk of deterioration of the value of the Purchased Assets if the Sale is not consummated quickly given,

among other things, the impending holiday shopping season; (ii) the Stalking Horse Bid set forth in the APA constitutes the highest and best offer for the Purchased Assets; and (iii) the Sale will present the best opportunity to realize the value of the Seller's business on a going concern basis and to avoid decline and devaluation of the Seller's business, all of which is in the best interests of the Seller, its estate and creditors, and other parties in interest. Entry of this Sale Order (and all provisions hereof) is a condition precedent to the Purchaser consummating the Sale.

M. **Opportunity to Bid**. The Seller, including its management and board of directors, and its professionals marketed the Purchased Assets appropriately and conducted the marketing and sale process in good faith, without collusion, and in accordance with the Bidding Procedures and the Bidding Procedures Order. The marketing process set forth in the Bidding Procedures Order and the Bidding Procedures was fair in substance and procedure and afforded a full and fair opportunity for any person or entity to make a higher or otherwise better offer to purchase the Purchased Assets. Based upon the record of these proceedings, all creditors of the Seller, other parties in interest in the Chapter 11 Case, and all prospective purchasers have been afforded a reasonable and fair opportunity to bid and compete against the Purchaser for the Purchased Assets.

N. **Highest or Otherwise Best Offer**. The total consideration provided by the Purchaser for the Purchased Assets is the highest or otherwise best offer for the Purchased Assets received by the Seller. No higher or otherwise better offers for the Purchased Assets were received by the Seller prior to the Bid Deadline, and the Seller, exercising its reasonable discretion, declared the Purchaser the Winning Bidder for the Purchased Assets in accordance with the Bidding Procedures, the Bidding Procedures Order, and the APA, which determination constitutes a valid and sound exercise of the Seller's business judgment.

O. **Good Faith Purchaser**. The APA and the Sale have been negotiated by the Seller and the Purchaser (and their respective affiliates and representatives, as applicable) in good faith, at arms' length, and without collusion or fraud. The terms and conditions of the APA, including the total consideration to be paid by the Purchaser to the Seller pursuant to the

APA, are fair and reasonable, and the Sale is in the best interest of the Seller, its estate, and its creditors.

P. The Purchaser is a "good faith purchaser" entitled to the full benefits and protections of section 363(m) of the Bankruptcy Code and any other applicable bankruptcy or non-bankruptcy law with respect to the sale and assignment of the Purchased Assets and Assumed Contracts that it is acquiring pursuant to the APA.

Q. The APA was not controlled by an agreement between or among potential or actual bidders within the meaning of section 363(n) of the Bankruptcy Code. The Seller and the Purchaser have not engaged in any conduct that would cause or permit the APA to be avoided, or costs or damages to be imposed, under section 363(n) of the Bankruptcy Code. The Purchaser is entitled to all the protections and immunities of section 363(n) of the Bankruptcy Code. The Purchaser is not, and was not immediately prior to or after the Closing Date, an "affiliate" or "insider" of the Seller as defined in section 101 of the Bankruptcy Code, and no common identity of incorporation, director, or stockholder existed between the Purchaser, on the one hand, and the Seller, on the other hand, immediately prior to or after the Closing Date.

R. An injunction against creditors of the Seller and third parties enjoining them pursuing Liens, Claims and Excluded Liabilities was necessary to entice the Purchaser to submit its Stalking Horse Bid and is necessary to induce the Purchaser to close the Sale; the issuance of such an injunction is therefore necessary to avoid irreparable injury to the Seller, its estate and creditors, and other parties in interest; provided, however, that nothing contained herein shall enjoin or impair the rights of SingPost (as defined below) with respect to the Temporary SingPost License (as defined below), as described in paragraph 12 of this Sale Order. Nothing contained herein shall constitute or be deemed to constitute consent to jurisdiction or entry of a final order by SingPost with respect to any matter other than this Sale Order, the Temporary SingPost License, and the resolution of the SingPost Objection (as each such term is defined below).

S. **Good Faith**. The Purchaser has acted in good faith in its negotiations with the Seller and in submitting and pursuing its bid, and will be acting in good faith consummating the Sale after entry of this Sale Order.

T. **Corporate Power and Authority**. Subject only to the entry of this Sale Order, the Seller has full corporate power and authority to execute and deliver the APA and to perform all of its respective obligations thereunder, and the sale of the Purchased Assets and assignment of the Assumed Contracts have been duly and validly authorized by all corporate authority necessary to consummate the Sale. No consents or approvals, other than as expressly provided for in the APA and the entry of this Sale Order, are required by the Seller to consummate the Sale.

U. **Transfer and Sale of Assumed Liabilities; Assumption and Assignment in Best Interest**. The transfer and sale of the Assumed Liabilities pursuant to the terms of the APA and this Sale Order and the assumption of the Assumed Contracts by the Seller and the assignment thereof to the Purchaser pursuant to the terms of the APA and this Sale Order are integral to the APA and are in the best interest of the Seller, its estate and creditors, and all other parties in interest, and represents the reasonable exercise of sound and prudent business judgment by the Seller. Accordingly, such transfer and sale, and assumption and assignment, are reasonable, enhance the value of the Seller's estate, and do not constitute unfair discrimination. No provision of any Assumed Contract that purports to prohibit, restrict, or condition the assignment of any such Assumed Contract in connection with the Sale shall have any force or effect and such Assumed Contract is hereby assigned to the Purchaser notwithstanding any such provisions therein.

V. **Cure/Adequate Assurance**. The Seller and Purchaser have met all of the requirements of section 365(b) of the Bankruptcy Code for each of the Assumed Contracts. The Seller and the Purchaser, as applicable have provided adequate assurance of cure of any default existing prior to the Closing Date under the Assumed Contracts, within the meaning of section 365(b)(1)(A) of the Bankruptcy Code, and provided adequate assurance of compensation to any party for any actual pecuniary loss to such party resulting from such default under any of the

Assumed Contracts within the meaning of section 365(b)(1)(B) of the Bankruptcy Code. Pursuant to the APA, the Purchaser is obligated to assume and pay all Cure Amounts with respect to the Assumed Contracts in the amounts specified in the Assumed Contracts and Cure Schedule (or in such other amount or on such other terms otherwise fixed by the Bankruptcy Court or as may be agreed to by the Purchaser and the Contract Counterparty(ies) to the applicable Assumed Contract) in effect on the Closing Date.

W. The Purchaser has provided adequate assurance of its future performance of and under the Assumed Contracts, within the meaning of section 365(b)(1)(C) and 365(b)(3) (to the extent applicable) of the Bankruptcy Code. The Contract Counterparties were each given adequate notice and the opportunity to object to the Assumption and Assignment Notice, and are deemed to have consented pursuant to section 363(f)(2), or any objection filed by a Contract Counterparty has been withdrawn or overruled except as set forth herein. Except as expressly set forth in the APA, the Assumed Contracts will not subject the Purchaser to any liability whatsoever prior to the Closing Date, or by reason of such transfer under the laws of the United States, any state, territory, or possession thereof, or the District of Columbia, based, in whole or in part, on any theory of law or equity.

X. **Contract Objections Withdrawn or Overruled**. Purchaser shall pay the agreed Cure Amounts or provide assurances, as applicable, to 1400 Rahway Urban Renewal, LLC (the "Rahway Landlord"), Staffmark Investment, LLC, and DI Overnite LLC d/b/a Deliver-It, as set forth herein and/or reflected on the record of the Sale Hearing, and their respective objections to the Sale Motion, Cure Notices (including the provision of adequate assurance of future performance) or Assumption and Assignment Notice, as applicable, have been withdrawn.

Y. With respect to that certain Lease Agreement, dated July 6, 2018, for the premises located at 1400 Randolph Avenue, Rahway NJ 07001 (the "Rahway Lease"), the agreed upon Cure Amount is $138,197.20. In addition, within 90 days of assumption and assignment of the Rahway Lease to Purchaser, the Purchaser shall obtain a letter of credit from an Issuing Bank (as defined under the Rahway Lease and approved by the Rahway Landlord) in the amount of $1,570,200 which names the Rahway Landlord as the beneficiary (the "Rahway LOC"). Upon

receipt of the Rahway LOC, the Rahway Landlord shall send to Purchaser the cash security deposit it currently holds in the amount of $773,441.82, without any setoff or deduction, to an account to be identified by the Purchaser in writing to the Rahway Landlord. Purchaser and the Rahway Landlord also agree to amend the Rahway Lease to reflect the assignment and assumption of the Rahway Lease to Purchaser and such amendment shall be in a form acceptable to the Rahway Landlord and Purchaser.

Z. No agreement or license between the Seller and Oracle America, Inc., including its predecessors in interest (herein, "Oracle"), shall be an Assumed Contract and on that basis Oracle's objection to assumption and assignment has been withdrawn; provided, however, that Oracle does not waive and specifically reserves its rights and remedies regarding, and does not consent to, any transitional use of, or provision of shared access to, any Oracle license, support, products and services by the Seller, Debtors, and Purchaser, or any other third party, whether under the APA or otherwise, in the absence of obtaining Oracle's prior written consent.

AA. The Administrative Services Agreement with UMR, Inc. shall not be an Assumed Contract.

BB. **Free and Clear**. The Purchaser would not have entered into the APA to acquire the Purchased Assets, and would exercise its right to terminate the APA, if the sale of the Purchased Assets were to be transferred to it other than free and clear of all Liens, Claims and Excluded Liabilities other than the Assumed Liabilities, or if the Purchaser would, or in the future could, be liable for any such Liens, Claims or Excluded Liabilities. A sale of the Purchased Assets other than one free and clear of all Liens, Claims and Excluded Liabilities other than the Assumed Liabilities would adversely impact the Seller's estate, and would yield substantially less value for the Seller's estate, with less certainty than the Sale. Therefore, the Sale contemplated by the APA is in the best interests of the Seller, its estate and creditors, and all other parties in interest.

CC. **Satisfaction of Section 363(f)(1)-(5)**. The Seller may sell and assign the Purchased Assets free and clear of all Liens, Claims and Excluded Liabilities, because, with respect to each creditor asserting a Lien, Claim or Excluded Liability, one or more of the

standards set forth in sections 363(f)(1)-(5) of the Bankruptcy Code have been satisfied. Those holders of Liens, Claims or Excluded Liabilities who did not object or who withdrew their objections to the Sale and/or the Assumption and Assignment Notice are deemed to have consented to the Sale Motion and the sale and assignment of the Purchased Assets to the Purchaser pursuant to section 363(f)(2) of the Bankruptcy Code. Those holders of Liens, Claims, or Excluded Liabilities who did object fall within one or more of the other subsections of section 363(f) of the Bankruptcy Code and are adequately protected by having their Liens, Claims or Excluded Liabilities, if any, attach to the proceeds of the Sale ultimately attributable to the Purchased Assets in which such holders allege a Lien, Claim or Excluded Liability in the same order of priority, with the same validity, force and effect that such holder had prior to the Sale, and subject to any claims and defenses the Debtors and their estates may possess with respect thereto.

DD. **No Successor Liability**. The transactions contemplated under the APA do not amount to a consolidation, merger, or de facto merger of the Purchaser with the Seller and/or the Seller's estate, there is not substantial continuity between the Purchaser and the Seller there is no common identity between the Seller and the Purchaser, there is no continuity of enterprise between the Seller and the Purchaser, the Purchaser is not a mere continuation of the Seller or its estate, and the Purchaser does not constitute a successor to the Seller or its estate. The Purchaser would not have acquired the Purchased Assets but for the foregoing protections against potential claims based upon "successor liability" or similar theories.

EE. **No Fraudulent Transfer**. The Sale is not for the purpose of hindering, delaying or defrauding creditors in violation of the Bankruptcy Code or the other laws of the United States, or the laws of any state, territory, or possession or the District of Columbia. Neither the Seller nor the Purchaser has entered into the APA or is consummating the Sale with any fraudulent intent or otherwise improper purpose.

FF. **Fair Consideration**. The consideration provided for the Sale constitutes reasonably equivalent value and fair consideration (as those terms are defined in each of the Uniform Fraudulent Transfer Act, Uniform Fraudulent Conveyance Act, section 548 of the

Bankruptcy Code or any similar state or federal law), and fair consideration under the Bankruptcy Code and other laws of the United States, and the laws of any state, territory, or possession or the District of Columbia.

GG. **Compliance with Bankruptcy Code**. The consummation of the Sale is legal, valid, and properly authorized under all applicable provisions of the Bankruptcy Code, including without limitation sections 105(a), 363(b), 363(f), 363(m), 365(b) and 365(f) of the Bankruptcy Code and all of the applicable requirements of such sections have been or will be complied with in respect of the Sale as of the Closing Date.

HH. **Sale Transaction Not a Sub Rosa Plan**. The sale and assignment of the Purchased Assets and Assumed Liabilities outside of a plan of reorganization pursuant to the APA and this Sale Order neither impermissibly restructures the rights of the Seller's creditors nor impermissibly dictates the terms of a liquidating plan of reorganization for the Seller. The Sale does not constitute a *sub rosa* chapter 11 plan.

II. The Sale contemplated by the APA is in the best interest of the Seller, its estate and creditors, and all other parties in interest in the Chapter 11 Case; and it is therefore,

ORDERED, ADJUDGED AND DECREED THAT:

1. **Relief Granted**. The relief requested in the Sale Motion is hereby granted on a final basis as set forth in this Sale Order.

2. **Objections Overruled**. All objections and responses to the Sale Motion, this Sale Order or the relief granted herein (including all reservation of rights included therein) that have not been overruled, withdrawn, waived, settled, or otherwise resolved, are hereby overruled and denied on the merits with prejudice, exclusive of the objection of United Parcel Service, Inc., which has been adjourned to a date to be determined. Notwithstanding anything in this Sale Order to the contrary and for the avoidance of doubt, the *Limited Objection of Singapore Post Limited to Jagged Peak's Sale of EDGE Software to ID Logistics US, Inc. Free and Clear of Liens, Claims, Interests, and Encumbrances* [Docket No. 278] (the "SingPost Objection") has not been overruled and shall be treated in accordance with the stipulation to be entered into among SingPost, the Seller, and the Purchaser (the "IP License Stipulation") on the terms set

forth on the record at the Sale Hearing, and prior thereto by the agreements that were recited on the record at the Sale Hearing by the Seller, the Purchaser, and SingPost, with all rights reserved; provided, however, that, for the avoidance of doubt, SingPost consents to the entry of this Sale Order on a final basis.

3. **Notice and Opportunity to be Heard**. Timely, adequate, and sufficient notice of the Sale Motion, the Sale, assumption and assignment of the Assumed Contracts, and the Auction and Sale Hearing has been provided and all interested parties have been afforded a reasonable opportunity to object or be heard regarding the relief requested in the Sale Motion pursuant to sections 102(1), 363 and 365 of the Bankruptcy Code, Bankruptcy Rules 2002, 6004, 6006, 9006, and 9007, and Local Rule 6004

4. **Prior Findings of Fact and Conclusions of Law**. The Bankruptcy Court's findings of fact and conclusions of law in the Bidding Procedures Order, including the record of the Bidding Procedures Hearing, are incorporated herein by reference

5. **Approval**. The APA is hereby approved and authorized in all respects and shall be deemed in full force and effect, and the Seller and Purchaser are hereby authorized, empowered and directed to fully perform under, consummate, and implement the terms of the APA and to execute, deliver and perform under, any and all additional instruments and documents that may be reasonably necessary or desirable to implement and effectuate the terms of the APA and this Sale Order, and to take all further actions as may reasonably be requested by the Seller or Purchaser for the purpose of assigning, transferring, granting, conveying, and conferring to the Purchaser or reducing to possession any or all of the Purchased Assets, as may be necessary or appropriate to the performance of the Seller's obligations as contemplated by the APA, without any further corporate action or orders of the Bankruptcy Court. The Seller and Purchaser may amend the APA from time to time in accordance with Section 10.2 thereof without further order of this Court, as long as such amendments are not materially inconsistent with the provisions of this Sale Order.

6. **Good Faith Purchaser**. The Purchaser is a good faith purchaser of the Purchased Assets and is hereby granted and entitled to all of the protections provided to a good faith

purchaser under section 363(m) of the Bankruptcy Code. Pursuant to section 363(m) of the Bankruptcy Code, if any or all of the provisions of this Sale Order are hereafter reversed, modified, or vacated by a subsequent order of the Bankruptcy Court or any other court, such reversal, modification, or vacatur shall not affect the validity and enforceability of any sale, transfer, or assignment under the APA or obligation or right granted pursuant to the terms of this Sale Order (unless stayed pending appeal prior to the Closing Date), and notwithstanding any reversal, modification, or vacatur, any sale, transfer, or assignment shall be governed in all respects by the original provisions of this Sale Order and the APA, as the case may be.

7. **Section 363(n) of the Bankruptcy Code**. The Sale approved by this Sale Order is not subject to avoidance or any recovery or damages pursuant to section 363(n) or any other section of the Bankruptcy Code.

8. The Seller is authorized and empowered to cause to be filed with the secretary of state of any state or other applicable officials of any applicable governmental units, any and all certificates, agreements, or amendments necessary or appropriate to effectuate the Sale contemplated by the APA, any related agreements and this Sale Order, including amended and restated certificates or articles of incorporation, by-laws, or certificates or articles of amendment, and all such other actions, filings, or recordings as may be required under appropriate provisions of the applicable laws of all applicable governmental units or as any of the officers of the Seller may determine are necessary or appropriate. The execution of any such document or the taking of any such action shall be, and hereby is, deemed conclusive evidence of the authority of such person to so act.

9. The Seller is hereby authorized and directed to cooperate with the Purchaser as reasonably requested by the Purchaser and take all actions and execute all documents which the Purchaser reasonably and in good faith determines are necessary or desirable to ensure that the Sale is consummated in accordance with the APA and the Seller is authorized to make such modifications or supplements to any bill of sale or other document or instrument executed or to be executed in connection with the Closing to facilitate such consummation as contemplated by the APA.

10. Each of the Seller and the Purchaser shall have no obligation to proceed with the Closing until all conditions precedent to its obligations to proceed have been met, satisfied or waived in accordance with the terms of the APA.

11. **Valid Transfer**. Effective as of the Closing Date (a) the sale and assignment of the Purchased Assets and the assumption and assignment of the Assumed Contracts by the Seller to the Purchaser i) shall constitute a legal, valid and effective transfer of the Purchased Assets and the Assumed Contracts notwithstanding any requirement for approval or consent by any person, and ii) shall vest the Purchaser with all right, title, and interest of the Seller in and to the Purchased Assets and Assumed Contracts, free and clear of all Liens, Claims and Excluded Liabilities other than the Assumed Liabilities pursuant to section 363(f) of the Bankruptcy Code, the IP License Stipulation, and the Temporary SingPost License, and the Purchaser is hereby authorized to freely own and operate the Purchased Assets following such sale and assignment; and (b) the assumption of the Assumed Contracts and any other Assumed Liabilities by the Purchaser constitutes a legal, valid, and effective assignment and delegation of any and all obligations, liabilities, and claims in respect thereof to the Purchaser and, other than to the extent expressly provided in this Sale Order and/or constituting Excluded Liabilities under the APA, divests the Seller and its representatives of all right, title and interest in, and all obligations and liability with respect to, the Assumed Contracts and such Assumed Liabilities. Upon the occurrence of the Closing, this Sale Order shall be considered and constitute for all purposes a full and complete general assignment, conveyance, and transfer of the Purchased Assets, including the Assumed Contracts, to the Purchaser pursuant to the APA and/or a bill of sale or assignment transferring indefeasible title and interest in the Purchased Assets, including the Assumed Contracts and all other rights and interests associated with or appurtenant to the Purchased Assets, including, without limitation, warranty rights, and other non-executory contract rights, to the Purchaser all to the extent set forth in the APA. Notwithstanding anything to the contrary, (i) the Seller and Purchaser do not assert an ownership interest in or title to any durable product inventory held by the Seller or any logistics provider on behalf of clients of the

Seller, where such durable product inventory is subject to a valid, enforceable bailment agreement and the Purchased Assets exclude all such durable product inventory.

12. **Free and Clear**. Upon the occurrence of the Closing, the Seller shall be, and hereby is, authorized, empowered, and directed, pursuant to sections 105, 363(b) and 363(f) of the Bankruptcy Code, to sell, assign, convey, and transfer the Purchased Assets to the Purchaser and assign the Assumed Contracts to the Purchaser. Except to the extent specifically provided in the APA or this Sale Order, the sale and assignment of the Purchased Assets and the assignment of the Assumed Contracts to the Purchaser pursuant to the APA vests the Purchaser with all right, title and interest of the Seller in and to such Purchased Assets free and clear of any and all Liens, Claims, Excluded Liabilities, and other liabilities of any kind or nature whatsoever (except for Assumed Liabilities, the IP License Stipulation and the Temporary SingPost License), whether known or unknown as of the Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise, with all such Liens, Claims and Excluded Liabilities to attach only to the proceeds derived from the Sale of the Purchased Assets with the same priority, validity, force, and effect as they now have in or against such Purchased Assets. The Sale Motion shall be deemed to provide sufficient notice as to the sale and assignment of the Purchased Assets free and clear of all Liens, Claims and Excluded Liabilities in accordance with Local Rule 6004. Following the Closing Date, no holder of any Lien or Claim on the Purchased Assets may interfere with the Purchaser's enjoyment of the Purchased Assets based on or related to such Lien or Claim, or any actions that the Debtors may take or fail to take in these Chapter 11 Cases and, subject to paragraph 45 of this Sale Order, no interested party may take any action to prevent, interfere with or otherwise enjoin consummation of the Sale. As used in this Sale Order, the "Temporary SingPost License" means a license by the Purchaser to Singapore Post Limited and its Affiliates (collectively, "SingPost") to use certain intellectual property rights of the Purchaser related to the EDGE Software consistent with SingPost's use of such software prior to the Closing Date, as agreed upon by and among the Seller, the Purchaser, and SingPost, and memorialized in the IP License Stipulation, and prior

thereto, by the agreements that were recited on the record at the Sale Hearing by the Seller, the Purchaser, and SingPost. Nothing in this Order shall impair the Purchaser's or SingPost's rights under the IP License Stipulation or the Temporary SingPost License.

13. The term "Lien" as used in this Sale Order shall include, without limitation, all liens, interests, rights, encumbrances, rights of offset, recoupment rights, restrictions, leases, option rights or claims, obligations, liabilities, indentures, loan agreements, guaranties, demands, contractual commitments or interests in respect of the Debtors or any property of the Debtors, equity interests, licenses, instruments, conditional sale rights or other title retention agreements, rights of first refusal, consent rights, contract rights, rights of recovery, reimbursement rights, contribution claims, indemnity rights, regulatory violations, judgments, decrees of any court or foreign or domestic governmental or quasi-governmental entity, debts arising in any way in connection with any agreements, acts or failures to act and reclamations rights whether choate or inchoate, filed or unfiled, scheduled or unscheduled, noticed or unnoticed, recorded or unrecorded, perfected or unperfected including, without limitation, the following: (1) all "Liens" as such term is defined in the APA; (2) all employment or labor agreements; (3) all mortgages, deeds of trust, hypothecations, pledges, security interests or charges of any kind or nature; (4) all pension, welfare, compensation or other employee benefit plans, agreements, practices and programs, including, without limitations, any pension plan of the Debtors; (5) all other employee, workers' compensation, occupational disease or unemployment or temporary disability related claim, including, without limitations, claims that might otherwise arise under or pursuant to (a) the Employee Retirement Income Security Act of 1974, Pub. L. No. 93-406, 88 Stat. 829 (1974), as amended (b) the Fair Labor Standards Act, 29 U.S.C. §§ 201 *et seq.*, as amended, (c) Title VII of the Civil Rights Act of 1964, 42 U.S.C. 2000e §§ *et seq.*, as amended, (d) the Federal Rehabilitation Act of 1973, 29 U.S.C. §§ 701 *et seq.*, as amended, (e) the National Labor Relations Act, 29 U.S.C. §§ 151 *et seq.*, as amended, (f) the Worker Adjustment and Retraining Act of 1988, 28 U.S.C. §§ 2101 *et seq.*, (g) the Age Discrimination in Employment Act of 1967, 29 U.S.C. §§ 621 *et seq.*, as amended, (h) the Americans with Disabilities Act of 1990, 42 U.S.C. 12101 §§ *et seq.*, as amended, (i) state discrimination laws,

(j) state unemployment compensation laws or any other similar state laws, or (k) all other state or federal benefits or claims relating to any employment with any of the Debtors or any of its respective predecessors; (6) all bulk sales or similar law; (7) all tax statutes or ordinances, including, without limitation, the Internal Revenue Code of 1986, as amended; (8) all theories of successor liability, including any theories on product liability grounds; and (9) all environmental or other liens, claims (as defined in section 101(5) of the Bankruptcy Code), encumbrances, obligations, liabilities, contractual commitments or interests of any kind or nature arising from existing conditions on or prior to the Closing Date.

14. **Order Self-Executing**. The provisions of this Sale Order authorizing the sale and assignment of the Purchased Assets free and clear of Liens, Claims and Excluded Liabilities, shall be self-executing, and the Seller and the Purchaser are authorized but shall not be required to execute or file lien and security agreement releases, termination statements, assignments, consents, or other instruments in order to effectuate, consummate, and implement the provisions of this Sale Order; *provided* that any specific release the parties believe necessary other than those explicitly set forth in this Order shall require notice to all parties in interest affected by any such release, including, but not limited to, counsel to the Committee and the Office of the United States Trustee, and further order of the Court.

15. **Authorization to Creditors**. From and after the Closing Date, each of the Debtors' creditors is authorized to execute such documents and take all other actions as may be reasonably necessary to release its Liens, if any, in the Purchased Assets, as such Liens may otherwise exist. If any person or entity that has filed financing statements, mortgages, mechanics liens, *lis pendens* or other documents, instruments, notices or agreements evidencing any Lien against or in the Purchased Assets shall not have delivered to the Seller before the Closing Date, in proper form for filing and executed by the appropriate parties, termination statements, releases or instruments of satisfaction that the person or entity has with respect to the Purchased Assets, then with regard to the Purchased Assets, (a) each of the Seller and the Purchaser is authorized and directed to execute and file such termination statements, releases, instruments of satisfaction or other documents on behalf of, in the name of, and without the signature of, the person or

entity with respect to the Purchased Assets and (b) each of the Seller or the Purchaser, as applicable, is authorized and directed to file, register or otherwise record a certified copy of this Sale Order which, once filed, registered or otherwise recorded, shall constitute conclusive evidence of the release of all Liens against the Purchased Assets. This Sale Order is deemed to be in recordable form sufficient to be placed in the filing or recording system of each and every federal, state, local, tribal, or foreign government agency, department, or office and each of the foregoing is authorized to accept and record this Sale Order in its records "as is."

16. **Authorization to Government Agencies**. Each and every Governmental Authority, filing agent, filing officer, title agent, recording agency, governmental department, secretary of state, federal, state, and local official, and any other persons and entity who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or to the Purchased Assets, is hereby authorized to accept any and all documents and instruments necessary and appropriate to consummate the Sale contemplated by the APA or this Sale Order. All such entities described above in this paragraph are authorized to strike all recorded Liens against the Purchased Assets from their records, official and otherwise.

17. **Direction to Surrender Possession or Control**. All persons or entities, presently or on or after the Closing Date, in possession or control of any of the Purchased Assets are directed to surrender possession or control of the Purchased Assets to the Purchaser on the Closing Date or at such time thereafter as the Purchaser may demand.

18. **Licenses and Permits**. Subject to the provisions of the APA and to the greatest extent available under applicable law, the Purchaser is authorized, as of the Closing Date, to operate under any Governmental Authorization, rights granted in respect of IP Agreements or other Intellectual Property constituting part of the Purchased Assets, any other license, permit, registration, and any other governmental approval of the Seller with respect to the Purchased Assets and the Assumed Contracts, and all such licenses, permits, registrations, and Governmental Authorizations, Intellectual Property and any other approvals are deemed to have been, and hereby are, directed to be transferred to the Purchaser as of the Closing Date. To the

extent any license or permit necessary for the operation of the business of the Seller is determined not to be an executory contract assumable and assignable under section 365 of the Bankruptcy Code, the Purchaser shall apply for and obtain any necessary license or permit promptly after the Closing Date and the Seller is hereby authorized and directed to cooperate with the Purchaser in connection with any such application as the Purchaser deems reasonably necessary or desirable, subject to the provisions of the APA.

19. To the greatest extent provided by section 525 of the Bankruptcy Code, no Governmental Authority may revoke or suspend any Governmental Authorization or other approval, permit or license relating to the operation of the Purchased Assets sold, transferred, or conveyed to the Purchaser on account of the filing or pendency of this Chapter 11 Case or the consummation of the Sale.

20. **No Successor Liability**. The Purchaser and its affiliates, predecessors, successors, assigns, members, partners, directors, officers, principals and shareholders (or equivalent) are not and shall not be (a) deemed a "successor" in any respect to the Seller or its estate as a result of the consummation of the Sale contemplated by the APA or any other event occurring in the Chapter 11 Case under any theory of law or equity, (b) deemed to have, *de facto* or otherwise, merged, or consolidated with or into the Seller or its estate, (c) deemed to have a common identity with the Seller, (d) deemed to have a continuity of enterprise with the Seller, or (e) deemed to be a continuation or substantial continuation of the Seller or any enterprise of the Seller. Except for the Assumed Liabilities, the transfer of the Purchased Assets and the Assumed Contracts to the Purchaser under the APA shall not result in the Purchaser or its affiliates, predecessors, successors, assigns, members, partners, directors, officers, principals and shareholders (or equivalent), or the Purchased Assets, (i) having any liability or responsibility for any claim against the Seller or against an insider of the Seller (including, without limitation, for any Excluded Liabilities), (ii) having any liability whatsoever with respect to or be required to satisfy in any manner, whether at law or in equity, whether by payment, setoff or otherwise, directly or indirectly, any Lien or Excluded Liability, or (iii) having any liability or responsibility to the Seller except as is expressly set forth in the APA or this Sale Order. The Purchaser shall

not assume, nor be deemed to assume, or in any way be responsible for any liability or obligation described in the foregoing sentence, and the Sale Motion shall be deemed to provide sufficient notice as to the sale and assignment of the Purchased Assets free and clear of all such liabilities and obligations in accordance with Local Rule 6004.

21. **Examples of No Successor Liability**. Without limiting the generality, effect or scope of the foregoing, as a result of and following the Closing of the Sale, each of the Purchaser and its affiliates, predecessors, successors, assigns, members, partners, directors, officers, principals and shareholders (or equivalent) shall have no successor or vicarious liabilities of any kind or character, including, without limitation, any theory of antitrust, environmental, transferee liability, continuity of enterprise, mere continuation, labor law, bulk sales law, employment or benefits law, alter ego, veil piercing, escheat, de facto merger or substantial continuity, whether known or unknown as of the Closing Date, now existing or hereafter arising, whether legal or equitable, matured or unmatured, contingent or non-contingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity or otherwise with respect to the Seller or any obligations of the Seller arising on or prior to the Closing Date, including, without limitation, United States or foreign pension liabilities or liabilities on account of any federal, state or other taxes arising, accruing or payable under, out of, in connection with, or in any way relating to or calculated or determined with respect to or based in whole or in any part upon the operation of the Purchased Assets or the Assumed Contracts on or prior to the Closing Date or any taxes in connection with, or in any way related to, the cancellation of debt of the Seller or its Affiliates. The consideration given by the Purchaser shall constitute valid and valuable consideration for the release of any potential claims of successor liability against the Purchaser which releases shall be deemed to have been given in favor of the Purchaser by all holders of Liens, Claims and Excluded Liabilities against the Seller or the Purchased Assets.

22. **Injunction**. Subject to paragraph 50 of this Sale Order, and except to the extent expressly included in the Assumed Liabilities, all persons and entities, including, but not limited to, the Seller, employees, former employees, all debt security holders, equity holders, administrative agencies, governmental units (as defined in section 101(27) of the Bankruptcy

Code), tax and regulatory authorities, secretaries of state, federal, state, and local officials, lenders, contract parties, bidders, lessors, and other parties in possession of any of the Purchased Assets at any time, trade creditors and all other creditors, holding any Liens, Claims or Excluded Liabilities of any kind or nature whatsoever against or in the Seller or in the Seller's interests in the Purchased Assets (whether known or unknown as of the Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise), arising under or out of, in connection with, or in any way relating to, the Seller, the Purchased Assets, the Assumed Contracts, the operation of the Seller's business on or prior to the Closing Date, the Sale, or the transfer of the Purchased Assets or the Assumed Contracts to the Purchaser shall be and hereby are forever barred, estopped and permanently enjoined from asserting, prosecuting, commencing, continuing, or otherwise pursuing in any manner any action, claim or other proceeding of any kind, directly or indirectly, against the Purchaser or any of its affiliates, predecessors, successors, or assigns or any of their respective current and former members, officers, directors, managed funds, investment advisors, attorneys, employees, partners, principals, affiliates, shareholders (or equivalent), financial advisors and representatives (each of the foregoing in its individual capacity), their property or the Purchased Assets. In connection with the foregoing, actions that are barred hereby include, without limitation: (i) the commencement or continuation of any action or other proceeding, (ii) the enforcement, attachment, collection, or recovery of any judgment, award, decree or order, (iii) the creation, perfection, or enforcement of any Lien, Claim, interest, or encumbrance, (iv) the assertion of any right of setoff, subrogation or recoupment of any kind, (v) the commencement or continuation of any action that does not comply with, or is inconsistent with, the provisions of this Sale Order, any actions contemplated or taken in respect hereof, or the APA, and (vi) the revocation, termination or failure or refusal to renew any Governmental Authorization or other license, permit, registration, or governmental authorization or approval to operate any of the Purchased Assets or conduct the businesses associated with such Purchased Assets. Following the Closing Date, no holder of a Lien on, in or against the Purchased Assets shall interfere with the

Purchaser's title to or use and enjoyment of the Purchased Assets based on or related to such Lien, or any actions that the Seller may take, fail to take, or refrain from taking, in the Seller's case.

23. **No Bulk Sales; No Brokers**. No bulk sales law or any similar law of any state or other jurisdiction shall apply in any way to the Sale or the other transactions contemplated under the APA. No brokers were involved in consummating the Sale or the other such transactions, and no brokers' commissions are due to any person or entity in connection with the Sale or the other such transactions. The Purchaser is not and will not become obligated to pay any fee or commission or like payment to any broker, finder, or financial advisor as a result of the consummation of the Sale or the other Transactions based upon any arrangement made by or on behalf of the Seller.

24. **Assumption and Assignment of Assumed Contracts**. Under sections 105(a), 363 and 365 of the Bankruptcy Code, and subject to and conditioned upon the Closing, the Seller's assumption of the Assumed Contracts and assignment thereof to the Purchaser free and clear of all Liens, Claims and Excluded Liabilities pursuant to the terms set forth in the APA is hereby approved, and the requirements of sections 365(b)(1) and 365(f)(2) (including section 365(b)(3) to the extent applicable) of the Bankruptcy Code with respect thereto are hereby deemed satisfied. Each of the Contract Counterparties is hereby forever barred, estopped and permanently enjoined from raising or asserting against the Seller or its property any assignment fee, default, breach, claim, pecuniary loss, liability, or obligation (whether known or unknown as of the Closing Date, now existing or hereafter arising, legal or equitable, matured or unmatured, contingent or noncontingent, liquidated or unliquidated, whether imposed by agreement, understanding, law, equity, or otherwise) arising under or out of, in connection with, or in any way related to the Assumed Contracts existing as of the Closing Date or arising by reason of the assumption, assignment and/or Sale except to the extent constituting an Excluded Liability under the APA. Pursuant to the terms of the APA, the Purchaser shall be liable for all obligations and liabilities arising after the Closing Date (as defined in the APA) under the Assumed Contracts.

25. Each of the Assumed Contracts shall be deemed to be valid and binding and in full force and effect and enforceable in accordance with their terms as of the date of this Sale Order, subject to any amendments or modifications agreed to between a Contract Counterparty and the Purchaser. Upon the Closing, in accordance with sections 363 and 365 of the Bankruptcy Code, the Purchaser shall be fully and irrevocably vested with all right, title and interest of the Seller under the Assumed Contracts. The assignment of each of the Assumed Contracts is deemed to be made in good faith under, and is entitled to the protections of, section 363(m) of the Bankruptcy Code.

26. **Adequate Assurance**. The Purchaser has provided adequate assurance of its future performance under the Assumed Contracts within the meaning of sections 365(b)(1)(C) and 365(f)(2)(B) of the Bankruptcy Code (including section 365(b)(3) to the extent applicable). All other requirements and conditions under sections 363 and 365 of the Bankruptcy Code for the assumption by the Seller and assignment to the Purchaser of the Assumed Contracts have been satisfied.

27. **Anti-Assignment Provisions Unenforceable**. No sections or provisions of the Assumed Contracts that purport to (a) prohibit, restrict, or condition the Seller's assignment of the Assumed Contracts, including, but not limited to, the conditioning of such assignment on the consent of the Contract Counterparties; (b) authorize the termination, cancellation, or modification of the Assumed Contracts based on the filing of a bankruptcy case, the financial condition of the Seller or similar circumstances; (c) declare a breach or default as a result of a change in control in respect of the Seller; or (d) provide for additional payments, penalties, conditions, renewals, extensions, charges, other financial accommodations in favor of the non-Seller third party to the Assumed Contracts, or modification of any term or condition upon the assignment of an Assumed Contract or the occurrence of the conditions set forth in subsection (b) above, shall have any force and effect, and such provisions constitute unenforceable anti-assignment provisions under 11 U.S.C. § 365(f) and/or are otherwise unenforceable under 11 U.S.C. § 365(e). The entry of this Sale Order constitutes the consent of the Contract Counterparties to the assumption and assignment of such agreements without the necessity of

obtaining such party's consent, written or otherwise, to such assumption or assignment. All Assumed Contracts shall remain in full force and effect, without existing default(s), subject only to payment of the applicable Cure Amounts, and to any amendments or modifications agreed to between a Contract Counterparty and the Purchaser.

28. **No Fees for Assumption and Assignment**. There shall be no rent accelerations, assignment fees, increases or any other fees charged to the Purchaser, its successors or assigns, or the Seller as a result of the assumption and assignment of the Assumed Contracts.

29. **Cure Amounts**. Assumption and payment of the Cure Amounts by the Purchaser set forth in the Assumed Contracts and Cure Schedule (or such other amount or such other terms as may be agreed to by the Purchaser and the Contract Counterparties to the applicable Assumed Contract) in accordance with the APA is hereby authorized and directed. All defaults shall be deemed cured and shall no longer exist upon the payment or other satisfaction by the Purchaser of the Cure Amounts set forth in the Assumed Contracts and Cure Schedule against which no timely objections have been properly filed and served in accordance with the Assumption and Assignment Procedures (or such other amount or such other terms as may be agreed to by the Seller and the Contract Counterparties to the applicable Assumed Contract or otherwise ordered by the Court) and, for the avoidance of doubt, no Contract Counterparty shall be entitled to a claim against the Seller or the Seller's estate for any such default. Except for the Cure Amounts set forth on the Assumed Contracts and Cure Schedule filed and served in accordance with the Assumption and Assignment Procedures (or such other amount as may be agreed to by the Seller and the Contract Counterparties to the applicable Assumed Contract or otherwise ordered by the Court), there are no defaults existing under the Assumed Contracts, nor is there any event or condition existing on the Closing Date which, with the passage of time or giving of notice, or both, would constitute such a default.

30. **Notice of Assumption and Assignment**. In accordance with the Assumption and Assignment Procedures, the Seller has served on all of the Contract Counterparties, identified on the schedule the Seller has filed with the Bankruptcy Court, the Assumption and Assignment that included (i) the title of the Assumed Contract, (ii) the name of the counterparty to the Assumed

Contract, (iii) any applicable Cure Amounts, (iv) the identity of the Assignee, (v) a notice that each Assumed Contract may be assumed by the Seller and assigned to the bidder submitting the highest or otherwise best bid for the Seller's assets, and (vi) the deadline by which any such Assumed Contract counterparty must file an objection to the proposed assumption and assignment. No other or further notice is required.

31. Any Contract Counterparties to an Assumed Contract designated to be assumed and assigned to the Purchaser who has not timely filed and served an objection in accordance with the Assumption and Assignment Procedures shall be barred from objecting, or asserting monetary or non-monetary defaults, with respect to any such Assumed Contract, and such Assumed Contract shall be deemed assumed by the Seller and assigned to the Purchaser on the Closing Date pursuant to this Sale Order.

32. From the date of the entry of the Sale Order, the Seller may, in its sole discretion, settle objections to assumption and assignment of any Assumed Contract, including to proposed Cure Amounts, without any further notice to or action by any party or order of the Court (including by paying any agreed Cure Amount); *provided* that notice to and consent of the Purchaser shall be required to the extent the Purchaser is liable for such Cure Amount pursuant to the APA as modified by this Sale Order. Unless the Bankruptcy Court orders otherwise, contemporaneously with the resolution of any such objection, the executory contract or unexpired lease underlying such objection shall be deemed an Assumed Contract to the Purchaser without the necessity of obtaining any further order of the Bankruptcy Court.

33. Notwithstanding anything to the contrary herein or in the Bidding Procedures, no executory contract or unexpired lease as to which a Contract Counterparty has timely filed and served an objection in accordance with the Assumption and Assignment Procedures shall be considered an Assumed Contract under this Sale Order unless and until any timely objection to the assumption and assignment of such executory contract or unexpired lease has been resolved and, if the Court orders a Cure Amount exceeding the Cure Amount proposed by the Seller, the Purchaser consents to such assumption and assignment.

34. **Additional Contracts**. Prior to the Closing Date, the Purchaser may remove contracts from the Assumed Contracts and Cure Schedule at any time, *provided* that, with respect to the removal of any Assumed Contracts, the estimated recoveries to general unsecured creditors of the Seller's estate are not reduced, and may add contracts to the Assumed Contracts and Cure Schedule. If the Purchaser seeks to add contracts or leases to the Assumed Contracts and Cure Schedule (the "Additional Contracts") in addition to those listed on Assumed Contracts and Cure Schedule the Seller shall, within two (2) calendar days of the Purchaser making such a determination, send a supplemental Assumption and Assignment Notice to the applicable Contract Counterparties to such executory contracts or unexpired leases so added or removed. Contract Counterparties seeking to object to the assumption and assignment of the Additional Contract shall have ten (10) Business Days after the Seller has sent notice to such Contract Counterparties of its intention to assume and assign such Additional Contract to file and serve any objection to the assumption and assignment of the Additional Contract and proposed Cure Amount, if any, in accordance with the Assumption and Assignment Procedures (as applicable, the "Additional Assignment Objection").

35. If a timely objection is filed to the assumption and assignment of an Additional Contract and cannot be resolved consensually, the Bankruptcy Court shall resolve such objection at a hearing to be held (i) on or before five (5) calendar days from the timely filing of the Additional Assignment Objection to the extent the Court's calendar permits or (ii) such other date designated by the Bankruptcy Court. Unless the Bankruptcy Court orders otherwise (or, if the Court orders a Cure Amount exceeding the Cure Amount proposed by the Seller, the Purchaser does not consent), contemporaneously with the resolution of any such objection, the Additional Contract underlying such objection shall be deemed an Assumed Contract to the Purchaser without the necessity of obtaining any further order of the Bankruptcy Court.

36. If no objection is timely filed and served to the assumption and assignment of an Additional Contract, such Additional Contract shall be deemed an Assumed Contract, the payment of the proposed Cure Amount (or such other amount or terms may be agreed between the Seller and the Contract Counterparties), if any, shall be authorized, and the assumption by the

Seller and assignment to the Purchaser as applicable of such Assumed Contract shall be hereby approved pursuant to this Sale Order. The Purchaser is responsible for the assumption and payment of all Cure Amounts under the Assumed Contracts and Additional Contracts.

37. No designation of any executory contract or unexpired lease for assumption and assignment or rejection in accordance with this Sale Order, the Bidding Procedures, the Bidding Procedures Order, or the APA will give rise to any right to any adjustment to the Purchase Price; *provided, however*, if the Purchaser designates any executory contract or unexpired lease for rejection that results in the amount to be funded by the Purchaser to be applied to potential claims incurred by the Seller's estate from the rejection of executory contracts or unexpired leases pursuant to the APA (the "Rejection Damages Amount") not being sufficient to pay all allowed rejection damage claims, the Purchaser, upon written request by the Seller following the Closing Date, shall promptly increase the Rejection Damages Amount by an amount equal to cover any such deficiency; and *provided further* that the Purchaser shall be responsible for any additional Cure Costs resulting from the assumption and assignment by the Purchaser of any Additional Contracts.

38. If prior to the Closing Date, it is discovered that a Contract should have been listed on Schedule 3.8 of the Seller Disclosure Schedule but was not so listed (any such Contract, a "Previously Omitted Contract"), the Seller shall, promptly following the discovery thereof (but in no event later than five (5) Business Days following the discovery thereof), notify the Purchaser in writing of such Previously Omitted Contract and provide the Purchaser with a copy of such Previously Omitted Contract and the Cure Amount (if any) in respect thereof. The Purchaser shall thereafter deliver written notice to the Seller, no later than five (5) Business Days following such notice of such Previously Omitted Contract from the Seller, if the Purchaser elects to so include such Previously Omitted Contract on the Contract & Cure Schedule. If the Purchaser includes a Previously Omitted Contract on the Contract & Cure Schedule in accordance with the foregoing, the Seller shall file and serve a notice on the contract counterparties to such Previously Omitted Contract notifying such counterparties of the Seller's intention to assume and assign to the Purchaser such Previously Omitted Contract, including the

proposed Cure Amount (if any). Such notice shall provide such contract counterparties with ten (10) Business Days to object, in writing, to the Seller and the Purchaser to the assumption of its Contract. If such counterparties, the Seller and the Purchaser are unable to reach a consensual resolution with respect to the objection, the Seller will seek an expedited hearing before the Bankruptcy Court to seek approval of the assumption and assignment of such Previously Omitted Contract. If no objection is timely served on the Seller and the Purchaser, then such Previously Omitted Contract shall be deemed assumed by the Seller and assigned to the Purchaser pursuant to this Sale Order. The Seller and the Purchaser shall execute, acknowledge and deliver such other instruments and take commercially reasonable efforts as are reasonably practicable for the Purchaser to assume the rights and obligations under such Previously Omitted Contract. Notwithstanding anything in the APA or this Sale Order to the contrary, the Purchaser shall be responsible for any additional Cure Costs resulting from the assumption and assignment by the Purchaser of any Previously Omitted Contracts.

39. **Direction to Contract Counterparties**. All Contract Counterparties shall cooperate and expeditiously execute and deliver, upon the reasonable requests of the Purchaser, and shall not charge the Seller or the Purchaser for, any instruments, applications, consents, or other documents which may be required or requested by any public or quasi-public authority or other party or entity to effectuate the applicable transfers in connection with the Sale.

40. Nothing in this Sale Order, the Sale Motion, an Assumption and Assignment Notice, or any notice or any other document is or shall be deemed an admission by the Seller that any contract is an executory contract or must be assumed and assigned pursuant to the APA or in order to consummate the Sale.

41. **Failure to Specify Provisions**. The failure specifically to include any particular provisions of the APA or any related agreements in this Sale Order shall not diminish or impair the effectiveness of such provision, it being the intent of the Bankruptcy Court, the Seller and the Purchaser that the APA and any related agreements are authorized and approved in their entirety with such amendments thereto as may be made by the parties in accordance with this Sale Order. Likewise, all of the provisions of this Sale Order are nonseverable and mutually dependent.

42. **Failure to Enforce Assumed Contracts**. The failure of the Seller or the Purchaser at any time to enforce one or more terms or conditions of any Assumed Contract shall not constitute a waiver of any such terms or conditions, or of the Seller's or the Purchaser's rights to enforce every term and condition of the Assumed Contracts.

43. **Nespresso Contract**. The *Master Warehousing and Logistics Services Agreement*, dated as of January 1, 2018, between Jagged Peak and Nespresso (including any statements of work issued thereunder, the "Services Agreement") is hereby rejected as of the Closing Date. All postpetition fees, costs, charges, or expenses incurred under the Services Agreement (*i.e.*, third party carriers, postage, etc.) shall be fully satisfied by the Seller prior to the Closing Date. Notwithstanding the rejection by the Seller of the Services Agreement, Nespresso may currently or at any other given time prior to the Closing Date owe a receivable to the Seller, and the Purchaser is purchasing any such receivables, free and clear of any rights of setoff or recoupment and other rights and defenses (other than to challenge the validity and/or amount of a receivable) of Nespresso arising prior to the Closing Date. With the exception of the extinguishment of rights and defenses with respect to the transferred receivables pursuant to this paragraph, Nespresso's support of the Sale and Nespresso's concessions made in connection with the Chapter 11 Cases do not constitute a release or waiver of any claims or causes of action Nespresso holds against the Debtors, the Debtors' estates, or any non-Debtors.

44. **Binding Order**. This Sale Order and the APA shall be binding upon and govern the acts of all persons and entities, including, without limitation, the Debtors, the Purchaser, and their respective successors and permitted assigns, including, without limitation, any chapter 11 trustee hereinafter appointed for the Seller's estate or any trustee appointed in a chapter 7 case if this case is converted from chapter 11, all creditors of any Debtor (whether known or unknown), all non-Seller parties to any Assumed Contracts, all Governmental Authorities, filing agents, filing officers, title agents, recording agencies, governmental departments, secretaries of state, federal, state, and local officials, and all other persons and entities who may be required by operation of law, the duties of their office or contract, to accept, file, register, or otherwise record or release any documents or instruments or who may be required to report or insure any title in or

to the Purchased Assets. The APA and the Sale shall not be subject to rejection or avoidance under any circumstances. This Sale Order and the APA shall inure to the benefit of the Seller, its estate, its creditors, the Purchaser and their respective successors and assigns.

45. **No Stay of Order**. The provisions of Bankruptcy Rules 6004 and 6006, and to the extent applicable under the Bankruptcy Rules, Rules 54(b) and 62(a) of the Federal Rules of Civil Procedure, staying the effectiveness of this Sale Order for fourteen (14) days, are hereby waived, and this Sale Order shall be effective and enforceable immediately upon entry and its provisions shall be self-executing. Any party in interest who wishes to appeal this Sale Order must exercise due diligence in filing an appeal, pursuing a stay and obtaining a stay prior to the Closing Date, or risk its appeal being foreclosed as moot.

46. **Lift of Automatic Stay**. The automatic stay pursuant to section 362 of the Bankruptcy Code is hereby lifted with respect to the Seller to the extent necessary, without further order of the Bankruptcy Court, to allow the Purchaser to deliver any notice provided for in the APA and allow the Purchaser to take any and all actions permitted under the APA.

47. **Retention of Jurisdiction**. The Bankruptcy Court shall retain exclusive jurisdiction to (a) interpret, implement and enforce the terms and provisions of this Sale Order, the Bidding Procedures Order, and the APA, including all amendments thereto and any waivers and consents thereunder and each of the agreements executed in connection therewith, in all respects, (b) decide any disputes concerning this Sale Order and the APA, or the rights and duties of the parties hereunder or thereunder or any issues relating to the APA and this Sale Order including, but not limited to, the interpretation of the terms, conditions, and provisions hereof and thereof, the status, nature, and extent of the Purchased Assets and any Assumed Contracts and all issues and disputes arising in connection with the relief authorized herein, inclusive of those concerning the transfer of the assets free and clear of all Liens and (c) enforce the injunctions set forth herein. As noted in paragraph R, above, nothing contained herein shall constitute or be deemed to constitute consent to jurisdiction or entry of a final order by SingPost with respect to any matter other than this Sale Order, the Temporary SingPost License, and the resolution of the SingPost Objection (as each such term is defined below).

48. **Subsequent Plan Provisions**. Nothing contained in any chapter 11 plan confirmed in the Debtors' cases or any order confirming any such plan or any other order in the Debtors' cases (including any order entered after any conversion of this case or any of the Chapter 11 Cases into a case under chapter 7 of the Bankruptcy Code) shall alter, conflict with, or derogate from, the provisions of the APA or this Sale Order and, to the extent of any such conflict, the terms of this Sale Order and the APA shall control.

49. **Further Assurances**. From time to time, as and when requested by the other, the Seller and the Purchaser, as the case may be, shall execute and deliver, or cause to be executed and delivered, all such documents and instruments and shall take, or cause to be taken, all such further or other actions as such other party may reasonably deem necessary or desirable to consummate the Sale, including, such actions as may be necessary to vest, perfect or confirm, or record or otherwise, in the Purchaser its right, title and interest in and to the Purchased Assets and the Assumed Contracts, subject to the provisions of the APA.

50. **Other Provisions**. Notwithstanding any provision in this Sale Order or the APA, nothing: (1) authorizes the assumption, sale, transfer and/or assignment of any governmental (a) license, (b) permit, (c) registration, (d) authorization, (e) approval, (f) lease, or (g) contract, (collectively as to (a)-(g), "Documents"), or the discontinuation of any obligation thereunder, without compliance with all applicable legal requirements and approvals under non-bankruptcy law; (2) requires the government to novate, approve or consent to the assumption, sale, assignment and /or transfer of any interests in the Documents; (3) releases, nullifies, precludes, or enjoins the enforcement of any police or regulatory power; (4) confers exclusive jurisdiction to the Bankruptcy Court with respect to claims, interests and causes of action of governmental units, except to the extent set forth in 28 U.S.C. § 1334 (as limited by any other provisions of the United States Code); or (5) expands the scope of 11 U.S.C. § 525.

51. **IP License Stipulation**. (i) The respective rights of the Seller, Purchaser and SingPost with respect to the EDGE Software shall be set forth in, and governed by, (a) the IP License Stipulation once entered into by the parties and approved by this Court, and prior thereto by the agreements that were recited on the record at the Sale Hearing by the Seller, the

Purchaser, and SingPost, and (b) and any final license agreement that may be entered into thereafter between the Purchaser and SingPost, and (ii) SingPost's right to continue to prosecute the SingPost Objection, and the rights of the Seller and Purchaser to oppose the SingPost Objection, shall not be impacted by this Sale Order and shall instead be governed by the resolution that was recited on the record at the Sale Hearing by the Seller, the Purchaser, and SingPost and thereafter in the IP License Stipulation once entered into by the Parties and approved by this Court.

52. **28 U.S.C. § 1930(a)(6) Fees**. Nothing in this Sale Order shall constitute or be deemed to constitute a release or waiver of the Seller's obligation to pay fees under 28 U.S.C. § 1930(a)(6).

53. **Governing Terms**. Unless otherwise provided herein, to the extent this Sale Order is inconsistent with the Bidding Procedures Order or any other prior order or pleading in these chapter 11 Cases, or the terms of the APA (including all ancillary documents executed in connection with such agreements), this Sale Order shall govern.

54. **Headings**. The headings in this Sale Order are for purposes of reference only and shall not limit or otherwise affect the meaning of the Sale Order.

IT IS SO ORDERED.

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LR 9021 CERTIFICATION

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court waived the requirement of approval under LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☒ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and any unrepresented parties who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated above.

☐ I certify that this is a case under chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objection to the form or content of the order.

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