

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
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IN RE:

Case No. 13-20853-PGH

Chapter 11

TLO, LLC,

Debtor.
_____ /

**DEBTOR'S' MOTION TO COUNTINUE USE OF CASH COLLATERAL
OF TECHNOLOGY INVESTORS, INC.
THROUGH OCTOBER 31, 2013**

Pursuant to Section 363 of Title 11, United States Code (the "Bankruptcy Code"), and Rule 4001 of the Federal Rules of Bankruptcy Procedure, TLO, LLC, the Debtor and Debtor-in-Possession (the "Debtor"), moves the Court for the entry of an order authorizing the Debtor to continue to use the cash collateral on which Technology Investors, Inc. (the "Lender") holds a first priority lien. In support of its motion, the Debtor states:

1. On May 9, 2013, a Voluntary Petition under Chapter 11 was filed by the Debtor [D.E. #1]. The Debtor has continued to operate its business and manage its property as a debtor in possession pursuant to Sections 1107 and 1108 of the Bankruptcy Code. The Debtor is a Florida limited liability company based in Boca Raton and was formed in March, 2009 to provide risk management, due diligence and fraud prevention information and investigative technology products and solutions to public and private sector industries. The Debtor offers information products and services to many of the nation's investigators, collection agencies, attorneys, financial institutions, corporate security departments, insurance companies, governmental agencies and law enforcement agencies.

The Loan Transaction

2. On or about January 31, 2011, Lender agreed to provide funds to the Debtor for general operating purposes under a Revolving Promissory Note (the "Note") in the principal sum of One Hundred Twenty-Five Million Dollars (\$125,000,000).

3. To secure its obligations to the Lender under the Note, the Debtor and the Lender entered into a Security Agreement, dated as of January 31, 2011 pursuant to which the Debtor granted the Lender a lien on all of its assets including, among other things, accounts, chattel paper, cash proceeds, deposit accounts, documents, equipment, fixtures, general intangibles, inventory, software and the proceeds thereof (collectively, the "Collateral"). The security interest is perfected by the filing of a UCC-1 Financing Statement with the Florida Secured Transaction Registry on February 4, 2011 at document #201104019777.

4. As of the filing date, the Debtor is indebted to the Lender in the principal amount of \$81,740,000 and accrued and unpaid interest of approximately \$7,312,000 for a total of \$89,052,000, plus costs and fees due pursuant to applicable law (the "Indebtedness").

5. The Lender is a company owned by the Estate of Hank Asher. Mr. Asher was the Debtor's principal shareholder and founder until his untimely demise earlier this year.

6. The cash generated by the Debtor constitutes cash collateral within the meaning of § 363(a) of the Bankruptcy Code (the "Cash Collateral"). The Debtor requires the continued use of the Cash Collateral for the continued operation of its business in the ordinary course, including payment of expenses attendant thereto; and, the Debtor is willing to provide the Lender with adequate protection of its secured interest in the Cash Collateral. Without the use of the

Cash Collateral, the Debtor will be forced to discontinue its business operations. The loan documents are available from undersigned counsel upon request.

7. In order (i) to adequately protect the Lender in connection with the Debtor's continued use of the Cash Collateral, and (ii) to provide the Lender with additional adequate protection in respect to any decrease in the value of its interests in the Collateral resulting from the stay imposed under §362 of the Bankruptcy Code or the use of the Collateral by the Debtor, the Debtor would offer as adequate protection of the Lender's lien, a first priority post-petition lien on all cash of the Debtor generated post-petition.

8. An immediate and critical need exists for the Debtor to be permitted continued access the Cash Collateral to continue to operate. Through this motion, the Debtor seeks an Order of this Court authorizing the Debtor's continued use cash collateral pursuant to 11 U.S.C. §§ 105 and 363, Federal Rules of Bankruptcy Procedure 4001(b)(2) and Local Rule 4001-3, since any cash collateral generated by the Debtors constitute the cash collateral of the Lender.

9. Therefore, the Debtor seeks a hearing in accordance with Rule 4001(b)(2) of the Federal Rules of Bankruptcy Procedures (the "Bankruptcy Rules"). At the hearing, the Debtor will seek entry of an Order in order to preserve the value of its assets so as to avoid immediate and irreparable harm to the estate, subject to and within the limits imposed by the Budget attached hereto.

10. Debtor admits (which admission shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case) that it is truly and justly indebted to the Technology Investors, Inc. under the Pre-Petition Indebtedness, without defense, counterclaim or offset of any kind, and that as of the Petition Date, such liability to Technology Investors, Inc. was, including interest, fees and

charges, in the aggregate amount of not less than \$88,000,000.00. The provisions of this paragraph constitute a stipulation by Debtor and shall become a finding by the Court (but shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case).

11. Debtor further admits (which admission shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case) that the Pre-Petition Indebtedness is secured by valid, properly perfected, enforceable and non-avoidable liens and security interests granted by Debtor to the Technology Investors, Inc. upon and in all of the Pre-Petition Collateral, and (ii) the liens held by Technology Investors, Inc. securing the Pre-Petition Indebtedness are senior to any other security interests in the Pre-Petition Collateral. The provisions of this paragraph constitute a stipulation by the Debtor and shall become a finding of the Court (but shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case).

12. The Debtor filed an Emergency Motion to Use Cash Collateral [DE#14] and the Court, after hearing, entered an Order Granting the Debtor's Motion to Use Cash Collateral [DE#59] (the "Order"). The Order authorized the Debtor to continue to use Technology Investors' cash collateral and provide adequate protection through and including **July 31, 2013** pursuant to the terms and conditions of the Order and the Budget attached thereto.

13. Accordingly, it is appropriate for the Court to enter an order authorizing the continued use of Cash Collateral for an additional **three (3) months, through October 31, 2013**, by the Debtor in accordance with the terms of the attached Budget.

14. The terms of the proposed continued use of the Cash Collateral and adequate protection arrangements are fair and reasonable under the circumstances and reflect the Debtor's exercise of prudent business judgment.


15. The Debtor believes that the relief sought in this Motion is in the best interest of the Debtor, the estate and creditors and that the entry of a final Order will allow for the continued operation of the Debtor's existing business for the purposes set forth above.

16. Any Order on this Motion shall be binding on a subsequently appointed Chapter 11 or Chapter 7 Trustee in Bankruptcy.

WHEREFORE, the Debtor respectfully requests an order authorizing the continued use of the Cash Collateral through October 31, 2013 as set forth herein in the form attached hereto and granting such other relief as this Court deems just and proper.

RESPECTFULLY SUBMITTED this 15th day of July, 2013.

FURR AND COHEN, P.A.
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By /s/Alvin S. Goldstein 
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TLO, LLC
Cash Collateral Budget
August - October 2013

	Aug-13	Sep-13	Oct-13
Beginning Cash Balance¹	\$ 103,744	\$ (973,599)	\$ (1,980,595)
Projected Revenue	2,306,852	2,399,126	2,495,091
Projected Cash Receipts	2,160,417	2,236,032	2,325,473
Data Expense (COGS)²	<u>1,278,733</u>	<u>1,292,733</u>	<u>1,648,983</u>
Gross Profit	881,684	943,299	676,490
Operating Expenses			
Selling			
Payroll & Payroll Taxes ³	375,026	379,752	461,000
Advertising & Marketing	2,500	2,500	2,500
Bank Fees	17,046	17,642	18,348
Credentialing Fees	100,000	100,000	75,000
Trade Shows	1,500	3,000	1,500
Travel & Entertainment	18,364	19,006	19,767
NSF/CC reversals	8,642	8,944	9,302
Other Selling Expenses	-	-	-
Total Selling	<u>523,077</u>	<u>530,845</u>	<u>587,416</u>
General & Administrative			
Payroll & Payroll Taxes ³	560,000	515,000	515,000
Bank Fees	8,100	8,100	8,200
Benefits	115,000	115,000	115,000
Computer Expense	25,000	25,000	25,000
Communication Expenses	21,500	21,500	21,500
Co-Location	-	-	75,000
Dues and Subscriptions	1,250	1,250	1,250
Equipment Lease	82,000	82,000	82,000
Insurance	9,500	45,000	12,500
Office Expenses	2,600	2,600	2,700
Professional Development	500	500	500
Postage & Shipping	1,000	1,000	1,200
Professional Fees	35,000	25,000	25,000
Rent Expense	242,000	245,000	85,000
Repairs, Maintenance & Cleaning	4,500	4,500	4,500
Taxes & Licenses	500	500	500
Travel & Entertainment	12,500	12,500	13,500
Utilities	110,000	110,000	30,000
Other General & Administrative Expenses	5,000	5,000	5,000
Total General & Administrative	<u>1,235,950</u>	<u>1,219,450</u>	<u>1,023,350</u>
Total Operating Expenses	1,759,027	1,750,295	1,610,766
Other Income			
Interest Income			
Gain on Sale of Assets			
Other Income			
Total Other Income			
Non Operating Expenses			
US Trustee Fee Expense			13,000
Bankruptcy Professionals	200,000	200,000	200,000
Other Expense	-	-	-
Total Other Expenses	<u>200,000</u>	<u>200,000</u>	<u>213,000</u>
Net Cash Flow	(1,077,343)	(1,006,996)	(1,147,276)
DIP Financing & Interest			(44,384)
Ending Cash Balance	<u>\$ (973,599)</u>	<u>\$ (1,980,595)</u>	<u>\$ (3,172,254)</u>

¹ Projected Cash Balance does not include the Wells Fargo Collateral Account as those funds are not available for operations.

² Quarterly data contract payments due in October.

³ October payroll includes quarterly sales commission.

Exhibit "A"

PROPOSED

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF FLORIDA
WEST PALM BEACH DIVISION
www.flsb.uscourts.gov

In re:

Case No. 13-20853-PGH
Chapter 11

TLO, LLC,

Debtor.

_____ /

**ORDER GRANTING DEBTOR'S MOTION FOR CONTINUED
USE OF THE CASH COLLATERAL OF TECHNOLOGY INVESTORS, INC.
THROUGH OCTOBER 31, 2013**

THIS CAUSE came before the Court for hearing on _____, in West Palm Beach, Florida upon the Debtor's Motion For Continued Use of the Cash Collateral of Technology Investors, Inc. [D.E. ___] (the "Motion"). Adequate notice of the hearing was given under the circumstances. The Court having reviewed the record and having heard the argument of counsel, good cause being shown, and being otherwise fully advised in the premises, does hereby

ORDER and ADJUDGE as follows:

1. The Motion is **GRANTED** to the extent set forth herein.
2. The Debtor is hereby authorized to continue to use the Cash Collateral (as defined in the Motion) of Technology Investors, Inc., as set forth herein.
3. The Debtor is hereby permitted to continue to use Cash Collateral, as defined in 11 U.S.C. § 363 (a), including the cash or noncash proceeds of assets that were not Cash Collateral on the Petition Date (“Cash Collateral”) up to the amounts shown in the Budget attached to the Motion as Exhibit “A”, through and including October 31, 2013.
4. Notwithstanding anything in the Motion or this Order to the contrary:
 - a. Wells Fargo shall continue to have a valid and perfected, non-avoidable first-priority lien on the funds in Account Number *****5093 (the “TLO Collateral Account”), which constitute Cash Collateral of Wells Fargo (the “Wells Fargo Cash Collateral”) (all Cash Collateral other than the Wells Fargo Cash Collateral shall be referred to as the “Technology Cash Collateral”).
 - b. The Debtor shall continue to be required to maintain a minimum balance of \$400,000.00 in the TLO Collateral Account to secure the Debtor’s obligations in connection with: (i) the Debtor’s Wells One Commercial Credit Card Agreement with a maximum balance of \$200,000.00; (ii) the automated clearing house services provided by Wells Fargo to the Debtor (the “ACH Services”); and (iii) the security agreement and other documents governing the TLO Collateral Account, including the post-petition attorneys’ fees and costs incurred in connection with this bankruptcy (collectively, the “Wells Fargo Obligations”). Wells Fargo is hereby granted a valid, perfected lien on all Cash Collateral to the extent necessary to maintain the minimum balance in the TLO Collateral Account and otherwise discharge the Wells Fargo Obligations.

5. As adequate protection for the use of the Technology Cash Collateral and for any diminution in value of Technology Investors, Inc.'s pre-petition collateral as described in the Note and Security Agreement (and which lien upon the pre-petition collateral, to the extent it is held within the TLO Collateral Account, is junior to the first-priority, perfected lien of Wells Fargo in the TLO Collateral Account) (the "Pre-petition Collateral") and post-petition interest, costs, and fees ("Post-petition Indebtedness"), Technology Investors, Inc. is hereby granted a valid, perfected first priority, lien on all cash generated post-petition from its collateral and proceeds therefrom, except: (i) cash in the TLO Collateral Account; and (ii) cash necessary to replenish the TLO Collateral Account and discharge the Wells Fargo Obligations and, further, except to the extent of post-petition financing otherwise approved by this Court (the "Adequate Protection Liens"). If, notwithstanding the provision of the Adequate Protection Liens, such Adequate Protection Liens do not provide adequate protection of Technology Investors, Inc.'s interests in the Pre-Petition Collateral, Technology Investors, Inc. shall have a claim allowed under Sections 507(a)(2) and 507(b) of the Bankruptcy Code (the "Section 507(b) Claim") and such Section 507(b) Claim shall be entitled to priority over every other claim allowable under such Section 507(a)(2) except any claim by Wells Fargo in connection with the Wells Fargo Obligations. Notwithstanding the foregoing, all liens and claims of Technology Investors, Inc. shall be subject to (a) the payment of any unpaid fees payable pursuant to 28 U.S.C. § 1930 (including, without limitation, fees under 28 U.S.C. § 1930(a)(6)), and (b) the fees due to the Clerk of the Court.

6. Debtor admits (which admission shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case) that it is truly and justly indebted to Technology Investors, Inc. under the Pre-Petition

Indebtedness, without defense, counterclaim or offset of any kind, and that as of the Petition Date, such liability to Technology Investors, Inc. was, including interest, fees and charges, in the aggregate amount of not less than \$89,052,000.00. The provisions of this paragraph 5 constitute a stipulation by Debtor and shall become a finding by the Court (but shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case).

7. Debtor further admits (which admission shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case) that the Pre-Petition Indebtedness is secured by valid, properly perfected, enforceable and non-avoidable liens and security interests granted by Debtor to Technology Investors, Inc. upon and in all of the Pre-Petition Collateral (with the understanding that Wells Fargo has a first-priority, perfected security interest in the TLO Collateral Account, as discussed above), and (ii) the liens held by Technology Investors, Inc. securing the Pre-Petition Indebtedness are senior to any other security interests in the Pre-Petition Collateral other than Wells Fargo's first-priority, perfected security interest in the TLO Collateral Account. The provisions of this paragraph 7 constitute a stipulation by the Debtor and shall become a finding of the Court (but shall not be binding upon any creditor or stockholder of the Debtor or any Committee or other party in interest in this case).

8. Debtor may continue to use the Cash Collateral solely to pay the expenses set forth in the Budget attached to the Motion through and including **October 31, 2013, so long as the aggregate of all expenses for each week do not exceed the amount in the Budget by more than ten percent (10%) for any such week on a cumulative basis (the "**Variance**").**

9. This Order shall be binding on a subsequently appointed Chapter 11 or Chapter 7 Trustee in Bankruptcy.

10. The liens and security interest granted to Technology Investors, Inc. shall be valid and perfected post-petition, effective immediately, and without the need for execution or filing of any further documents or instruments otherwise required to be filed or be executed or filed under non-bankruptcy law. Notwithstanding the foregoing, Technology Investors, Inc. may, in its sole discretion, enter into a deposit account control agreement, file such financing statements, notices of lien or similar instruments or otherwise confirm perfection of such liens and security interests without seeking modification of the automatic stay under Section 362 of the Bankruptcy Code and all such documents shall be deemed to have been filed or recorded at the time and on the date of entry of this Order.

11. The relief granted herein is without prejudice to the rights of creditors and other parties in interest to object to or otherwise contest the lien or claim of Technology Investors, Inc.

12. The Debtor shall forthwith serve a copy of this Order and the Motion on all parties and counsel entitled to notice pursuant to Rule 4001(b) of the Federal Rules of Bankruptcy Procedure.

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Cash Submitted by:

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ATTORNEY GOLDSTEIN IS DIRECTED TO SERVE COPIES OF THIS ORDER ON ALL PARTIES AND COUNSEL ENTITLED TO NOTICE PURSUANT TO RULE 4001(b) OF THE FEDERAL RULES OF BANKRUPTCY PROCEDURE AND TO FILE A CERTIFICATE OF SERVICE.

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