

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) WASSERMAN, JURISTA & STOLZ, P.C. 110 Allen Road, Suite 304 Basking Ridge, NJ 07920 Phone: (973) 467-2700 Fax: (973) 467-8126 <i>Counsel for SITO Mobile Solutions, Inc., SITO Mobile, Ltd., and SITO Mobile R&D IP, LLC.</i> DANIEL M. STOLZ DONALD W. CLARKE	
In Re: SITO MOBILE SOLUTIONS, INC., Debtor.	Case No.: 20-21436 Judge: Honorable Stacey L. Meisel Chapter: 11
In Re: SITO MOBILE, LTD., Debtor.	Case No.: 20-21435 Judge: Honorable Stacey L. Meisel Chapter: 11
In Re: SITO MOBILE R&D IP, LLC., Debtor.	Case No.: 20-21437 Judge: Honorable Stacey L. Meisel Chapter: 11

**DEBTORS' MOTION FOR AUTHORITY TO OBTAIN POST-PETITION FINANCING
AND GRANT SENIOR LIEN PURSUANT TO
11 U.S.C. §§ 105 and 364(c) AND FED. R. BANKR. PROC. 4001**

**TO: THE HONORABLE STACEY L. MEISEL,
UNITED STATES BANKRUPTCY JUDGE:**

SITO Mobile Solutions, Inc., ("SITO Solutions"), SITO Mobile, Ltd. ("SITO Limited"),
and SITO Mobile R&D IP, LLC. ("SITO R&D") the debtors and debtors-in-possession

(collectively, the “Debtors”), in the above captioned chapter 11 cases (the “Cases”), respectfully represent:

Introduction

The Debtors, by and through counsel, hereby file this Motion for Authority to Obtain Post-petition Financing and Grant Lien Pursuant to 11 U.S.C. Sections 364(c)(2) and F.R.B.P. 4001 (the “Motion”), and in so doing respectfully requests that this Court enter an order, *inter alia*:

(A) Authorizing the Debtors to borrow on a secured basis from Gavin Scotti, Steven Baksa, and Hiroaki Aoyama (the "**DIP Lenders**")¹, in the principal amount of \$300,000.00 (the "**First DIP Loan Tranche**"; **all tranches, the “DIP Loan”**), substantially in accordance with the terms of this Motion and the Promissory Note and Security Agreement annexed hereto as **Exhibit “A”** (the "**DIP Loan Agreement**");

(B) Authorizing the Debtors to execute agreements in favor of the DIP Lenders, which shall be consistent with the provisions of this Motion and the DIP Loan Agreement annexed hereto as *Exhibit “A”* (the "**DIP Loan Documents**"), and such other documents, instruments and agreements and perform all such other acts as may be required in connection with the DIP Loan Documents;

(C) Modifying and, to the extent necessary, lifting the automatic stay imposed by Section 362 of the Bankruptcy Code to the extent necessary to permit the DIP Lenders and the Debtors to implement the terms of this Motion;

(D) Granting the Debtors such other and further relief as the Court deems necessary, appropriate, equitable, proper, and consistent with the terms of this Motion.

Jurisdiction

1. This Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. §§ 157 and 1334. The subject matter of this Motion is a core proceeding pursuant to 28 U.S.C. § 157(b). Venue is proper in this district pursuant to 28 U.S.C. § 1408. The statutory predicates for the relief sought herein include Sections 105, 361, 362, 363 and 364 of the Bankruptcy Code and Rule 4001 of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**").

2. Filed contemporaneously herewith is a *Certification of Thomas Candelaria in Support of Debtors' Chapter 11 Petitions and First Day Motions* (the "Candelaria Certification").

3. The Candelaria Certification details the significant headwinds faced by the Debtors as it continues its revised business strategy assisting customers with targeted media ad campaigns, including the inability to substantiate the effectiveness of a campaign due to restrictions on foot traffic in brick and mortar locations resulting from the COVID-19 pandemic, as well as the substantial prepetition vendor debt from prior business models and the Aviron Ponzi scheme fraud.

4. The Debtors have since exhausted its PPP loans and requires immediate availability of cash to continue its operations and pay its employees.

5. The DIP Loan Agreement attached hereto and the First DIP Loan Tranche contemplated by this Motion are necessary and appropriate for the reasons stated within, including for the purposes detailed in the within 13 week budget, attached as **Exhibit "B."**²

¹ Steven Baksa and Gavin Scotti are also on SITO Limited's Board of Directors.

² Including up to a 15% variance per line item.

DIP Lenders and the Terms of the DIP Financing

6. The DIP Lenders are also within the 20 largest prepetition general unsecured creditors. The DIP Lenders are very familiar with the Debtors' history and operations.

7. The Debtors have considered alternative funding sources. However, none offer terms as favorable as the DIP Lenders. For example, normal commercial sources often charge distressed entities significant interest, require onerous oversight, and charge large fees up front.

8. The DIP Lenders have agreed to and have authorized the First DIP Loan Tranche in the principal amount of \$300,000.00. The Debtor anticipates securing future and additional tranches as the needs arise. Future tranches will be on notice to the Notice Parties and authorized by a subsequent DIP Financing Orders.

9. The principal features of the DIP Financing, as set forth in the DIP Loan Agreement annexed as an Exhibit hereto, are as follows:

- (a) **Amount of the DIP Loan.** The First DIP Loan Tranche will be in the principal amount of \$300,000.00. The Debtors anticipate using the same DIP Loan Agreement to secure additional tranches in the future, upon notice to the Notice Parties (as defined herein).
- (b) **Terms.** The DIP Loan will be a term loan, and shall mature upon the earlier of: (i) one (1) year from the date hereof, and (ii) the confirmation of a Chapter 11 plan for any one of the Borrowers (the "Maturity Date").
- (c) **Interest.** The interest rate for the term of the loan shall be six (6%) percent per annum (hereinafter sometimes referred to as the "Interest Rate").
- (d) **Security and Priority:** A first priority security interest on all property of the Debtors' estates, to secure the DIP Loan which the DIP Lenders shall record and file along with any other documents necessary to perfect the security interest(s).

- (e) **Maturity Date.** The loan shall mature on the Maturity Date, defined as the earlier of: (i) one (1) year from the date hereof, and (ii) the confirmation of a Chapter 11 plan for any one of the Borrowers.
- (f) **Conditions Precedent to Lending.** The DIP Lenders have agreed to the form and substance of the DIP Loan Agreement attached hereto. The only condition precedent to lending is this Court's approval of the Motion.
- (g) **Closing.** The closing (the "**Closing**") of the DIP Facility shall occur promptly upon the entry of the order of the Court granting this Motion (the "**DIP Financing Order**"). At the Closing, the Debtor will execute and deliver the DIP Loan Documents satisfactory to the DIP Lender.
- (h) **Costs and Expenses.** There are no costs or expenses associated with the DIP Loan except for those born by the Debtors processing this Motion.
- (i) **Collateral.** The collateral for the DIP Financing is described in Section 8 of the DIP Loan Agreement, and shall include all now existing and hereafter acquired real and personal property of each of the Debtors' estates, wherever located, of any kind, nature or description, including any such property in which a lien is granted to the DIP Lenders pursuant to the Financing Orders or any other order entered or issued by the Bankruptcy Court (the "Collateral").

10. The description of the terms of the DIP Financing Agreement contained above in this Motion is intended as a summary only and is qualified in its entirety by reference to the DIP Loan Agreement (*Exhibit A*) itself, and **to the extent there is any inconsistency between the language of the DIP Loan Agreement and the description thereof set forth in this Motion, the DIP Loan Agreement shall control any such inconsistency.** Each creditor of the Debtor and party in interest should read, consider and carefully analyze the terms and provisions of the annexed DIP Loan Agreement.

Relief Requested and Grounds for Relief

11. The Debtors hereby request authority, pursuant to Section 364(c)(1), (c)(2) and (d)(1) of the Bankruptcy Code and Bankruptcy Rules 4001, to obtain post-petition financing,

from the DIP Lender. As stated above, the DIP Financing will be secured by a security interest in and lien on the Collateral as described above which will be senior to any existing prepetition and post-petition liens. The DIP Lenders shall not be granted a lien on any claim or cause of action arising under Sections 544, 545, 547, 548, 549, or 553(b) of the Bankruptcy Code.

12. The Debtors believe that the financing described herein is in its best interest and the best interest of its creditors. The financing provided herein will allow the Debtors to maximize their ability to continue their businesses without interruption, including satisfying its immediate payroll obligations.

13. The Debtors are presently unable to obtain, in the ordinary course of business or otherwise:

- (a) pursuant to Section 364(a) or 364(b) of the Bankruptcy Code, unsecured credit (including, without limitation, unsecured trade credit) allowable under Section 503(b)(1) of the Bankruptcy Code as an administrative expense;
- (b) pursuant to Section 364(c)(1) of the Bankruptcy Code, unsecured credit (including, without limitation, unsecured trade credit) with priority over any or all administrative expenses of the kind specified in Section 503(b) or 507(b) of the Bankruptcy Code; or
- (c) credit on any basis other than that described in the DIP Loan Agreement.

23. After considering all of the alternatives, the Debtors have concluded, in the exercise of their business judgment, that the financing to be provided under the terms of the DIP Loan Agreement and this Motion represents the best financing available to the Debtors and is in the best interests of the Debtors, its creditors and other parties in interest.

24. In conclusion, if the Debtors fail to receive the needed financing, the Debtors and their estates will be irreparably harmed by its failure to pay employees or continue operations.

25. Good cause has been shown for the entry of an order granting this Motion pursuant to Bankruptcy Rule 4001(c)(2). In particular, entry of the order is in the best interest of the Debtor and its business and its ability to continue to operate as a going concern.

26. As set forth in the Motion, the DIP Lender and the Debtors have negotiated the terms and conditions of the DIP Financing in good faith and at arm's-length, and the terms and conditions of the DIP Loan Agreement are fair and reasonable and are supported by reasonably equivalent value.

27. The Debtors request that this Court find that any credit extended by the DIP Lender pursuant to the terms of the DIP Loan Documents will have been extended in "good faith" (as that term is used in Section 364(e) of the Bankruptcy Code).

Notice

28. A copy of this Motion is being sent by (i) the Court's CM/ECF system to the Office of the United States Trustee, and (ii) United States first class mail to the top 20 unsecured creditors of the Debtors (iii) any committee of general unsecured creditors appointed in these Cases, (iv) all parties request service of notice and process under Rule 2002, (v) other parties in interest, including the DIP Lenders, and (vi) certain other parties listed in the Certificate of Service (the "Notice Parties").

29. Accordingly, the Debtors request that the Court enter an order finding that such notice of this Motion is adequate and sufficient and complies with the Bankruptcy Code, the Federal Rules of Bankruptcy Procedure and the Local Rules of this Court. The Debtor submits that, given the nature of the relief requested herein, no other or further notice need be given.

Basis for Emergency Relief

30. The Debtors immediate need to pay payroll and secure operating cash require that the closing take place as soon as possible.

WHEREFORE, the Debtor respectfully requests that this Court enter an order granting this Motion, authorizing the Debtor to obtain financing and grant liens pursuant to 11 U.S.C. §§ 364(c) in accordance with the terms and conditions of the DIP Loan Documents, and granting such other and further relief as may be just and proper.

Respectfully submitted,
WASSERMAN, JURISTA & STOLZ, PC
Counsel to Debtors

Dated: November 9, 2020

By: /s/ Donald W. Clarke.
DONALD W. CLARKE

VERIFICATION

I, THOMAS CANDELARIA, state the following:

1. I am the President and CEO of each of the above captioned Debtors and as such, I am authorized to make and submit the statements contained herein.

2. I have reviewed all of the factual assertions contained in this Motion, and I certify under penalty of perjury under the laws of the United States of America that said statements are true and correct.

Dated: November 9, 2020

/s/ Thomas Candelaria.
THOMAS CANDELARIA

EXHIBIT “A”

PROMISSORY NOTE AND SECURITY AGREEMENT

\$100,000.00

November ⁶____, 2020

This **PROMISSORY NOTE AND SECURITY AGREEMENT** (this “Note”), dated as of November ⁶____, 2020, is by and between **HIROAKI AOYAMA** (“Lender”) and **SITO MOBILE LTD, DEBTOR IN POSSESSION, SITO MOBILE R&D IP, LLC, DEBTOR IN POSSESSION and SITO MOBILE SOLUTIONS, INC., DEBTOR IN POSSESSION** (each referred to as a Borrower and jointly as “Borrowers”).

W I T N E S S E T H:

WHEREAS, each of the Borrowers has commenced a case under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), and each Borrower has retained possession of its assets and is authorized under the Bankruptcy Code to continue the operation of its businesses as a debtor-in-possession;

WHEREAS, each Borrower will be filing a motion with the Bankruptcy Court seeking an order approving this Note and pursuant to which Lender may make post-petition loans and advances, and provide other financial accommodations, to the Borrowers secured by substantially all the assets and properties of the Borrowers (the “Financing Orders”);

WHEREAS, Borrowers have requested Lender make post-petition loans and advances and provide other financial or credit accommodations to Borrowers, and Lender is willing to do so, subject to the Financing Orders and the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrowers mutually covenant, warrant and agree as follows:

FOR VALUE RECEIVED, **SITO MOBILE LTD, SITO MOBILE R&D IP, LLC and SITO MOBILE SOLUTIONS, INC.** each hereby promises to pay to the order of **HIROAKI AOYAMA** ("Lender"), the principal sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), together with interest (the "Loan") according to the following terms and conditions:

1. Rate of Interest; Payments. The Loan shall bear interest in the following manner:

(a) From the date hereof until the Maturity Date (as hereinafter defined) the interest rate on the Loan shall be six (6%) percent per annum (hereinafter sometimes referred to as the "Interest Rate").

(b) This Note shall be payable upon the earlier of: (i) one (1) year from the date hereof, and (ii) the confirmation of a Chapter 11 plan for any one of the Borrowers (the "Maturity Date") unless earlier accelerated pursuant to the terms hereof, when all remaining principal and accrued interest and all other sums owing under this Note shall be due and payable in full.

(c) The Borrowers shall be jointly and severally liable for the full payment of all amounts due under this Note.

2. Interest Calculations. Interest shall accrue on the unpaid principal amount of this Note from the date of each advance until all sums under this Note are paid in full. Interest shall be computed on the basis of the actual number of days elapsed, as applicable, divided by a 360 day factor.

3. Application of Payments. Payments received under this Note (including prepayments) shall be applied first to Lender's expenses of collection, including attorney's fees, then to accrued interest and then to principal.

4. Late Fee. If this Note is not paid in full within ten (10) days of the Maturity Date, without limiting any right or remedy under this Note, Lender may charge a late fee equal to Five Percent (5%) of the total amount overdue.

5. Prepayments. This Note may be prepaid in whole or in part at any time without premium or penalty.

6. Place and Manner of Payment. Payments under this Note are to be made in United States currency at the offices of Lender listed in this Note or at such other location designated by Lender. Any delay by Lender in submitting a statement of any amount due under this Note shall not relieve Borrower of its duty to inquire as to the amount due and to make timely payments.

7. Collateral. This Note is secured by the “Collateral”. The “Collateral shall mean, collectively, all now existing and hereafter acquired real and personal property of each of the Borrower’s estates, wherever located, of any kind, nature or description, including any such property in which a lien is granted to Lender pursuant to the Financing Orders or any other order entered or issued by the Bankruptcy Court, and shall include, without limitation:
- (i) all accounts;
 - (ii) all general intangibles, including, without limitation, all intellectual property and all tariff refunds;
 - (iii) all goods, including, without limitation, inventory and equipment;
 - (iv) all real property and fixtures;
 - (v) all chattel paper, including, without limitation, all tangible and electronic chattel paper;
 - (vi) all instruments, including, without limitation, all promissory notes;
 - (vii) all documents (including, without limitation, all present and future, wherever located, warehouse receipts, bills of lading shipping documents, documents of title, chattel paper, instruments and similar documents. all whether negotiable or not and all goods and inventory relating thereto, in each case to the extent arising out of or entered into or acquired by Borrower in connection with any letter of credit accommodation or any of its inventory);
 - (viii) all deposit accounts;
 - (ix) all letters of credit, banker’s acceptances and similar instruments and including all letter-of-credit rights;
 - (x) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of receivables, including (A) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (B) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (C) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, receivables or other Collateral, including returned, repossessed and reclaimed goods, and (D) deposits by and property of account debtors or other persons securing the obligations of account debtors;
 - (xi) all (A) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts), and (B) monies, credit balances, deposits and other property of Borrower now or hereafter held or received by or in transit to Lender or its

Affiliates or at any other depository or other institution from or for the account of Borrower, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(xii) all commercial tort claims;

(xiii) to the extent not otherwise described above, all receivables;

(xiv) all records;

(xv) the proceeds of all claims, rights, interests, assets and properties (recovered by or on behalf of Borrower or any trustee of Borrower (whether in the Chapter 11 Case or any subsequent case to which any of the Chapter 11 Case is converted), including, without limitation, proceeds of all property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to Sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code; and

(xvi) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

8. Grant of Security Interest: As collateral security for the prompt performance, observance and payment in full of the Loan, each Borrower, as Debtor and Debtor-in-Possession, hereby grants, pledges and assigns to Lender a continuing security interest in and liens upon, and rights of setoff against, all of the Collateral. Upon request, each Borrower shall execute any and all UCC statements presented by Lender reflecting the matters pledged hereunder for filing in the appropriate state files.
9. Acknowledgment of Security Interests. Borrower hereby acknowledges, confirms and agrees that Lender has and shall continue to have valid, enforceable and perfected first priority and senior security interests in and liens upon all of the Collateral, under the Financing Orders or hereunder, in order to secure this Loan.
10. Representations, Warranties and Covenants:

Each Borrower hereby represents, warrants and covenants to Lender the following, the truth and accuracy of which, or compliance with, to the extent such compliance does not violate the terms and provisions of the Bankruptcy Code, shall be a continuing requirement until the Loan is paid in full:

- a. Financing Order: The Financing Order for each Borrower has been duly entered, is valid, subsisting and continuing and has not been vacated, modified, reversed on appeal, or vacated or modified by any order of the Bankruptcy Court (other than as consented to by Lender) and is not subject to any pending appeal or stay.

- b. Use of Proceeds. The Loan shall be used by Borrower for general operating and working capital purposes in the ordinary course of business of Borrower in accordance with the Financing Order. Unless authorized by the Bankruptcy Court and approved by Lender in writing, no portion of any administrative expense claim or other claim relating to the Chapter 11 Case shall be paid with the proceeds of the Loan, other than those administrative expense claims and other claims relating to the Chapter 11 Case directly attributable to the operation of the business of Borrower in the ordinary course of such business in accordance with the Financing Order.
- c. Indebtedness. Borrower will not, and will not permit any subsidiary, after the date hereof, to, create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any new indebtedness, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender).
- d. Liens. Borrower will not, and will not permit any subsidiary, after the date hereof, to, create, incur, assume or suffer to exist, directly or indirectly, any new lien or security interest on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender).
- e. Disposal of Assets. Borrower will not, and will not permit any subsidiary, after the date hereof, to convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any portion of Borrower's or its subsidiaries' Collateral or other assets, including, without limitation, assume, reject or assign any leasehold interest or enter into any agreement to return inventory to vendor, whether pursuant to section 546 of the Bankruptcy Code or otherwise, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order and the sale of inventory in the ordinary course of business.
- f. Payments on Indebtedness. Borrower will not, and will not permit any subsidiary, after the date hereof, to make any payment on account of, or optionally prepay, redeem, defease, purchase, or otherwise acquire, any Indebtedness, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.

- g. Dividends and Redemptions. Borrower will not, and will not permit any subsidiary, after the date hereof, to make any dividend, distribution or redemption, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.
- h. Loans and Investments. Borrower will not, and will not permit any subsidiary, after the date hereof, to, directly or indirectly, make any loan or make or acquire any investment or incur any liabilities (including contingent obligations) for or in connection with any investment, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.
11. Binding Effect of Documents. Each Borrower hereby acknowledges, confirms and agrees that: (a) this Note was duly executed and delivered to Lender by Borrower and is in full force and effect as of the date hereof and Borrower has no valid defense, offset or counterclaim to the enforcement of such obligations, and (b) Lender is and shall be entitled to all of the rights, remedies and benefits provided for in the Financing Order.
12. Defaults and Remedies. The following shall constitute an “Event of Default” if not cured within ten (10) days of written notice from Lender: (i) the failure of Borrower to make any payment of interest or principal due hereunder within ten (10) days of its due date, (ii) any representation or warranty set forth in this Note shall be false or any Borrower shall fail to keep any of the covenants set forth in this Note, or (iii) Borrower shall otherwise be in default of the terms and provisions of this Note. Upon the occurrence of an Event of Default, all sums outstanding under this Note may, at Lender’s sole option, become, or may be declared to be, immediately due and payable in full, and the Lender may increase the interest rate on such sums to the Default Interest Rate. Lender’s delay or failure to accelerate this Note or to exercise any other available right or remedy shall not impair any such right or remedy, nor shall it be construed to be a forbearance or waiver. The term “Default Interest Rate” means Twelve Percent (12%) in excess of the Interest Rate set forth in Section 1 hereof. Borrower shall be responsible for paying the Lender’s costs of collection, including attorney’s fees.
13. New Jersey Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New Jersey. Borrower hereby consents to personal jurisdiction in the State of New Jersey with respect to any and all matters arising

under or relating to this Note.

14. Partial Invalidity. If any term or provision of this Note is at any time held to be invalid by any court of competent jurisdiction, the remaining terms and provisions of this Note shall not be affected and shall remain in full force and effect.
15. Waivers. Borrower hereby waives presentment, demand, protest, notice of protest, diligence and all other demands and notices in connection with the payment and enforcement of this Note. EACH BORROWER HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS NOTE OR THE ASSIGNMENT, PLEDGE AND SECURITY AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER. By accepting this Note, Lender also waives its right to request a trial by jury.
16. Interest Limits. If any provision of this Note relating to the rate of interest violates any applicable law in effect at the time payment is due, the interest rate then in effect shall be automatically reduced to the maximum rate then permitted by law. If for any reason Lender should receive as interest an amount that would exceed the highest applicable lawful rate of interest, the amount that would exceed that highest lawful rate shall be deemed to be credited against principal and not to the payment of interest.
17. Successors and Assigns. This Note shall be binding on each Borrower and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns. The term "Lender" in this Note shall refer to **HIROAKI AOYAMA** or to any other future holder of this Note.
18. Electronic Copy. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each Borrower has caused this Note to be duly executed on the date first written above.

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE LTD,
DEBTOR IN POSSESSION**

DocuSigned by:
Thomas Candalaria
By: D4EFB56B138F469...
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE R&D IP, LLC,
DEBTOR IN POSSESSION**

DocuSigned by:
Thomas Candalaria
By: D4EFB56B138F469...
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE SOLUTIONS, INC.
DEBTOR IN POSSESSION**

DocuSigned by:
Thomas Candalaria
By: D4EFB56B138F469...
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

PROMISSORY NOTE AND SECURITY AGREEMENT

\$100,000.00

November ⁶____, 2020

This **PROMISSORY NOTE AND SECURITY AGREEMENT** (this “Note”), dated as of November ____, 2020, is by and between STEPHEN BAKSA (“Lender”) and **SITO MOBILE LTD, DEBTOR IN POSSESSION, SITO MOBILE R&D IP, LLC, DEBTOR IN POSSESSION and SITO MOBILE SOLUTIONS, INC., DEBTOR IN POSSESSION** (each referred to as a Borrower and jointly as “Borrowers”).

W I T N E S S E T H:

WHEREAS, each of the Borrowers has commenced a case under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), and each Borrower has retained possession of its assets and is authorized under the Bankruptcy Code to continue the operation of its businesses as a debtor-in-possession;

WHEREAS, each Borrower will be filing a motion with the Bankruptcy Court seeking an order approving this Note and pursuant to which Lender may make post-petition loans and advances, and provide other financial accommodations, to the Borrowers secured by substantially all the assets and properties of the Borrowers (the “Financing Orders”);

WHEREAS, Borrowers have requested Lender make post-petition loans and advances and provide other financial or credit accommodations to Borrowers, and Lender is willing to do so, subject to the Financing Orders and the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrowers mutually covenant, warrant and agree as follows:

FOR VALUE RECEIVED, **SITO MOBILE LTD, SITO MOBILE R&D IP, LLC and SITO MOBILE SOLUTIONS, INC.** each hereby promises to pay to the order of **STEPHEN BAKSA** ("Lender"), the principal sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), together with interest (the "Loan") according to the following terms and conditions:

1. Rate of Interest; Payments. The Loan shall bear interest in the following manner:

(a) From the date hereof until the Maturity Date (as hereinafter defined) the interest rate on the Loan shall be six (6%) percent per annum (hereinafter sometimes referred to as the "Interest Rate").

(b) This Note shall be payable upon the earlier of: (i) one (1) year from the date hereof, and (ii) the confirmation of a Chapter 11 plan for any one of the Borrowers (the "Maturity Date") unless earlier accelerated pursuant to the terms hereof, when all remaining principal and accrued interest and all other sums owing under this Note shall be due and payable in full.

(c) The Borrowers shall be jointly and severally liable for the full payment of all amounts due under this Note.

2. Interest Calculations. Interest shall accrue on the unpaid principal amount of this Note from the date of each advance until all sums under this Note are paid in full. Interest shall be computed on the basis of the actual number of days elapsed, as applicable, divided by a 360 day factor.

3. Application of Payments. Payments received under this Note (including prepayments) shall be applied first to Lender's expenses of collection, including attorney's fees, then to accrued interest and then to principal.

4. Late Fee. If this Note is not paid in full within ten (10) days of the Maturity Date, without limiting any right or remedy under this Note, Lender may charge a late fee equal to Five Percent (5%) of the total amount overdue.

5. Prepayments. This Note may be prepaid in whole or in part at any time without premium or penalty.

6. Place and Manner of Payment. Payments under this Note are to be made in United States currency at the offices of Lender listed in this Note or at such other location designated by Lender. Any delay by Lender in submitting a statement of any amount due under this Note shall not relieve Borrower of its duty to inquire as to the amount due and to make timely payments.

7. Collateral. This Note is secured by the “Collateral”. The “Collateral shall mean, collectively, all now existing and hereafter acquired real and personal property of each of the Borrower’s estates, wherever located, of any kind, nature or description, including any such property in which a lien is granted to Lender pursuant to the Financing Orders or any other order entered or issued by the Bankruptcy Court, and shall include, without limitation:
- (i) all accounts;
 - (ii) all general intangibles, including, without limitation, all intellectual property and all tariff refunds;
 - (iii) all goods, including, without limitation, inventory and equipment;
 - (iv) all real property and fixtures;
 - (v) all chattel paper, including, without limitation, all tangible and electronic chattel paper;
 - (vi) all instruments, including, without limitation, all promissory notes;
 - (vii) all documents (including, without limitation, all present and future, wherever located, warehouse receipts, bills of lading shipping documents, documents of title, chattel paper, instruments and similar documents. all whether negotiable or not and all goods and inventory relating thereto, in each case to the extent arising out of or entered into or acquired by Borrower in connection with any letter of credit accommodation or any of its inventory);
 - (viii) all deposit accounts;
 - (ix) all letters of credit, banker’s acceptances and similar instruments and including all letter-of-credit rights;
 - (x) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of receivables, including (A) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (B) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (C) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, receivables or other Collateral, including returned, repossessed and reclaimed goods, and (D) deposits by and property of account debtors or other persons securing the obligations of account debtors;
 - (xi) all (A) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts), and (B) monies, credit balances, deposits and other property of Borrower now or hereafter held or received by or in transit to Lender or its

Affiliates or at any other depository or other institution from or for the account of Borrower, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(xii) all commercial tort claims;

(xiii) to the extent not otherwise described above, all receivables;

(xiv) all records;

(xv) the proceeds of all claims, rights, interests, assets and properties (recovered by or on behalf of Borrower or any trustee of Borrower (whether in the Chapter 11 Case or any subsequent case to which any of the Chapter 11 Case is converted), including, without limitation, proceeds of all property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to Sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code; and

(xvi) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

8. Grant of Security Interest: As collateral security for the prompt performance, observance and payment in full of the Loan, each Borrower, as Debtor and Debtor-in-Possession, hereby grants, pledges and assigns to Lender a continuing security interest in and liens upon, and rights of setoff against, all of the Collateral. Upon request, each Borrower shall execute any and all UCC statements presented by Lender reflecting the matters pledged hereunder for filing in the appropriate state files.
9. Acknowledgment of Security Interests. Borrower hereby acknowledges, confirms and agrees that Lender has and shall continue to have valid, enforceable and perfected first priority and senior security interests in and liens upon all of the Collateral, under the Financing Orders or hereunder, in order to secure this Loan.
10. Representations, Warranties and Covenants:

Each Borrower hereby represents, warrants and covenants to Lender the following, the truth and accuracy of which, or compliance with, to the extent such compliance does not violate the terms and provisions of the Bankruptcy Code, shall be a continuing requirement until the Loan is paid in full:

- a. Financing Order: The Financing Order for each Borrower has been duly entered, is valid, subsisting and continuing and has not been vacated, modified, reversed on appeal, or vacated or modified by any order of the Bankruptcy Court (other than as consented to by Lender) and is not subject to any pending appeal or stay.

- b. Use of Proceeds. The Loan shall be used by Borrower for general operating and working capital purposes in the ordinary course of business of Borrower in accordance with the Financing Order. Unless authorized by the Bankruptcy Court and approved by Lender in writing, no portion of any administrative expense claim or other claim relating to the Chapter 11 Case shall be paid with the proceeds of the Loan, other than those administrative expense claims and other claims relating to the Chapter 11 Case directly attributable to the operation of the business of Borrower in the ordinary course of such business in accordance with the Financing Order.
- c. Indebtedness. Borrower will not, and will not permit any subsidiary, after the date hereof, to, create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any new indebtedness, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender).
- d. Liens. Borrower will not, and will not permit any subsidiary, after the date hereof, to, create, incur, assume or suffer to exist, directly or indirectly, any new lien or security interest on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender).
- e. Disposal of Assets. Borrower will not, and will not permit any subsidiary, after the date hereof, to convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any portion of Borrower's or its subsidiaries' Collateral or other assets, including, without limitation, assume, reject or assign any leasehold interest or enter into any agreement to return inventory to vendor, whether pursuant to section 546 of the Bankruptcy Code or otherwise, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order and the sale of inventory in the ordinary course of business.
- f. Payments on Indebtedness. Borrower will not, and will not permit any subsidiary, after the date hereof, to make any payment on account of, or optionally prepay, redeem, defease, purchase, or otherwise acquire, any Indebtedness, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.

- g. Dividends and Redemptions. Borrower will not, and will not permit any subsidiary, after the date hereof, to make any dividend, distribution or redemption, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.
- h. Loans and Investments. Borrower will not, and will not permit any subsidiary, after the date hereof, to, directly or indirectly, make any loan or make or acquire any investment or incur any liabilities (including contingent obligations) for or in connection with any investment, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.
11. Binding Effect of Documents. Each Borrower hereby acknowledges, confirms and agrees that: (a) this Note was duly executed and delivered to Lender by Borrower and is in full force and effect as of the date hereof and Borrower has no valid defense, offset or counterclaim to the enforcement of such obligations, and (b) Lender is and shall be entitled to all of the rights, remedies and benefits provided for in the Financing Order.
12. Defaults and Remedies. The following shall constitute an “Event of Default” if not cured within ten (10) days of written notice from Lender: (i) the failure of Borrower to make any payment of interest or principal due hereunder within ten (10) days of its due date, (ii) any representation or warranty set forth in this Note shall be false or any Borrower shall fail to keep any of the covenants set forth in this Note, or (iii) Borrower shall otherwise be in default of the terms and provisions of this Note. Upon the occurrence of an Event of Default, all sums outstanding under this Note may, at Lender’s sole option, become, or may be declared to be, immediately due and payable in full, and the Lender may increase the interest rate on such sums to the Default Interest Rate. Lender’s delay or failure to accelerate this Note or to exercise any other available right or remedy shall not impair any such right or remedy, nor shall it be construed to be a forbearance or waiver. The term “Default Interest Rate” means Twelve Percent (12%) in excess of the Interest Rate set forth in Section 1 hereof. Borrower shall be responsible for paying the Lender’s costs of collection, including attorney’s fees.
13. New Jersey Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New Jersey. Borrower hereby consents to personal jurisdiction in the State of New Jersey with respect to any and all matters arising

under or relating to this Note.

14. Partial Invalidity. If any term or provision of this Note is at any time held to be invalid by any court of competent jurisdiction, the remaining terms and provisions of this Note shall not be affected and shall remain in full force and effect.
15. Waivers. Borrower hereby waives presentment, demand, protest, notice of protest, diligence and all other demands and notices in connection with the payment and enforcement of this Note. EACH BORROWER HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS NOTE OR THE ASSIGNMENT, PLEDGE AND SECURITY AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER. By accepting this Note, Lender also waives its right to request a trial by jury.
16. Interest Limits. If any provision of this Note relating to the rate of interest violates any applicable law in effect at the time payment is due, the interest rate then in effect shall be automatically reduced to the maximum rate then permitted by law. If for any reason Lender should receive as interest an amount that would exceed the highest applicable lawful rate of interest, the amount that would exceed that highest lawful rate shall be deemed to be credited against principal and not to the payment of interest.
17. Successors and Assigns. This Note shall be binding on each Borrower and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns. The term "Lender" in this Note shall refer to STEPHEN BAKSA or to any other future holder of this Note.
18. Electronic Copy. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each Borrower has caused this Note to be duly executed on the date first written above.

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE LTD,
DEBTOR IN POSSESSION**

By: *Thomas Candalaria*
DocuSigned by:
D4EFB56B138F469...
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE R&D IP, LLC,
DEBTOR IN POSSESSION**

By: *Thomas Candalaria*
DocuSigned by:
D4EFB56B138F469...
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE SOLUTIONS, INC.
DEBTOR IN POSSESSION**

By: *Thomas Candalaria*
DocuSigned by:
D4EFB56B138F469...
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

PROMISSORY NOTE AND SECURITY AGREEMENT

\$100,000.00

November ⁶____, 2020

This **PROMISSORY NOTE AND SECURITY AGREEMENT** (this “Note”), dated as of November ⁶____, 2020, is by and between GAVIN SCOTTI (“Lender”) and **SITO MOBILE LTD, DEBTOR IN POSSESSION, SITO MOBILE R&D IP, LLC, DEBTOR IN POSSESSION and SITO MOBILE SOLUTIONS, INC., DEBTOR IN POSSESSION** (each referred to as a Borrower and jointly as “Borrowers”).

W I T N E S S E T H:

WHEREAS, each of the Borrowers has commenced a case under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of New Jersey (the “Bankruptcy Court”), and each Borrower has retained possession of its assets and is authorized under the Bankruptcy Code to continue the operation of its businesses as a debtor-in-possession;

WHEREAS, each Borrower will be filing a motion with the Bankruptcy Court seeking an order approving this Note and pursuant to which Lender may make post-petition loans and advances, and provide other financial accommodations, to the Borrowers secured by substantially all the assets and properties of the Borrowers (the “Financing Orders”);

WHEREAS, Borrowers have requested Lender make post-petition loans and advances and provide other financial or credit accommodations to Borrowers, and Lender is willing to do so, subject to the Financing Orders and the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants and agreements contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Lender and Borrowers mutually covenant, warrant and agree as follows:

FOR VALUE RECEIVED, **SITO MOBILE LTD, SITO MOBILE R&D IP, LLC and SITO MOBILE SOLUTIONS, INC.** each hereby promises to pay to the order of **GAVIN SCOTTI** ("Lender"), the principal sum of ONE HUNDRED THOUSAND DOLLARS (\$100,000.00), together with interest (the "Loan") according to the following terms and conditions:

1. Rate of Interest; Payments. The Loan shall bear interest in the following manner:

(a) From the date hereof until the Maturity Date (as hereinafter defined) the interest rate on the Loan shall be six (6%) percent per annum (hereinafter sometimes referred to as the "Interest Rate").

(b) This Note shall be payable upon the earlier of: (i) one (1) year from the date hereof, and (ii) the confirmation of a Chapter 11 plan for any one of the Borrowers (the "Maturity Date") unless earlier accelerated pursuant to the terms hereof, when all remaining principal and accrued interest and all other sums owing under this Note shall be due and payable in full.

(c) The Borrowers shall be jointly and severally liable for the full payment of all amounts due under this Note.

2. Interest Calculations. Interest shall accrue on the unpaid principal amount of this Note from the date of each advance until all sums under this Note are paid in full. Interest shall be computed on the basis of the actual number of days elapsed, as applicable, divided by a 360 day factor.

3. Application of Payments. Payments received under this Note (including prepayments) shall be applied first to Lender's expenses of collection, including attorney's fees, then to accrued interest and then to principal.

4. Late Fee. If this Note is not paid in full within ten (10) days of the Maturity Date, without limiting any right or remedy under this Note, Lender may charge a late fee equal to Five Percent (5%) of the total amount overdue.

5. Prepayments. This Note may be prepaid in whole or in part at any time without premium or penalty.

6. Place and Manner of Payment. Payments under this Note are to be made in United States currency at the offices of Lender listed in this Note or at such other location designated by Lender. Any delay by Lender in submitting a statement of any amount due under this Note shall not relieve Borrower of its duty to inquire as to the amount due and to make timely payments.

7. Collateral. This Note is secured by the “Collateral”. The “Collateral shall mean, collectively, all now existing and hereafter acquired real and personal property of each of the Borrower’s estates, wherever located, of any kind, nature or description, including any such property in which a lien is granted to Lender pursuant to the Financing Orders or any other order entered or issued by the Bankruptcy Court, and shall include, without limitation:
- (i) all accounts;
 - (ii) all general intangibles, including, without limitation, all intellectual property and all tariff refunds;
 - (iii) all goods, including, without limitation, inventory and equipment;
 - (iv) all real property and fixtures;
 - (v) all chattel paper, including, without limitation, all tangible and electronic chattel paper;
 - (vi) all instruments, including, without limitation, all promissory notes;
 - (vii) all documents (including, without limitation, all present and future, wherever located, warehouse receipts, bills of lading shipping documents, documents of title, chattel paper, instruments and similar documents. all whether negotiable or not and all goods and inventory relating thereto, in each case to the extent arising out of or entered into or acquired by Borrower in connection with any letter of credit accommodation or any of its inventory);
 - (viii) all deposit accounts;
 - (ix) all letters of credit, banker’s acceptances and similar instruments and including all letter-of-credit rights;
 - (x) all supporting obligations and all present and future liens, security interests, rights, remedies, title and interest in, to and in respect of receivables, including (A) rights and remedies under or relating to guaranties, contracts of suretyship, letters of credit and credit and other insurance related to the Collateral, (B) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (C) goods described in invoices, documents, contracts or instruments with respect to, or otherwise representing or evidencing, receivables or other Collateral, including returned, repossessed and reclaimed goods, and (D) deposits by and property of account debtors or other persons securing the obligations of account debtors;
 - (xi) all (A) investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts), and (B) monies, credit balances, deposits and other property of Borrower now or hereafter held or received by or in transit to Lender or its

Affiliates or at any other depository or other institution from or for the account of Borrower, whether for safekeeping, pledge, custody, transmission, collection or otherwise;

(xii) all commercial tort claims;

(xiii) to the extent not otherwise described above, all receivables;

(xiv) all records;

(xv) the proceeds of all claims, rights, interests, assets and properties (recovered by or on behalf of Borrower or any trustee of Borrower (whether in the Chapter 11 Case or any subsequent case to which any of the Chapter 11 Case is converted), including, without limitation, proceeds of all property recovered as a result of transfers or obligations avoided or actions maintained or taken pursuant to Sections 544, 545, 547, 548, 549, 550, 551 and 553 of the Bankruptcy Code; and

(xvi) all products and proceeds of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to or destruction of or other involuntary conversion of any kind or nature of any or all of the other Collateral.

8. Grant of Security Interest: As collateral security for the prompt performance, observance and payment in full of the Loan, each Borrower, as Debtor and Debtor-in-Possession, hereby grants, pledges and assigns to Lender a continuing security interest in and liens upon, and rights of setoff against, all of the Collateral. Upon request, each Borrower shall execute any and all UCC statements presented by Lender reflecting the matters pledged hereunder for filing in the appropriate state files.
9. Acknowledgment of Security Interests. Borrower hereby acknowledges, confirms and agrees that Lender has and shall continue to have valid, enforceable and perfected first priority and senior security interests in and liens upon all of the Collateral, under the Financing Orders or hereunder, in order to secure this Loan.
10. Representations, Warranties and Covenants:

Each Borrower hereby represents, warrants and covenants to Lender the following, the truth and accuracy of which, or compliance with, to the extent such compliance does not violate the terms and provisions of the Bankruptcy Code, shall be a continuing requirement until the Loan is paid in full:

- a. Financing Order: The Financing Order for each Borrower has been duly entered, is valid, subsisting and continuing and has not been vacated, modified, reversed on appeal, or vacated or modified by any order of the Bankruptcy Court (other than as consented to by Lender) and is not subject to any pending appeal or stay.

- b. Use of Proceeds. The Loan shall be used by Borrower for general operating and working capital purposes in the ordinary course of business of Borrower in accordance with the Financing Order. Unless authorized by the Bankruptcy Court and approved by Lender in writing, no portion of any administrative expense claim or other claim relating to the Chapter 11 Case shall be paid with the proceeds of the Loan, other than those administrative expense claims and other claims relating to the Chapter 11 Case directly attributable to the operation of the business of Borrower in the ordinary course of such business in accordance with the Financing Order.
- c. Indebtedness. Borrower will not, and will not permit any subsidiary, after the date hereof, to, create, incur, assume, suffer to exist, guarantee, or otherwise become or remain, directly or indirectly, liable with respect to any new indebtedness, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender).
- d. Liens. Borrower will not, and will not permit any subsidiary, after the date hereof, to, create, incur, assume or suffer to exist, directly or indirectly, any new lien or security interest on or with respect to any of its assets, of any kind, whether now owned or hereafter acquired, or any income or profits therefrom, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender).
- e. Disposal of Assets. Borrower will not, and will not permit any subsidiary, after the date hereof, to convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any portion of Borrower's or its subsidiaries' Collateral or other assets, including, without limitation, assume, reject or assign any leasehold interest or enter into any agreement to return inventory to vendor, whether pursuant to section 546 of the Bankruptcy Code or otherwise, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order and the sale of inventory in the ordinary course of business.
- f. Payments on Indebtedness. Borrower will not, and will not permit any subsidiary, after the date hereof, to make any payment on account of, or optionally prepay, redeem, defease, purchase, or otherwise acquire, any Indebtedness, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.

- g. Dividends and Redemptions. Borrower will not, and will not permit any subsidiary, after the date hereof, to make any dividend, distribution or redemption, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.
- h. Loans and Investments. Borrower will not, and will not permit any subsidiary, after the date hereof, to, directly or indirectly, make any loan or make or acquire any investment or incur any liabilities (including contingent obligations) for or in connection with any investment, without in each case the prior written consent of Lender (and no such consent shall be implied, from any other action, inaction or acquiescence by Lender), except to the extent specifically set forth in the Financing Order.
11. Binding Effect of Documents. Each Borrower hereby acknowledges, confirms and agrees that: (a) this Note was duly executed and delivered to Lender by Borrower and is in full force and effect as of the date hereof and Borrower has no valid defense, offset or counterclaim to the enforcement of such obligations, and (b) Lender is and shall be entitled to all of the rights, remedies and benefits provided for in the Financing Order.
12. Defaults and Remedies. The following shall constitute an “Event of Default” if not cured within ten (10) days of written notice from Lender: (i) the failure of Borrower to make any payment of interest or principal due hereunder within ten (10) days of its due date, (ii) any representation or warranty set forth in this Note shall be false or any Borrower shall fail to keep any of the covenants set forth in this Note, or (iii) Borrower shall otherwise be in default of the terms and provisions of this Note. Upon the occurrence of an Event of Default, all sums outstanding under this Note may, at Lender’s sole option, become, or may be declared to be, immediately due and payable in full, and the Lender may increase the interest rate on such sums to the Default Interest Rate. Lender’s delay or failure to accelerate this Note or to exercise any other available right or remedy shall not impair any such right or remedy, nor shall it be construed to be a forbearance or waiver. The term “Default Interest Rate” means Twelve Percent (12%) in excess of the Interest Rate set forth in Section 1 hereof. Borrower shall be responsible for paying the Lender’s costs of collection, including attorney’s fees.
13. New Jersey Law. This Note shall be governed by, and construed in accordance with, the laws of the State of New Jersey. Borrower hereby consents to personal jurisdiction in the State of New Jersey with respect to any and all matters arising

under or relating to this Note.

14. Partial Invalidity. If any term or provision of this Note is at any time held to be invalid by any court of competent jurisdiction, the remaining terms and provisions of this Note shall not be affected and shall remain in full force and effect.
15. Waivers. Borrower hereby waives presentment, demand, protest, notice of protest, diligence and all other demands and notices in connection with the payment and enforcement of this Note. EACH BORROWER HEREBY WAIVES ANY RIGHT TO REQUEST A TRIAL BY JURY IN ANY LITIGATION WITH RESPECT TO THIS NOTE OR THE ASSIGNMENT, PLEDGE AND SECURITY AGREEMENT AND REPRESENTS THAT COUNSEL HAS BEEN CONSULTED SPECIFICALLY AS TO THIS WAIVER. By accepting this Note, Lender also waives its right to request a trial by jury.
16. Interest Limits. If any provision of this Note relating to the rate of interest violates any applicable law in effect at the time payment is due, the interest rate then in effect shall be automatically reduced to the maximum rate then permitted by law. If for any reason Lender should receive as interest an amount that would exceed the highest applicable lawful rate of interest, the amount that would exceed that highest lawful rate shall be deemed to be credited against principal and not to the payment of interest.
17. Successors and Assigns. This Note shall be binding on each Borrower and its successors and assigns, and shall inure to the benefit of Lender and its successors and assigns. The term "Lender" in this Note shall refer to GAVIN SCOTTI or to any other future holder of this Note.
18. Electronic Copy. A signed copy of this Agreement delivered by facsimile, email or other means of electronic transmission shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement.

[Signature Page Follows]

IN WITNESS WHEREOF, each Borrower has caused this Note to be duly executed on the date first written above.

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE LTD,
DEBTOR IN POSSESSION**

DocuSigned by:
Thomas Candalaria
D4EFB56B138F469...
By: _____
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE R&D IP, LLC,
DEBTOR IN POSSESSION**

DocuSigned by:
Thomas Candalaria
D4EFB56B138F469...
By: _____
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

WITNESS:

DocuSigned by:
Lisa Patrick Pallack
7756B750E9D14AE...

**SITO MOBILE SOLUTIONS, INC.
DEBTOR IN POSSESSION**

DocuSigned by:
Thomas Candalaria
D4EFB56B138F469...
By: _____
Name: THOMAS CANDELARIA
Title: Chief Operating Officer

UNITED STATES BANKRUPTCY COURT DISTRICT OF NEW JERSEY	
Caption in Compliance with D.N.J. LBR 9004-2(c) WASSERMAN, JURISTA & STOLZ, P.C. 110 Allen Road, Suite 304 Basking Ridge, NJ 07920 Phone: (973) 467-2700 Fax: (973) 467-8126 <i>Counsel for SITO Mobile Solutions, Inc., SITO Mobile, Ltd., and SITO Mobile R&D IP, LLC.</i> DANIEL M. STOLZ DONALD W. CLARKE	
In Re: SITO MOBILE SOLUTIONS, INC., Debtor.	Case No.: 20-21436 Judge: Honorable Stacey L. Meisel Chapter: 11
In Re: SITO MOBILE, LTD., Debtor.	Case No.: 20-21435 Judge: Honorable Stacey L. Meisel Chapter: 11
In Re: SITO MOBILE R&D IP, LLC., Debtor.	Case No.: 20-21437 Judge: Honorable Stacey L. Meisel Chapter: 11

ORDER AUTHORIZING POST-PETITION FINANCING

The relief set forth on the following pages is hereby **ORDERED**.

(Page 2)

Debtors: SITO Mobile Solutions, Inc., SITO Mobile, Ltd., SITO Mobile R&D IP, LLC.
Case No.: 20-21436, 20-21435, 20-21437
Caption: Order Authorizing Post-Petition Financing

Upon the motion (the “Motion”)¹ of the Debtors, by and through their proposed counsel, Wasserman, Jurista & Stolz, P.C, seeking entry of an Order Authorizing Post-Petition Financing; and it appearing that the Court has jurisdiction to consider this Motion; and it appearing that the relief requested in the best interest of the Debtors, their estates and creditors; and it appearing that due notice of the Motion has been given and no further notice need to be given; and upon the proceedings before the Court; and good and sufficient cause appearing;

IT IS HEREBY ORDERED THAT:

1. The Debtors are authorized to borrow on a secured basis from the DIP Lenders, in the principal amount of \$300,000.00, substantially in accordance with the terms of this Motion² and the Promissory Note and Security Agreement annexed to the Motion as *Exhibit “A”*.

2. The Debtors are authorized to execute agreements in favor of the DIP Lenders, which shall be consistent with the provisions of this Motion and the DIP Loan Agreement annexed to the Motion as *Exhibit “A”*, and such other documents, instruments and agreements and perform all such other acts as may be required in connection with the DIP Loan Documents.

¹ Capitalized terms not otherwise defined herein shall have the meanings ascribed to such terms in the Motion.

² Including up to a 15% variance per line item.

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Debtors: SITO Mobile Solutions, Inc., SITO Mobile, Ltd., SITO Mobile R&D IP, LLC.

Case No.: 20-21436, 20-21435, 20-21437

Caption: Order Authorizing Post-Petition Financing

3. The Automatic Stay imposed by Section 362 of the Bankruptcy Code is modified and, to the extent necessary, lifted to permit the DIP Lenders and the Debtors to implement the terms of this Motion.