

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF SUNGARD AVAILABILITY SERVICES (CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE DES AFFAIRES (CANADA) LTEE

APPLICATION OF SUNGARD AVAILABILITY SERVICES (CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE DES AFFAIRES (CANADA) LTEE UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**AFFIDAVIT OF WILLIAM ONYEAJU
(October 26, 2022)**

I, William Onyeaju, of the City of Toronto, in the Province of Ontario, MAKE OATH AND SAY:

1. I am a lawyer at Cassels Brock & Blackwell LLP ("**Cassels**"), counsel to the foreign representative (the "**Foreign Representative**"), Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuité des Affaires (Canada) Ltee ("**Sungard AS Canada**"), and, as such, have knowledge of the following matters.
2. Terms not defined in this affidavit have the meanings given to them in the affidavits of Michael K. Robinson, sworn October 14 and October 15, 2022.
3. On September 23, 2022, the Debtors filed the Settlement Stipulation Motion with the U.S. Bankruptcy Court, seeking entry of the Settlement Stipulation Order.

4. The Confirmation Order, entered by the U.S. Bankruptcy Court on October 17, 2022, provided that any person or governmental unit alleging that it had inadequate due process notice and opportunity to object to the Second Amended Plan or Confirmation Order could file an objection by October 24, 2022 at 4:00 p.m. (prevailing Central Time) (the “**Objection Deadline**”). The Confirmation Order also provided that on October 26, 2022 at 1:00 p.m. (prevailing Central Time), the U.S. Bankruptcy Court would conduct a status conference to address any such objections (the “**Status Conference**”).
5. No objections to the Second Amended Plan or the Confirmation Order were filed by the Objection Deadline. On October 26, 2022, on behalf of the Foreign Representative, I attended the Status Conference. As there were no objections filed, no action was taken by the U.S. Bankruptcy Court and the Confirmation Order remains unchanged from that entered by the U.S. Bankruptcy Court on October 17, 2022.
6. Following the Status Conference, the U.S. Bankruptcy Court entered the Settlement Stipulation Order. The entered Settlement Stipulation Order is unchanged from the proposed order which was attached to the Settlement Stipulation Motion.
7. Attached as **Exhibit “A”** is a copy of the entered Settlement Stipulation Order.

8. I swear this affidavit in support of the Foreign Representative's motions for Orders, among other things, recognizing and giving full force and effect in all provinces and territories of Canada to the Confirmation Order and the Settlement Stipulation Order and not for any other or improper purpose.

SWORN BEFORE ME

by video conference on this 26th day of October 2022. The affiant and I both were located the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.



Behnoosh Nasri

Commissioner for Taking Affidavits
(or as may be)

WILLIAM ONYEAJU

Commissioner Name: Behnoosh Nasri
Law Society of Ontario Number: P14845

This is Exhibit "A" referred to in the Affidavit of William Onyeaju sworn October 26, 2022. The affiant and I both were located the City of Toronto in the Province of Ontario. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath or Declaration Remotely.

A handwritten signature in black ink that reads "Behnoosh Nasri". The signature is written in a cursive style and is centered on the page.

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Behnoosh Nasri
Law Society of Ontario Number: P14845

provided; and upon consideration of the Motion and all of the proceedings had before this Court; and this Court having found and determined that the relief sought in the Motion is in the best interests of the Debtors, their estates, their creditors, their stakeholders and all other parties in interest, and that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and after due deliberation and sufficient cause appearing therefor, IT IS HEREBY ORDERED THAT:

1. The Settlement is within the range of reasonableness and in the best interests of the Debtors and their estates and creditors.

2. The Settlement is approved and authorized. The Debtors are authorized to perform in accordance with the terms of the Settlement, including payment of the Modified Lease Rent, as may become payable in accordance with the terms and conditions of the Leases, as modified by the Settlement.

3. All provisions of the Settlement are incorporated herein by reference and shall be effective and binding as though fully set forth herein.

4. In accordance with the Settlement, the Landlords shall have allowed, administrative expense claims as follows:

a. *Houston Landlord.* With respect to the Houston Lease, as modified by the Settlement, in an amount no less than USD \$122,346.00 in respect of the modified Monthly Base Rent plus any Additional Rent that may become due and payable during or attributable to any period during the Modified Term.

b. *Markham Landlord.* With respect to the Markham Lease, as modified by the Settlement, in an amount no less than CAD \$464,154.00, in respect of

the modified Monthly Base Rent plus any Additional Rent that may become due and payable during or be attributable to any period during the Modified Term.

c. The Modified Lease Rent shall be paid to the Landlords pursuant to the terms and conditions of the Leases, as modified by the Settlement.

5. The Debtors are authorized to (a) abandon or (b) with the consent of the applicable Landlord, transfer ownership to such Landlord, provided that the Landlord shall not have any administrative claims under the Bankruptcy Code in connection with such a transfer, any Premises B Personal Property or the Houston and Markham Personal Property free and clear of all liens, claims, encumbrances, interests and rights of third parties to the maximum extent allowed by Bankruptcy Code section 363(f). The Landlords may dispose of such property without further notice to any party claiming an interest in such abandoned property.

6. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion.

7. The Debtors, the Landlords and Chubb are authorized to take all actions necessary to effectuate the relief granted in this Order in accordance with the Motion.

8. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6006.

9. Notwithstanding Bankruptcy Rule 4001(a)(3) and Bankruptcy Rule 6004(h), this Order shall be effective immediately upon entry of it by the Court.

10. This Court retains exclusive jurisdiction with respect to all matters arising from or related to the implementation, interpretation, and enforcement of this Order.

Signed: October 26, 2022.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Settlement

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION**

In re:)	
)	Chapter 11
SUNGARD AS NEW HOLDINGS, LLC, <i>et al.</i> , ¹)	Case No. 22-90018 (DRJ)
)	
Debtors.)	(Jointly Administered)
)	

**SETTLEMENT STIPULATION BETWEEN
THE DEBTORS, CHUBB INSURANCE
COMPANY OF CANADA AND CERTAIN LANDLORDS**

Sungard Availability Services, LP (“Sungard AS”) and Sungard Availability Services (Canada) Ltd. (“Sungard AS Canada” and, together with Sungard AS, individually, a “Tenant” and, collectively, the “Tenants” and, the Tenants together with their affiliated debtors and debtors in possession in the above-captioned chapter 11 cases, the “Debtors”), Digital Greenspoint, L.P., a Texas limited partnership (the “Houston Landlord”) and Digital Toronto Nominee, Inc., a British Columbia corporation (“Markham Landlord” and, together with the Houston Landlord, each a “Landlord” and, collectively, the “Landlords”), and Westchester Fire Insurance Company, Federal Insurance Company, ACE INA Insurance, ACE American Insurance Company, Chubb Insurance of Canada and their affiliated sureties (individually and collectively, and each solely in their capacities as sureties and not insurers, the “Surety” and, together with the Landlords and the

¹ The Debtors in these chapter 11 cases, along with the last four digits of the Debtors’ tax identification numbers, are: InFlow LLC (9489); Sungard AS New Holdings, LLC (5907); Sungard AS New Holdings II, LLC (9169); Sungard AS New Holdings III, LLC (3503); Sungard Availability Network Solutions Inc. (1034); Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite des Affaires (Canada) Ltee (3886); Sungard Availability Services Holdings (Canada), Inc. (2679); Sungard Availability Services Holdings (Europe), Inc. (2190); Sungard Availability Services Holdings, LLC (6403); Sungard Availability Services Technology, LLC (9118); Sungard Availability Services, LP (6195); and Sungard Availability Services, Ltd. (4711). The location of the Debtors’ service address for purposes of these chapter 11 cases is: 565 E Swedesford Road, Suite 320, Wayne, PA 19087.

Tenants, the “Parties”) hereby stipulate and agree (this “Stipulation”), by and through their undersigned counsel, as follows:

Recitals

WHEREAS, on April 11, 2022 (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code (the “Bankruptcy Code”) in the United States Bankruptcy Court for the Southern District of Texas (the “Bankruptcy Court”). These chapter 11 cases are jointly administered for procedural purposes.

WHEREAS, on April 11, 2022, Sungard AS Canada commenced proceedings (the “Canadian Proceedings”) under the Companies’ Creditors Arrangement Act (Canada) in the Ontario Superior Court of Justice (Commercial List) (the “Canadian Court”) seeking recognition of its chapter 11 case. The Canadian Court granted the relief requested on April 14, 2022 and appointed Alvarez & Marsal Canada Inc. as information officer (the “Information Officer”) in the Canadian Proceedings.

WHEREAS, the Landlords, as applicable, and Tenants, as applicable, entered into those certain leases, as applicable, at: (a) 12175 North Freeway, Houston, TX dated August 16, 2004 (as may be amended, modified and supplemented from time to time in accordance with the terms thereof, the “Houston Lease”); and (b) 371 Gough Road, Markham, Ontario, Canada dated May 30, 2013 (as may be amended, modified and supplemented from time to time in accordance with the terms thereof, the “Markham Lease” and, together with the Houston Lease, the “Leases”). The premises described in and subject to the Houston Lease are hereinafter referred to as the “Houston Leased Premises” and the premises described in and subject to the Markham Lease are hereinafter referred to as the “Markham Leased Premises,” and together with the Houston Leased Premises, collectively the “Leased Premises.”

WHEREAS, the Markham Leased Premises are comprised of “Premises-A” (as more particularly described in the Markham Lease, “Markham Premises A”) and “Premises-B” (as more particularly described in the Markham Lease, “Markham Premises B”).

WHEREAS, the Monthly Base Rent (as defined in the Houston Lease) required by the Houston Lease is equal to USD \$130,650.77 and the Monthly Base Rent required by the Markham Lease (as defined in the Markham Lease) is equal to CAD 549,643.28, which amounts do not include the reimbursement obligations for common area maintenance, insurance, taxes and such other Additional Rent (as described below) obligations provided by the Leases.

WHEREAS, the Markham Lease requires Sungard AS Canada to provide to the Markham Landlord an irrevocable, upon demand, letter of credit payable to the Markham Landlord in the amount of CAD 922,389.75. As a substitute and replacement for a letter of credit, Sungard AS Canada obtained a surety bond, with Sungard AS Canada as principal, Surety as the surety and the Markham Landlord as obligee, in the penal sum of CAD 922,389.75 (together with any and all related documents, including any and all continuation certificates, the “Bond”).

WHEREAS, on July 27, 2022, the Markham Landlord filed *Digital Realty’s Emergency Motion for Limited Relief from the Automatic Stay* [Docket No. 518] (the “Stay Relief Motion”), seeking relief from the automatic stay imposed under Bankruptcy Code section 362 to take actions necessary to submit a claim to the Surety under the Bond.

WHEREAS, the Surety, Sungard AS Canada and the Markham Landlord have engaged in discussions regarding the potential resolution of the Markham Landlord’s actual and/or potential claims under the Bond.

WHEREAS, on August 12, 2022, the Bankruptcy Court entered an order granting the Stay Relief Motion [ECF No. 566].

WHEREAS, the Debtors, in the exercise of their business judgment, have concluded that the contractual obligations, as currently priced under the Leases, are burdensome to the Debtors and that they no longer need to use or occupy the entirety of the Leased Premises.

WHEREAS, the Debtors have determined that continued use of the Houston Lease and Markham Lease on the modified terms set forth herein will provide a material benefit to the Debtors' sale and restructuring efforts by *inter alia*, generating (a) substantial cost savings through reduced monthly Base Rent obligations; (b) a waiver of certain of Landlords' claims against the Debtors' estates arising under the Leases; and a (c) a coordinated transition of the Debtors' customers at the Leased Premises to the Landlords.

WHEREAS the Debtors and the Landlords, after arm's-length and good faith negotiations, have reached a commercial agreement for rejection of the Leases pursuant to sections 365 and 1123 of the Bankruptcy Code and an agreement on modified terms to govern the Debtors and the Landlords' obligations until the effective date of such rejection, including, *inter alia*, a reduction in the size of the Leased Premises and a reduction of the Debtors' rent obligations due thereunder, in each case consistent with the Debtors' efforts to restructure their lease portfolio and reduce costs (the "Transactions").

WHEREAS, the Parties, after arm's-length and good faith negotiations, have reached agreement on the treatment of the Bond in connection with the Transactions.

WHEREAS the Debtors have determined, in the reasonable exercise of their business judgment, that entry into Stipulation is in the best interests of the Debtors and their estates.

WHEREAS, the terms of this Stipulation are supported by the Ad Hoc Group.

STIPULATION

1. The recitals set forth above are true and correct and are incorporated herein by reference as if restated in full.

2. This Stipulation shall be effective with respect to the Parties upon the date that the Bankruptcy Court enters an order approving the Stipulation and, with respect to the Markham Leased Premises, the issuance of an order by the Canadian Court recognizing the Bankruptcy Court approval order (such date, the “Approval Effective Date”); *provided, however*, that (i) paragraphs 2(g) and 2(j) and the last sentence of paragraph 11 shall be effective upon execution of this Stipulation notwithstanding any failure of the Approval Effective Date to occur and (ii) the Tenants shall obtain the benefit of the Modified Lease Rent agreed to herein upon execution of this Stipulation. If the Approval Effective Date does not occur by December 31, 2022 (the “Approval Deadline”), then this Stipulation (other than paragraphs 2(g) and 2(j) and the last sentence of paragraph 11) shall be null and void and the Landlords and Tenants shall revert to their respective positions as if such documentation never existed; *provided, moreover*, that if the Approval Effective Date does not occur by the Approval Deadline, the Landlords and Tenants agree to be bound by paragraph 4 of this Stipulation and the provisions of such paragraph shall control. The Parties hereby agree to the following terms and conditions:

- a. *Rejection.* The Debtors’ chapter 11 plan shall provide for the rejection of the Houston Lease and Markham Lease pursuant to Bankruptcy Code sections 365 and 1123, provided that the effective date of such rejection will be December 31, 2022 (the “Rejection Effective Date”), consistent with the terms and conditions hereof, including without limitation the requirement that the applicable Tenants have vacated and surrendered possession of the Leased Premises on or before the Rejection Effective Date. Nothing in the Debtors’ chapter 11 plan shall operate to modify or amend any of the terms of the Transactions referenced herein unless otherwise agreed to between the Parties in accordance with paragraph 7 hereof.
- b. *Surrender of Markham Premises B.* On or promptly following the execution of this Stipulation but no later than October 1, 2022, Sungard AS Canada shall surrender

Markham Premises B to the Markham Landlord. The Debtors shall seek authorization under the motion seeking approval of this Stipulation (the “Approval Motion”) to abandon or, with the Markham Landlord’s consent, transfer ownership of any personal property located at Markham Premises B (the “Premises B Personal Property”) to the Markham Landlord free and clear of all liens, claims, encumbrances, interests and rights of third parties to the maximum extent allowed by Bankruptcy Code section 363(f). After the Approval Effective Date, the Markham Landlord may dispose of such Premises B Personal Property without further notice to any party claiming an interest in such abandoned Premises B Personal Property. Upon the surrender of Markham Premises B, Sungard AS Canada shall have no further obligations to the Markham Landlord for such premises.

- c. *Modified Houston Lease Obligations.* Beginning October 1, 2022 and continuing through the Rejection Effective Date, the following modifications to Sungard AS’s obligations under the Houston Lease shall apply, which such modifications shall replace and supersede anything to the contrary in the Houston Lease (collectively, the “Modified Houston Lease Obligations”):
- i. Sungard AS’s Monthly Base Rent (as defined in the Houston Lease) in respect of the Houston Lease shall be \$40,782.00 per month, which shall be payable on the first day of each month (with the same grace periods, if any, as set forth in the Houston Lease).
 - ii. Except as provided herein, continuing through the Rejection Effective Date, Sungard AS shall remain responsible for payment of all Additional Rent (as defined in the Houston Lease) solely to the extent such Additional Rent is billed on or after the Petition Date, including without limitation all such Additional Rent that is attributable to charges incurred during any period prior to the Rejection Effective Date, even if such Additional Rent is not billed until after the Rejection Effective Date; *provided* that the Houston Landlord shall provide a final accounting of all charges attributable to such period no later than June 1, 2023.
 - iii. The amounts due under sections 2(c)(i) and 2(c)(ii) shall hereinafter be referred to as the “Modified Houston Lease Rent”.
 - iv. The term under the Houston Lease shall expire upon the Rejection Effective Date (the “Lease Termination Date”) without further action of the Parties, provided that Sungard AS has vacated and surrendered possession of the Houston Leased Premises on or before the Lease Termination Date, the Houston Landlord and Sungard AS having agreed that if the Houston Tenant does not timely vacate the Houston Leased Premises, the provisions of Paragraph 2(l) shall control. The Debtors shall use commercially reasonable efforts to ensure that all property belonging to customers is removed on or prior to the Lease Termination Date.

- v. The Debtors and Houston Landlord are authorized to enter into documentation to evidence the Modified Houston Lease Obligations without further order of the Bankruptcy Court. Except as expressly modified herein, all terms of the Houston Lease shall continue to apply.
- d. *Modified Markham Lease.* Beginning October 1, 2022 and continuing through the Rejection Effective Date, the following modifications to Sungard AS's obligations under the Markham Lease, solely with respect to Markham Premises A, shall apply, which such modifications shall replace and supersede anything to the contrary in the Markham Lease (collectively, the "Modified Markham Lease Obligations"):
 - i. Sungard AS Canada's Base Rent (as defined in the Markham Lease) in respect of Premises-A shall be CAD\$154,718.00 per month, which shall be payable on the first day of each month (with the same grace periods, if any, as set forth in the Markham Lease).
 - ii. Except as provided herein, continuing through the Rejection Effective Date, Sungard AS Canada shall remain responsible for payment of all Additional Rent (as defined in the Markham Lease) solely to the extent such Additional Rent is billed on or after the Petition Date, including without limitation all such Additional Rent that is attributable to charges incurred during any period prior to the Rejection Effective Date, even if such Additional Rent is not billed until after the Rejection Effective Date; *provided* that the Markham Landlord shall provide a final accounting of all charges attributable to such period no later than June 1, 2023.
 - iii. The amounts due under sections 2(d)(i) and 2(d)(ii) shall hereinafter be referred to as the "Modified Markham Lease Rent," and together with the Modified Houston Lease Rent, collectively hereinafter defined as the "Modified Lease Rent."
 - iv. The term under the Markham Lease shall expire on the Lease Termination Date without further action of the Parties, provided that Sungard AS Canada has vacated and surrendered possession of the Markham Leased Premises on or before the Lease Termination Date, the Markham Landlord and Sungard AS Canada having agreed that if the Markham Tenant does not timely vacate the Markham Leased Premises, the provisions of Paragraph 2(l) shall control. The Debtors shall use commercially reasonable efforts to ensure that all property belonging to customers is removed on or prior to the Lease Termination Date.
 - v. The Debtors and Markham Landlord are authorized to enter into documentation to evidence the Modified Markham Lease Obligations without further order of the Bankruptcy Court. Except as expressly modified herein, all terms of the Markham Lease shall continue to apply.

- e. *Overpayments.* In the event Sungard AS or Sungard AS Canada, as applicable, makes or made a payment to the applicable Landlord in excess of the Modified Lease Rent at any time after execution of this Stipulation and prior to the Rejection Effective Date for the applicable Lease, the amount of the overpayment will be credited against Sungard AS's or Sungard AS Canada's next rent payment for the applicable Lease.

- f. *Claim Waiver.* Except in the event that holders of general unsecured claims are entitled to a recovery under any chapter 11 plan filed in the chapter 11 cases, the Landlords shall not file or assert any claims (as defined under Bankruptcy Code section 101(5)) against the Debtors or the Debtors' estates arising on or before September 30, 2022 under the Leases; *provided, however,* that the foregoing waiver shall not apply to: (x) the Tenants' payment of all Additional Rent on the terms and conditions set forth herein; (y) payment of any allowed claim on account of Postpetition Property Damages (as defined below); or (z) payment of any allowed administrative expense claim against the Debtors and their estates in respect of any accrued and unpaid rent (however characterized) owing under the Leases for the period between April 11, 2022 through April 30, 2022 (provided that any such allowed administrative expense claim shall be reduced in accordance with paragraph 2(m) of this Stipulation). The Landlords reserve all rights for any claims arising or attributable to the period after September 30, 2022 and through the Rejection Effective Date (including, for the avoidance of doubt, any claims not released under paragraph 2(k) hereof).

- g. *Bond.* No later than 10 business days following execution of this Stipulation, the Surety shall pay to the Markham Landlord CAD \$850,000 (the "Bond Proceeds") in full satisfaction of the Bond. Notwithstanding anything herein to the contrary, upon the Surety making payment to the Markham Landlord in the amount of the Bond Proceeds: the Bond is fully released and fully discharged; to the extent it can be located after reasonable efforts, the original Bond shall be returned to the Surety (however, no other terms herein shall be impacted if the original Bond cannot be located and/or returned to the Surety); and the Surety's past, present and future liability and/or obligations under or in connection with the Bond and/or the Markham Lease shall be deemed fully terminated and otherwise extinguished. In accordance with paragraph 3 of the *Order (I) Authorizing Debtors to (A) Continue Insurance Coverage Entered Into Prepetition and Satisfy Prepetition Obligations Related Thereto, and (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies and (II) Granted Related Relief* [Docket No. 61], notwithstanding anything herein to the contrary, the Debtors further acknowledge and agree that: (i) the Surety has a valid indemnity claim against the Surety's indemnitors; (ii) the Surety may look to any security in its favor to pay the Markham Landlord the Bond Proceeds, including, without limitation, by using proceeds of that certain

irrevocable standby letter of credit bearing reference number 18133893-00-000 (“LC”) to pay the Markham Landlord the aforementioned Bond Proceeds and/or to reimburse the Surety for, among other things, the payment of the Bond Proceeds to the Markham Landlord; (iii) the Surety is not acting as a volunteer by way of its payment of the aforementioned Bond Proceeds to the Markham Landlord; and (iv) the payment of the Bond Proceeds from the aforementioned security shall not limit or reduce any claim of the Surety against the Debtors’ estates; *provided, however*, that in no event shall the Surety receive total payments from said security, plus payment, if any, from the Debtors’ estates greater than the amount of the Surety’s entire indemnity claim. For the avoidance of doubt, nothing herein shall transform the Surety’s indemnity claim into a postpetition obligation to the extent it is not otherwise such an obligation. Subject to the Surety’s sole obligation hereunder, which is to remit the Bond Proceeds as set forth above, nothing herein shall be deemed a waiver or estoppel, in whole or in part, of any of the Surety’s rights, remedies or defenses under any and all applicable bond(s), agreement(s) and/or documents related to the Surety’s surety program. Moreover, nothing herein shall negatively impact the Surety’s rights, interests and/or claims in and/or to the LC or any of the proceeds thereof, including, but not limited to, the proceeds that may be remaining after the Bond Proceeds are paid to the Markham Landlord and/or after the Surety reimburses itself for, among other things, the Surety’s payment to the Markham Landlord.

- h. *Access Rights.* Upon no less than 48 hours’ notice to the Tenants by the Landlords, the Tenants shall provide reasonable access to the Leased Premises to the Landlords for the purpose of showing the facilities for re-leasing. The Parties have already agreed that the Markham Landlord may enter Markham Premises B for the purpose of showing those facilities for re-leasing.
- i. *Customer Contracts.* After execution of this Stipulation and until the Rejection Effective Date, the Tenants and Landlords shall cooperate on the transition of customers of Tenants to the Landlords, including reasonably consulting with the Landlords on any communications with customers in connection with this paragraph 2(i). Promptly after execution of this Stipulation, the Tenants shall provide the Landlords with a list of all customers at the Leased Premises whose customer contracts may be assumed and assigned by the Debtors to a third party (the “Excluded Customers”). The Landlords and Tenants agree that all customers at the Leased Premises other than the Excluded Customers (the “Transitioned Customers”) may be contacted by the Landlords for transition of services. Nothing herein shall prohibit the Landlords from communicating with any Transitioned Customers. The Debtors shall not interpose any confidentiality objections to sharing any of their Transitioned Customer contracts with the Landlords, so long as the Transitioned Customers do not object. Subject to

any confidentiality agreements imposed by the Transitioned Customers (Tenants having waived any such confidentiality), the Tenants shall provide the Landlords with copies of contracts and contact information of all Transitioned Customers, and the Tenants shall not transfer or assign any of such contracts of Transitioned Customers occupying space at the Leased Premises to any third party. With respect to services that the Tenants currently provide to the Transitioned Customers that Landlords do not offer, the Landlords shall not be responsible to provide such services. The Landlords and the Tenants will explore Tenants continuing to provide such services upon terms and conditions mutually agreeable to all parties.

- j. *Security Deposit.* Upon receipt of the Bond Proceeds, the Markham Landlord shall waive any further requirement under the Markham Lease for Sungard AS Canada to maintain a letter of credit or performance bond to secure its obligations. The Landlords reserve all rights to require a letter of credit or performance bond in connection with any new leases or agreements that they may negotiate with any of the Debtors in the future. Nothing herein shall require the Surety to issue and/or execute any such bond(s) requested by either of the Landlords.
- k. *Restoration and Damages.* On or prior to September 30, 2022, the Landlords shall inspect the Leased Premises and document and photograph as appropriate the current condition thereof (the “Landlord Inspection”), and the Landlords shall make available to the Tenants the result of the Landlord Inspection. The Tenants shall have the option to be present at the time of the Landlord Inspection, and the Landlords shall give the Tenants no less than three business days’ prior written notice of the date and time of the Landlord Inspection. In the event that the Tenants disagree with the findings in the Landlord Inspection, the Tenants shall have the option to hire a third-party inspector to inspect the Leased Premises, with the identity of the third-party inspector to be jointly determined by the Landlords and Tenants. In such event, the inspection report produced by the third-party inspector (the “Third Party Inspection”) shall govern and control. The date that the controlling inspection that occurs as described hereunder shall hereinafter be referred to as the “Inspection Date.” With respect to the Leased Premises, the Tenants shall not be obligated for any restoration costs arising under the Leases or otherwise (i) prior to the Inspection Date, (ii) from removing any personal property of the Tenants or (iii) for any Excluded Conditions (as defined below) (each of the foregoing, collectively, the “Released Obligations”), and the Landlords each irrevocably release the Tenants of any and all such Released Obligations and any and all claims associated therewith; *provided* that, for the avoidance of doubt, any physical damage (other than Excluded Conditions) to the Leased Premises that occurred on or after the Petition Date and before the Rejection Effective Date shall not be Released Obligations (any such damages, “Postpetition Property Damages”), and the Landlords and Tenants

reserve all rights with respect to any such Postpetition Property Damages. Following the Inspection Date and continuing through the Rejection Effective Date, the Tenants shall use reasonable diligence and care of the Leased Premises consistent with the terms of the Leases except as otherwise agreed herein, and shall surrender the Leased Premises to the Landlords at the Rejection Effective Date in substantially the same condition as documented on the Inspection Date through the Landlord Inspection or the Third Party Inspection, as applicable, excepting ordinary wear and tear, latent defects, condemnation or damage by fire or other casualty not caused by Tenants, damages caused by the negligence or willful misconduct of the Landlords or their representatives or any other Released Obligation (each of the following exceptions, collectively, the “Excluded Conditions”). For the avoidance of doubt, nothing herein shall prevent the Landlords from asserting an administrative expense claim against the applicable Tenant for any damages to the Leased Premises contrary to the terms and conditions of the applicable Lease other than with respect to the Released Obligations (provided that nothing herein waives the applicable Tenant’s right to contest any such claim to the extent such claims are subject to bona fide dispute or any available defense). Further, in connection with the Approval Motion, the Debtors shall seek authorization from the Bankruptcy Court to abandon or, with the Landlords’ consent, transfer ownership of any personal property located at the Leased Premises (the “Houston and Markham Personal Property”) to the Landlords free and clear of all liens, claims, encumbrances, interests and rights of third parties to the maximum extent allowed by Bankruptcy Code section 363(f), and to dispose of the Houston and Markham Personal Property without further notice to any party claiming an interest in such abandoned property. The Landlords reserve all claims for damage to the Leased Premises that may arise between the Inspection Date and the Rejection Effective Date, excluding the Excluded Conditions; *provided* that the Tenants shall have the option to be present at the time of any inspection following the Rejection Effective Date, and the Landlords shall give the Tenants no less than three business days’ prior written notice of the date and time of any such inspection. The Tenants reserve all defenses to any such claims by the Landlords.

1. *Holdover Tenancy.* If either or both of the Tenants fail to vacate the Leased Premises (or any portion thereof) by the Lease Termination Date, the applicable Tenant shall be deemed to be occupying the Leased Premises on an “at-sufferance” basis, Monthly Base Rent shall thereafter be charged at the rate(s) applicable to holdover tenants as set forth in the Leases as if rates were never modified by this Stipulation, and all such rent obligations shall be deemed to be Modified Lease Rent (as defined herein) and Landlords shall be free to exercise any of the remedies provided for in the Leases. The Landlords reserve all rights against any customers who fail to vacate the Leased Premises prior to the Lease Termination Date.

- m. *Prepetition Rent.* The Landlords shall apply the \$1.8 million payment made by the Debtors on or about April 8, 2022 as follows, in each case, on a pro rata basis among the Houston Lease, the Markham Lease, the Carlstadt Lease and the Piscataway Leases (collectively, the “Digital Leases”):² (i) *first*, to any unpaid obligations of the Debtors for the period of March 1, 2022 through and including March 31, 2022 arising under the Digital Leases; (ii) *second*, to any unpaid obligations of the Debtors for the period of April 1, 2022 through and including April 10, 2022 arising under the Digital Leases; and (iii) *third*, to any unpaid obligations of the Debtors for the period of April 11, 2022 through and including April 30, 2022 arising under the Digital Leases; *provided* that, notwithstanding the foregoing, if the Carlstadt Lease is assumed and assigned to a third party, and such third party pays all cure costs associated with the Carlstadt Lease, then the \$1.8 million shall be applied on a pro rata basis among only the Houston Lease, the Markham Lease and the Piscataway Leases and otherwise applied in the same manner as set forth in clauses (i) through (iii) of this paragraph. Digital shall file amended proofs of claim in the chapter 11 cases reflecting the foregoing application of payments.

3. Upon the occurrence of the Approval Effective Date, the Modified Lease Rent shall constitute allowed administrative expense claims under sections 503(b) and 507 of the Bankruptcy Code, and shall be payable as provided herein without further order of the Bankruptcy Court without the need for filing any proof of claim and shall not be subject to set-off, recharacterization, avoidance or disallowance. If, following notice and hearing before the Bankruptcy Court, the Tenant is found by the Bankruptcy Court to have materially defaulted in its obligations under the Leases as modified by this Stipulation, then the Landlords shall be entitled to payment, as an allowed administrative expense claim under sections 503(b) and 507 of the Bankruptcy Code, of an amount equal to, but not to exceed, the sum of all unpaid Modified Lease Rent through the Rejection Effective Date plus any Modified Lease Rent accruing during any holdover period as

² The “Carlstadt Lease” means that certain lease between Digital Commerce Boulevard, LLC and Sungard AS for the premises at 410 Commerce Boulevard, Carlstadt, New Jersey 07072. The “Piscataway Leases” means (i) that certain contract dated September 24, 2014 between Digital Piscataway, LLC and Sungard AS for space and services at 365 S. Randolphville Road, Piscataway, New Jersey; and (ii) that certain contract dated January 6, 2022 between Digital Piscataway, LLC and Sungard AS for space and services at 3 Corporate Place, Piscataway, New Jersey.

described in Section 2(1) above; *provided* that the Landlords shall provide reasonable documentation supporting any unpaid Additional Rent through the Rejection Effective Date under the Leases. For the avoidance of doubt, nothing herein waives the Debtors' right to contest the amount (but not the priority to the extent it is consistent with this Stipulation) of any claims attributable to Additional Rent only. The Debtors waive their right to challenge the amount of any claims attributable to non-payment of the Base Rent amounts due hereunder.

4. If the Approval Effective Date does not occur by the Approval Deadline, the Tenants shall, within five (5) business days from the Approval Deadline, remit funds necessary to pay the full Base Rent obligations owing under the Leases as if the rates were never modified by this Stipulation.

5. In consideration of the Landlords entering into this Stipulation and the Transactions contemplated thereby, the Debtors and their bankruptcy estates, on behalf of themselves, their estates, and their successors and assigns, hereby waive and release any and all claims that may be brought against the Landlords, Digital Commerce Boulevard LLC and Digital Piscataway LLC (and, solely to the extent applicable, any other affiliated entity of the foregoing that may have received a payment in connection with the Digital Leases prior to the Petition Date) by or on behalf of the Debtors or their bankruptcy estates or other authorized parties in interest arising under chapter 5 of the Bankruptcy Code (including without limitation, those claims arising under 11 U.S.C. §§ 547, 548, 549, and 550).

6. The Debtors are authorized to take any and all actions that may be necessary or appropriate to implement the terms of this Stipulation (and consummate the Transactions), and perform all obligations contemplated hereunder, including, without limitation, to negotiate, execute, deliver and enter into such other documents, agreements, instruments and papers as shall

be necessary and appropriate to reflect the Transactions contemplated hereunder consistent with the terms hereof and thereof (collectively, the “Transaction Documentation”). The Parties shall cooperate in good faith and use commercially reasonable efforts to obtain approval of the Approval Motion by the Bankruptcy Court prior to the Approval Deadline and resolve any objections to the Approval Motion.

7. The Debtors are authorized to further modify, amend, extend or supplement the Transactions and the Transaction Documentation (each, an “Amendment”) in writing signed by the Landlords and Tenants and, solely to the extent that any such Amendment affects the Surety, the Surety, and in accordance with the terms thereof without further approval by the Bankruptcy Court.

8. The automatic stay under Bankruptcy Code section 362(a) is modified, to the extent applicable, to permit the Parties to consummate the Transactions contemplated herein and take any other actions with respect thereto.

9. Nothing herein affects any other relationship arising under contract or at law between the Parties except to the extent specifically provided herein. Any rights and remedies of the Parties (including, without limitation, under any contract, applicable law or otherwise) with respect to all matters not addressed herein (or in such related agreements that are subsequently entered into as part of the Transaction Documentation, as applicable) are expressly preserved.

10. Nothing in this Stipulation shall in any way be construed as or deemed to be evidence of or reflect admission on behalf of any of the Parties regarding any claim or right such Party may have against any other Party unless such claim or right is specifically addressed in this Stipulation. Except as expressly provided for in this Stipulation, nothing contained herein or any actions taken pursuant to such relief requested is intended or shall be construed as: (a) an admission

as to the amount of, basis for or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors', or any other party in interest's, right to dispute any claim on any grounds; (c) a promise or requirement to pay any claim; (d) an implication or admission that any particular claim is of a type specified or defined in this Stipulation or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt or reject any agreement, contract or lease pursuant to Bankruptcy Code section 365; or (f) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law.

11. Nothing in this Stipulation shall prejudice the rights of the Landlords or Tenants to, among other things, assert a claim for past-due amounts (other than as explicitly stated herein). Upon the Approval Effective Date, the Landlords and Tenants waive and release any and all claims (except as provided herein) that it may have against the Landlords or the Tenants, as applicable. Nothing in this Stipulation shall negatively impact the Surety's rights, claims and interests in the orders approving sales in these chapter 11 cases.

12. This Stipulation constitutes the entire agreement between the Parties with respect to the subject matter of it and supersedes all prior agreements and undertakings between the Parties relating to the subject matter hereof. There are no other covenants, promises, agreements, conditions or understandings, whether oral or written, express or implied, between the Parties, except for this Stipulation with respect to its subject matter. The terms of this Stipulation are contractual and not merely recitals.

13. The Parties acknowledge that: (a) they have carefully read and fully understand the terms of this Stipulation; and (b) this Stipulation shall be construed in all respects as jointly drafted,

and shall not be construed in any way against any other Party hereto on the grounds that the Party was the drafter of this Stipulation.

14. Each of the Parties represents and warrants it is duly authorized to enter into and be bound by this Stipulation, has obtained all requisite consents and has had full opportunity to consult with legal counsel regarding the terms hereof.

15. This Stipulation shall be binding on and inure to the benefit of each Party hereto and each of their respective successors and assigns, if any, including without limitation any and all of the Reorganized Debtors (as such term is defined in the Debtors' plan [Docket No. 627]), and shall also be binding upon each of the Debtors, any committee or trustee appointed in these chapter 11 cases (or any subsequent chapter 7 case in the event of conversion) and all creditors or other parties in interest in these chapter 11 cases. Nothing in this Stipulation is intended to confer upon any other person, whether or not named herein, any rights or remedies whatsoever under or by reason of this Stipulation.

16. For the avoidance of doubt, nothing herein shall constitute an assumption of any contract or agreement between the Parties or be construed so as to give the Debtors the right to assume or assign executory contracts or unexpired leases pursuant to Bankruptcy Code section 365 without further order of the Bankruptcy Court.

17. This Stipulation may be executed in multiple counterparts, by facsimile, electronic submission or otherwise, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same document.

18. This Stipulation shall be effective immediately upon entry of an order of the Bankruptcy Court approving this Stipulation, except, however, paragraphs 2(g) and 2(j) and the

last sentence of paragraph 11 shall be effective and binding upon the Parties regardless of whether or not the Bankruptcy Court enters an order approving this Stipulation.

19. The Bankruptcy Court shall retain exclusive jurisdiction with respect to any matters, claims, rights or disputes arising from or related to this Stipulation, or any other actions to interpret, implement and enforce the terms and provisions of this Stipulation, including following the effective date of any chapter 11 plan.

Dated: September 23, 2022
Houston, Texas

/s/Matthew D. Cavanaugh

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)
Jennifer F. Wertz (TX Bar No. 24072822)
Rebecca Blake Chaikin (admitted *pro hac vice*)
1401 McKinney Street, Suite 1900
Houston, Texas 77010
Telephone: (713) 752-4200
Facsimile: (713) 752-4221
Email: mcavanaugh@jw.com
jwertz@jw.com
rchaikin@jw.com

*Co-Counsel to the Debtors and
Debtors in Possession*

AKIN GUMP STRAUSS HAUER & FELD LLP

Philip C. Dublin (admitted *pro hac vice*)
Meredith A. Lahaie (admitted *pro hac vice*)
One Bryant Park
New York, New York 10036
Telephone: (212) 872-1000
Facsimile: (212) 872-1002
Email: pdublin@akingump.com
mlahaie@akingump.com

-and-

AKIN GUMP STRAUSS HAUER & FELD LLP

Marty L. Brimmage, Jr. (TX Bar No. 00793386)
Lacy M. Lawrence (TX Bar No. 24055913)
Zach D. Lanier (admitted *pro hac vice*)
2300 N. Field Street, Suite 1800
Dallas, Texas 75201
Telephone: (214) 969-2800
Facsimile: (214) 969-4343
Email: mbrimmage@akingump.com
llawrence@akingump.com
zlanier@akingump.com

Co-Counsel to the Debtors and Debtors in Possession

/s/ Bryan T. Glover

Bryan T. Glover, WA Bar No. 51045
(Admitted Pro Hac Vice)
Stoel Rives LLP
600 University Street, Suite 3600
Seattle, WA 98101
Telephone: 206.386.7555
Facsimile: 206.386.7500
Email: bryan.glover@stoel.com

*Attorneys for Digital Greenspoint, L.P., and Digital
Toronto Nominee, Inc.*

/s/ Gary D. Bressler

**McELROY, DEUTSCH, MULVANEY &
CARPENTER, LLP**

Gary D. Bressler, Esq. (No. 5544)
300 Delaware Avenue, Suite 1014
Wilmington, DE 19801
Telephone: 302-300-4515
Facsimile: 302-645-4031
E-mail: gbressler@mdmc-law.com

-and-

Michael R. Morano, Esq. (*pro hac vice*)
1300 Mount Kemble Avenue
P.O. Box 2075
Morristown, New Jersey 07962
Telephone: 973-993-8100
Facsimile: 973-425-0161
E-mail: mmorano@mdmc-law.com

*Counsel to Westchester Fire Insurance Company,
Federal Insurance Company, and their affiliated
sureties*

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

AND IN THE MATTER OF SUNGARD AVAILABILITY SERVICES (CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE DES AFFAIRES (CANADA) LTEE

APPLICATION OF SUNGARD AVAILABILITY SERVICES (CANADA) LTD./SUNGARD, SERVICES DE CONTINUITE DES AFFAIRES (CANADA) LTEE UNDER SECTION 46 OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED

**ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)**

PROCEEDING COMMENCED AT
TORONTO

AFFIDAVIT

CASSELS BROCK & BLACKWELL LLP

Scotia Plaza, Suite 2100
40 King Street West
Toronto, Ontario M5H 3C2

Ryan Jacobs LSO#: 59510J

Tel: 416.860.6465
rjacobs@cassels.com

Jane Dietrich LSO#: 49302U

Tel: 416.860.5223
jdietrich@cassels.com

Natalie E. Levine LSO#: 64908K

Tel: 416.860.6568
nlevine@cassels.com

Lawyers for the Foreign Representative