

**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

FIRST REPORT OF THE INFORMATION OFFICER

ALVAREZ & MARSAL CANADA INC.

MAY 10, 2022

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1.0 INTRODUCTION

- 1.1 On April 11, 2022 (the “**Filing Date**”), Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite des Affaires (Canada) Ltee (“**Sungard AS Canada**” or the “**Foreign Representative**”), and 11 affiliated companies (each a “**Debtor**” and collectively, the “**Debtors**”,¹ and together with their direct and indirect non-Debtor affiliates, the “**Company**”), commenced voluntary reorganization proceedings (the “**Chapter 11 Proceedings**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”).
- 1.2 Also on April 11, 2022, Sungard AS Canada brought an application before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) and obtained certain interim relief pursuant to the *Companies’ Creditors Arrangement Act* (the “**CCAA**”, and these proceedings the “**CCAA Recognition Proceedings**”, and together with the Chapter 11 Proceedings, the “**Restructuring Proceedings**”).²
- 1.3 On April 12, 2022, the U.S. Court granted various orders in the Chapter 11 Proceedings (the “**First Day Orders**”), including an order authorizing Sungard AS Canada to act as

¹ “**Debtors**” means the following entities that are “debtors” in the Chapter 11 Proceedings: InFlow LLC; Sungard AS New Holdings, LLC; Sungard AS New Holdings II, LLC; Sungard AS New Holdings III, LLC; Sungard Availability Network Solutions Inc.; Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite des Affaires (Canada) Ltee; Sungard Availability Services Holdings (Canada), Inc.; Sungard Availability Services Holdings (Europe), Inc.; Sungard Availability Services Holdings, LLC; Sungard Availability Services Technology, LLC; Sungard Availability Services, LP; and Sungard Availability Services, Ltd.

² As part of the initial application, Sungard AS Canada sought and obtained an interim order (the “**Interim Order**”), among other things, staying proceedings (the “**Interim Stay**”) against Sungard AS Canada as well as Sungard AS New Holdings III, LLC and Sungard Availability Services LP which have guaranteed certain lease obligations of Sungard AS Canada but have no assets in Canada, other than certain registered intellectual property rights.

foreign representative in the Chapter 11 Proceedings (the “**U.S. Foreign Representative Order**”).

1.4 On April 14, 2022, this Court made two orders (the “**Initial Recognition Order**” and the “**Supplemental Order**”) that, among other things: (a) recognized the Chapter 11 Proceedings as a “foreign main proceeding” under the CCAA; (b) recognized Sungard AS Canada as the “foreign representative” of the Debtors; (c) stayed all proceedings against Sungard AS Canada and the Guarantor Debtors (as defined in the Supplemental Order); (d) appointed Alvarez & Marsal Canada Inc. (“**A&M Canada**”) as the information officer (the “**Information Officer**”) in respect of the CCAA Recognition Proceedings; (e) recognized and gave effect in Canada to certain of the First Day Orders; and (f) granted the Administration Charge and the DIP Agents’ Charges (each as defined in the Supplemental Order).

1.5 A&M Canada, in its capacity as Proposed Information Officer, filed with this Court a report dated April 13, 2022 (the “**Pre-Filing Report**”) to provide this Court with, among other things, background information with respect to the Debtors and the Chapter 11 Proceedings. A copy of the Pre-Filing Report, without appendices, is attached hereto as **Appendix “A”** and is available on the Information Officer’s case website at: www.alvarezandmarsal.com/SungardASCanada (the “**Case Website**”).³

³ Copies of documents filed in the Chapter 11 Proceedings can be found on the case website maintained by Kroll at: <https://cases.ra.kroll.com/sungardAS/>

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this First Report, the Information Officer has relied solely on information and documents provided by the Foreign Representative, its Canadian legal counsel, the other Debtors, and their U.S.-based restructuring advisor, FTI Consulting, Inc. (“**FTI**”) (collectively, the “**Information**”).

2.2 The Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* (the “**Handbook**”), and accordingly, the Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information.

2.3 This First Report should be read in conjunction with the Affidavit of Michael K. Robinson, sworn on May 2, 2022 (the “**Second Robinson Affidavit**”). Capitalized terms that are used in the First Report but not otherwise defined herein have the meanings ascribed to them in the Second Robinson Affidavit.

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in USD.

3.0 PURPOSE OF THIS REPORT

3.1 The purpose of this First Report is to provide this Court with information regarding the following:

- (a) the orders that the Foreign Representative is seeking to have recognized and given effect in Canada by this Court pursuant to the CCAA, for which a hearing has been scheduled on May 13, 2022, comprised of the Final DIP Order, Final Cash Management Order, Bidding Procedures Order, Bar Date Order and De Minimis Asset Sales Order, in each case if granted by the U.S. Court;
- (b) information regarding the Lease Rejection Motion and the proposed Lease Rejection Order (each as defined and described below). The Lease Rejection Motion is scheduled to be heard by the U.S. Court on May 31, 2022, and accordingly, the Foreign Representative is not yet seeking recognition of the Lease Rejection Order by this Court; and
- (c) a summary of the activities of the Information Officer since the date of its appointment.

4.0 ORDERS FOR WHICH RECOGNITION IS BEING SOUGHT

- 4.1 A hearing has been scheduled before the U.S. Court on May 11, 2022, at which the Debtors intend to seek certain of the orders described in this First Report other than the De Minimis Asset Sales Order, which is expected to be entered without a hearing if the objections and informal comments described below are resolved.⁴ If such orders are granted by the U.S. Court, the Foreign Representative will seek recognition of the orders by this Court, and a hearing before this Court has been scheduled on May 13, 2022 for this purpose. To the extent any orders are not yet entered by the U.S. Court as of the May 13, 2022 hearing, the

⁴ If no resolution is reached, a hearing will be set on a date to be determined by the U.S. Court.

Information Officer understands the Foreign Representative intends to seek direction from this Court with respect to whether a further hearing will be required.

4.2 Each of the proposed orders for which recognition of this Court is being sought is defined and further described in the Second Robinson Affidavit and copies are attached as schedules thereto, with the exception of the proposed Final DIP Order. The Information Officer understands that the proposed Final DIP Order remains subject to discussion with the official committee of unsecured creditors appointed in the Chapter 11 Proceedings (the “**Committee**”) and will be provided to the Court in advance of the Foreign Representative’s motion. To the extent that there are any changes to the proposed orders, including as a result of ongoing stakeholder discussions, an update will be provided prior to the hearing by the Foreign Representative or the Information Officer.

4.3 The Bidding Procedures Order is described in Section 5.0, and the remainder of the orders are summarized as follows:

Final DIP Order

4.4 Relief regarding the DIP Facilities is being sought by the Debtors in two stages through: (a) the Interim DIP Order, which provided the Debtors with access to emergency funding, was granted by the U.S. Court on April 12, 2022 and recognized by this Court on April 14, 2022; and (b) the Final DIP Order, which if granted by the U.S. Court will approve additional funding to the Debtors and protections for the applicable lenders on a final basis, to be heard by the U.S. Court on May 11, 2022.

4.5 A summary of the DIP Facilities (comprised of the ABL DIP Facility and the Term Loan DIP Facility), including their impact on Sungard AS Canada, the Information Officer’s

assessment of their reasonableness and the basis on which the Information Officer recommended that this Court recognize the Interim DIP Order were provided in the Pre-Filing Report.

- 4.6 The Final DIP Order, if granted, will: (a) authorize the Debtors to roll-up the remaining pre-petition balance of the Revolving Credit Agreement and (b) approve the Term Loan DIP Roll-Up Obligations.
- 4.7 As described in the Pre-Filing Report, the ABL DIP Facility is a \$50.0 million senior secured revolving credit facility and the Term Loan DIP Facility is a \$285.0 million senior secured term loan facility, consisting of up to \$95.3 million of new money loans and a roll-up of up to \$190.6 million of obligations under prepetition term loans.
- 4.8 The Debtors, including Sungard AS Canada, continue to require access to the DIP Facilities, including the additional amounts to be advanced following entry of the Final DIP Order. The Final DIP Order, if granted, will approve the relief previously granted by the U.S. Court, on a final basis.
- 4.9 The Information Officer understands that the Maricopa County Treasurer and certain Texas taxing authorities have filed objections to the proposed Final DIP Order. Each of these objections addresses the priority of tax liens under the Final DIP Order. The Information Officer understands that the Debtors are working with the objecting parties on proposed language to ensure that the objecting parties' tax liens are not primed by the liens and charges granted in the Final DIP Order to the extent that such liens had priority over the pre-filing secured debt under the terms of the relevant Prepetition 1L Term Loan documents or the Prepetition ABL documents.

- 4.10 The Information Officer also understands that the Debtors extended the Committee's objection deadline with respect to the proposed Final DIP Order to May 10, 2022 at 10 a.m. Central Time.
- 4.11 The version of the Final DIP Order that the Information Officer has reviewed is substantially similar to the Interim DIP Order, with adjustments necessary to address the relief described herein.
- 4.12 The Information Officer recommends recognition of the Final DIP Order, if granted by the U.S. Court, for the reasons set out in Section 7.6 of the Pre-Filing Report.

Final Cash Management Order

- 4.13 The Final Cash Management Order approves the relief previously granted by the U.S. Court, on a final basis, which, among other things, authorizes the Debtors to continue to operate their cash management system, including maintaining existing bank accounts, and to continue to perform intercompany funding through the Cash Management System. The Information Officer understands that a revised form of order, incorporating comments from the Committee, is expected to be filed in advance of the May 11, 2022 hearing.

Bar Date Order

- 4.14 The Bar Date Order is described in the Second Robinson Affidavit and is attached thereto as Exhibit "C". The Bar Date Order sets out the categories of claimants holding a claim against any of the Debtors that must file a Proof of Claim, along with the applicable deadlines for each category, as set out below. Key dates and terms, if granted, include the following:

- (a) Proofs of Claim must be submitted on or before June 15, 2022 (the “**General Bar Date**”);
- (b) governmental agencies and authorities must file Proofs of Claim on or before October 10, 2022 (the “**Governmental Bar Date**”);
- (c) entities with claims arising from a lease or contract rejection must file a Proof of Claim on the later of: (i) the General Bar Date or the Governmental Bar Date, as applicable; and (ii) the date that is 30 days following entry of an order approving the rejection;
- (d) to ensure that Canadian domiciled creditors have notice of the Bar Date Order, notice of the Bar Date Order will be published in *The Globe & Mail (National Edition)*. Under the Bar Date Order the Debtors are required to send a notice of the Claims Bar Date to all known creditors, including creditors of Sungard AS Canada; and
- (e) the Information Officer will post notice of the General Bar Date and Governmental Bar Date, as well as the Bar Date Package materials, to its Case Website.

De Minimis Asset Sales Order

- 4.15 The De Minimis Asset Sales Order authorizes the Debtors to, among other things: (i) sell certain assets or collections of assets with an aggregate sale value equal to or less than \$1 million, free and clear of all liens, claims, interests and encumbrances, without need for further court approval; and (ii) pay the reasonable fees and expenses of agents, brokers, auctioneers and liquidators in connection with De Minimis Asset Sales.

- 4.16 The De Minimis Asset Sales Order establishes prescribed procedures that require the Debtors to provide advance notice to certain Sale Notice Parties which include the Debtors' key stakeholders. As it relates to assets located in Canada, counsel to the Information Officer is a Sale Notice Party and would be provided with the prescribed advance notice.
- 4.17 The Information Officer understands that the Maricopa County Treasurer has objected to the proposed De Minimis Asset Sales Order seeking additional notice with respect to any assets located in Maricopa County. The Information Officer also understands that the Committee has provided minor comments on the proposed order. Although not currently scheduled to be heard by the U.S. Court as part of the May 11, 2022 hearing, the Information Officer understands that the Debtors expect the U.S. Court may enter the De Minimis Asset Sales Order without a hearing on or around May 11, 2022, if the Debtors and the objecting parties are able to agree on a revised form of order.

5.0 BIDDING PROCEDURES ORDER

- 5.1 As described in the Pre-Filing Report, during the months leading up to the Filing Date, the Debtors engaged with an ad hoc group of secured term loan lenders (the “**Required Consenting Stakeholders**”), as well as other key stakeholders, with respect to the terms of a potential Chapter 11 restructuring. Those discussions ultimately culminated in a restructuring support agreement (the “**RSA**”) which forms the basis for the Restructuring Proceedings.
- 5.2 The terms of the RSA include a sale process (the “**Sale Process**”) that contemplates two potential restructuring scenarios: (a) the “Equitization Scenario”, which would be implemented via a credit bid transaction with the Required Consenting Stakeholders; or (b)

the “Sale Scenario” which would be one or multiple third-party transaction(s) resulting from the Sale Process.

- 5.3 The Sale Process is being conducted by two investment banks: Houlihan Lokey Capital, Inc. (“**Houlihan**”) and DH Capital, LLC.

Bidding Procedures

- 5.4 As part of the Sale Process, the Debtors have developed bidding procedures designed to maximize the value of the Debtors’ assets and business through a competitive sale process (the “**Bidding Procedures**”).
- 5.5 The Bidding Procedures Order, if granted by the U.S. Court, would, among other things: (a) approve the Bidding Procedures and the associated dates and deadlines; (b) schedule an auction and approve the form and manner of notice thereof; (c) approve the procedures regarding the assumption and assignment of executory contracts and leases; (d) schedule a sale hearing and approve the form and manner of notice thereof; and (e) approve that any sale of the Debtors’ assets would be free and clear of liens, claims, interests and encumbrances.
- 5.6 The Bidding Procedures Order is described in the Second Robinson Affidavit. The timeline and key processes contemplated by the Bidding Procedures are summarized as follows:

Bidding Procedures Order – Key Dates	
June 27, 2022	<ul style="list-style-type: none"> • Deadline for the Required Consenting Stakeholders to set the “Reserve Price” in connection with their credit bid <ul style="list-style-type: none"> ○ The Reserve Price means a purchase price to be determined by the Required Consenting Stakeholders in consultation with the Debtors (a) for each group of the Debtors’ assets and, alternatively, (b) for the assets comprising the Debtors’ business as a whole • Pursuant to the Bidding Procedures, the Consenting Stakeholders will not submit a bid in excess of the Reserve Price (the “Credit Bid Cap”) • The intention of this structure is to create a robust and competitive process to maximize the value of the Company’s business and assets
July 7, 2022 at 12:00 p.m. Central Time	<ul style="list-style-type: none"> • Final Bid Deadline
July 11, 2022 at 10:00 a.m. Eastern Time	<ul style="list-style-type: none"> • If required, the Auction would be held at the offices of Akin Gump Strauss Hauer & Feld LLP in New York, or at such other time and location as designated by the Debtors, in consultation with the Consultation Parties including via remote video or in person.
July 14, 2022	<ul style="list-style-type: none"> • Proposed hearing in the U.S. Court to approve the proposed Sale Transaction(s), subject to the availability of the U.S. Court

5.7 If entered by the U.S. Court, the Foreign Representative will seek recognition by this Court of the Bidding Procedures Order. The Information Officer considered the following in assessing the reasonableness of the Bidding Procedures Order:

- (a) in the Information Officer’s view, the Sale Process and the Bidding Procedures are commercially reasonable, consistent with procedures approved by this Court in other insolvency proceedings, and intended to maximize value through a competitive sale process while also mitigating against downside risk for stakeholders by providing certainty of the implementation of a going-concern transaction pursuant to the contemplated Equitization Scenario should the Sale Process not produce a superior result;

- (b) the Bid Deadline provides sufficient time to ensure potential bidders are able to perform diligence and prepare and submit Qualified Bids (as defined in the Bidding Procedures Order);
- (c) the Sale Process provides for the inclusion of all, substantially all or one or more subsets of assets of Sungard AS Canada to form part of the sale transaction(s); and
- (d) the Information Officer does not believe the creditors of Sungard Canada AS would be materially prejudiced by the Bidding Procedures.

5.8 Based on the foregoing, the Information Officer believes that the Bidding Procedures Order is fair and reasonable and recommends that this Court recognize the Bidding Procedures Order.

6.0 LEASE REJECTION MOTION

6.1 On May 6, 2022, the Debtors filed a motion (the “**Lease Rejection Motion**”) in the Chapter 11 Proceedings seeking an order (the “**Lease Rejection Order**”) authorizing the Debtors to reject certain unexpired leases of non-residential real property (the “**Rejected Leases**”) and granting related relief, including permitting the Debtors to abandon certain personal property located on the premises associated with the Rejected Leases. A copy of the Lease Rejection Motion, including the proposed order, is attached hereto as **Appendix “B”**.

6.2 A hearing has been scheduled for May 31, 2022 for the U.S. Court to hear the Lease Rejection Motion. The Information Officer understands that if the proposed order is granted by the U.S. Court, the Foreign Representative intends to seek recognition of the Lease Rejection Order by this Court.

- 6.3 The Debtors are seeking the rejection of three leases at this time, including one Canadian lease, each with a Rejection Effective Date of May 31, 2022. As described in the Lease Rejection Motion, the Rejected Leases have been determined by the Debtors, in consultation with their advisors, to be burdensome, to provide no economic value to the Debtors' estates and to be unnecessary to the Debtors' restructuring efforts. Certain details regarding the Rejected Leases are included in Schedule 1 attached to the Lease Rejection Order.
- 6.4 The single Canadian lease which the Debtors are seeking to reject at this time is in respect of the workplace recovery facilities located at 7405 Trans Canada Highway, Suite 200 Saint-Laurent, Province of Quebec and 3950 de la Cote-Vertu Boulevard, Suite 100 City of Montreal (the "**Canadian Rejected Lease**").
- 6.5 The Information Officer understands that the landlord for the Canadian Rejected Lease, QAB #1 Investments Limited, was provided with formal notice of the Lease Rejection Motion on May 6, 2022. Although the notice period provided to the landlord for the Canadian Rejected Lease was slightly less than the required notice that would be provided in a plenary CCAA proceeding, the Information Officer understands that there is no statutory notice period in Chapter 11 proceedings. In addition, the Canadian landlord is being treated in the same manner as the Debtors' U.S.-based landlords whose leases are being rejected. The Information Officer also understands that all landlords whose leases are being rejected by the Lease Rejection Order are also being treated identically with respect to the abandonment of personal property.

7.0 ACTIVITIES OF THE INFORMATION OFFICER

7.1 The activities of the Information Officer since being appointed have included:

- (a) establishing the Case Website (www.alvarezandmarsal.com/SungardASCanada) to make available copies of the orders granted in the CCAA Recognition Proceedings as well as other relevant motion materials, reports and information. In addition, there is a link on the Information Officer's website to the Debtors' restructuring website maintained by Kroll that includes copies of the U.S. Court materials and orders, petitions, notices and other materials;
- (b) coordinating publication of notice of the Chapter 11 Proceedings and CCAA Recognition Proceedings in *The Globe & Mail (National Edition)* newspaper, on April 20 and April 27, 2022;
- (c) monitoring the Kroll website for activity in the Chapter 11 Proceedings;
- (d) responding to stakeholder inquiries regarding the Restructuring Proceedings;
- (e) discussions with the Debtors' Canadian legal counsel and advisors, including FTI and Houlihan, regarding matters relevant to the Restructuring Proceedings and Sale Process;
- (f) reviewing and commenting on the Debtors' draft motions and orders in the Chapter 11 Proceedings; and
- (g) preparing this First Report and reviewing draft materials of the Foreign Representative in connection with the CCAA Recognition Proceedings.

8.0 RECOMMENDATIONS

- 8.1 The Information Officer understands that the orders for which recognition is being sought in Canada, comprised of the Final DIP Order, Final Cash Management Order, Bidding Procedures Order, Bar Date Order and De Minimis Asset Sales Order (in each case, if granted by the U.S. Court) are necessary to the Debtors' continued business operations and to advance the Restructuring Proceedings, and that absent these orders the Debtors' reorganization efforts would be impaired.
- 8.2 The Information Officer and its legal counsel have reviewed each of the orders and believe that the recognition of the orders is reasonable and appropriate in the circumstances. Based on the foregoing, the Information Officer respectfully recommends that this Court grant the relief requested by the Foreign Representative.
- 8.3 The Information Officer will provide its recommendation in respect of the Lease Rejection Order if and when the Foreign Representative seeks recognition of such order by this Court.

All of which is respectfully submitted to this Court this 10th day of May, 2022.

ALVAREZ & MARSAL CANADA INC.

**Information Officer of Sungard Availability Services (Canada) Ltd./Sungard, Services de
Continuite des Affaires (Canada) Ltee, and not in its personal or corporate capacity**

Per:


Alan J. Hutchens
Senior Vice-President

Per:


Josh Nevsky
Senior Vice-President

Appendix “A”

Pre-Filing Report of the Information Officer (without appendices)

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

IN THE MATTER OF THE *COMPANIES' CREDITORS
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36, AS AMENDED

**PRE-FILING REPORT
OF THE PROPOSED INFORMATION OFFICER**

ALVAREZ & MARSAL CANADA INC.

APRIL 13, 2022

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APPENDICES

Appendix “A” – Interim Order (Foreign Main Proceeding) granted on April 11, 2022

Appendix “B” – Declaration of Tom Hedus dated April 11, 2022

Appendix “C” – Declaration of Christopher Nicholls dated April 11, 2022

Appendix “D” – Consent to Act as Information Officer

1.0 INTRODUCTION

- 1.1 On April 11, 2022 (the “**Filing Date**”), Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite des Affaires (Canada) Ltee (“**Sungard AS Canada**”), and 11 affiliated companies (each a “**Debtor**” and collectively, the “**Debtors**”, and together with their direct and indirect non-Debtor affiliates, the “**Company**”)¹, commenced voluntary reorganization proceedings (the “**Chapter 11 Proceedings**”) pursuant to Chapter 11 of the U.S. Bankruptcy Code (the “**U.S. Bankruptcy Code**”) with the United States Bankruptcy Court for the Southern District of Texas (the “**U.S. Court**”).
- 1.2 On April 11, 2022, Sungard AS Canada, as the proposed foreign representative of itself and the other Debtors, brought an application (the “**Application**”) before the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) for certain relief pursuant to Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and these proceedings the “**CCAA Recognition Proceedings**”, and together with the Chapter 11 Proceedings, the “**Restructuring Proceedings**”).
- 1.3 The Application sought/seeks three orders and is proceeding in stages. On the initial return date of April 11, 2022, Sungard AS Canada sought and obtained an interim order (the “**Interim Order**”), among other things, staying proceedings (the “**Interim Stay**”) against Sungard AS Canada as well as Sungard AS New Holdings III, LLC and Sungard

¹ “**Debtors**” means the following entities that are “debtors” in the Chapter 11 Proceedings: InFlow LLC; Sungard AS New Holdings, LLC; Sungard AS New Holdings II, LLC; Sungard AS New Holdings III, LLC; Sungard Availability Network Solutions Inc.; Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite des Affaires (Canada) Ltee; Sungard Availability Services Holdings (Canada), Inc.; Sungard Availability Services Holdings (Europe), Inc.; Sungard Availability Services Holdings, LLC; Sungard Availability Services Technology, LLC; Sungard Availability Services, LP; and Sungard Availability Services, Ltd.

Availability Services LP (together, the “**Guarantor Debtors**”), which have guaranteed certain lease obligations of Sungard AS Canada but have no assets in Canada, other than certain registered intellectual property rights, pending the determination of the relief set out below. The Interim Stay was required as although Sungard AS Canada had filed a petition with the U.S. Court commencing its Chapter 11 Case (and had received an automatic stay of proceedings in the United States), first day orders had not yet been issued by the U.S. Court, including any order appointing a foreign representative in the proceedings, which is required to commence Part IV CCAA proceedings. Without the Interim Stay, Sungard AS Canada and the Guarantor Debtors would not have had the creditor protection in Canada that they had in the United States during the period between commencement of the Chapter 11 Proceedings and the issuance of the First Day Orders (defined below). A copy of the Interim Order is attached hereto as **Appendix “A”**.

- 1.4 On April 12, 2022, the U.S. Court granted various orders in the Chapter 11 Proceedings (the “**First Day Orders**”), including an order authorizing Sungard AS Canada to act as foreign representative in the Chapter 11 Proceedings (the “**U.S. Foreign Representative Order**”).
- 1.5 With the U.S. Foreign Representative Order having been issued by the U.S. Court, Sungard AS Canada is now in a position to proceed to seek the remaining two orders contemplated by the Application, being the Initial Recognition Order and the Supplemental Order as defined and described in paragraphs 1.6 (a) and (b) below.
- 1.6 The purpose of this pre-filing report (the “**Pre-Filing Report**”) is to provide this Court with background information with respect to the Debtors and the Chapter 11 Proceedings,

and to assist the Court in considering Sungard AS Canada's request for the following relief being sought:

- (a) an order, among other things: (i) finding that Sungard AS Canada is the foreign representative (in such capacity, the "**Foreign Representative**") of the Debtors; (ii) finding that the centre of main interest for Sungard AS Canada is the United States; and (iii) recognizing the case (the "**Chapter 11 Case**" and together with the cases commenced by the other Debtors, the "**Chapter 11 Cases**") commenced by Sungard AS Canada in the U.S. Court as a foreign main proceeding under Part IV of the CCAA (the "**Initial Recognition Order**"); and
- (b) an order, among other things: (i) recognizing certain of the First Day Orders of the U.S. Court entered in the Chapter 11 Cases (the "**U.S. Orders**"); (ii) appointing Alvarez & Marsal Canada Inc. ("**A&M Canada**") as information officer in respect of these proceedings (in such capacity, the "**Information Officer**"); and (iii) granting the Administration Charge (as defined below) and the DIP Agents' Charge (as defined below) (the "**Supplemental Order**").

1.7 Other than the Chapter 11 Proceedings and these CCAA Recognition Proceedings, the Proposed Information Officer is not aware of any other foreign proceedings in respect of the Debtors. However, on March 25, 2022, a non-Debtor affiliate of the Company commenced an administration proceeding in the United Kingdom.

2.0 TERMS OF REFERENCE AND DISCLAIMER

2.1 In preparing this Pre-Filing Report, A&M Canada has relied solely on information and documents provided by the Foreign Representative, its Canadian legal counsel, the other Debtors, and their U.S.-based restructuring advisor, FTI Consulting, Inc. (“**FTI**”) (collectively, the “**Information**”). Except as otherwise described in this Pre-Filing Report:

- (a) the Proposed Information Officer has reviewed the Information for reasonableness, internal consistency and use in the context in which it was provided. However, the Proposed Information Officer has not audited or otherwise attempted to verify the accuracy or completeness of the Information in a manner that would wholly or partially comply with Canadian Auditing Standards (“**CASs**”) pursuant to the *Chartered Professional Accountants Canada Handbook* (the “**Handbook**”), and accordingly, the Proposed Information Officer expresses no opinion or other form of assurance contemplated under CASs in respect of the Information; and
- (b) some of the information referred to in this Pre-Filing Report consists of forecasts and projections. An examination or review of the financial forecasts and projections, as outlined in the Handbook, has not been performed.

2.2 Future-oriented financial information referred to in this Pre-Filing Report was prepared based on estimates and assumptions made by the Debtors’ management. Readers are cautioned that since projections are based upon assumptions about future events and conditions that are not ascertainable, the actual results will vary from the projections, and the variations could be significant.

2.3 This Pre-Filing Report should be read in conjunction with the Affidavit of Michael K. Robinson, sworn on April 11, 2022 (the “**Robinson Affidavit**”), the Declaration of Michael K. Robinson dated April 11, 2022 and filed in the Chapter 11 Proceedings, a copy of which is attached as Exhibit “B” to the Robinson Affidavit (the “**First Day Declaration**”), the Declaration of Tom Hedus dated April 11, 2022 and filed in the Chapter 11 Proceedings, a copy of which is attached hereto as **Appendix “B”** (the “**Hedus Declaration**”), the Declaration of Christopher Nicholls dated April 11, 2022 and filed in the Chapter 11 Proceedings, a copy of which is attached hereto as **Appendix “C”** (the “**Nicholls Declaration**”) , and the affidavit of Stephanie Fernandes sworn April 12, 2022 (the “**Fernandes Affidavit**”).

2.4 Unless otherwise stated, all monetary amounts contained herein are expressed in USD.

3.0 BACKGROUND

Company Overview

3.1 The Company is headquartered in Wayne, Pennsylvania and is a provider of cloud-connected infrastructure services delivering business resilience to customers in the event of unplanned business disruption, ranging from man-made events to natural disasters. As explained in further detail in the Robinson Affidavit, the Company’s business is divided into four product segments: (i) Colocation & Network Services; (ii) Cloud & Managed Services; (iii) Recovery Services; and (iv) Workplace Recovery.

3.2 The Company operates 55 facilities (comprising 24 data centres and 31 work area recovery centres) servicing approximately 2,000 customers across the United States, Canada, the

United Kingdom and Europe in a variety of industries, including financial institutions, healthcare, manufacturing, logistics, transportation and others.

- 3.3 As of the Filing Date, the Debtors had approximately 585 employees in the United States and Canada.
- 3.4 During fiscal 2021, the Company generated consolidated revenue of approximately \$587 million and as of the Filing Date had approximately \$423.7 million in aggregate secured debt outstanding under its primary prepetition credit facilities.
- 3.5 Sungard AS Canada's operations consist of six leased facilities and approximately 35 employees. During fiscal 2021, Sungard AS Canada generated revenue of approximately \$33.2 million, representing approximately 6% of the Company's consolidated revenue.
- 3.6 For a detailed description of the Debtors' business, refer to the Robinson Affidavit and the First Day Declaration. A corporate organization chart showing the ownership structure of the Company is attached as Exhibit "E" to the Robinson Affidavit.

Secured Credit Facilities

- 3.7 As of the Filing Date, the Debtors had approximately \$423.7 million in aggregate secured debt outstanding under their primary credit facilities, comprised of the following:

Facility	Sungard AS Canada	Balance Outstanding (\$US in millions)
Revolving Credit Agreement	Borrower and Guarantor	\$29.0
Prepetition 1L Term Loan Credit Agreement	Guarantor	108.2
Prepetition Non-Extending 2L Credit Agreement	Not an Obligor	8.9
Prepetition New 2L Credit Agreement	Guarantor	277.6
Total		\$423.7

3.8 As noted in the table above, Sungard AS Canada is not an obligor under the Prepetition Non-Extending 2L Credit Agreement. Accordingly, Sungard AS Canada’s obligations under the credit facilities totaled approximately \$414.8 million as of the Filing Date.

3.9 Each of the credit facilities is described in detail in the Robinson Affidavit and the First Day Declaration. Key terms and components of the facilities include the following:

Sungard AS Prepetition Secured Credit Facilities	
Revolving Credit Agreement	
Borrowers	<ul style="list-style-type: none"> Sungard AS New Holdings III, LLC (“Sungard AS III”) and all Debtors other than Sungard AS Holdings II, LLC (“Holdings”) (collectively, the “Revolving Borrowers”) Sungard AS Canada is included as a Revolving Borrower
Lender	<ul style="list-style-type: none"> PNC Bank (“PNC” or the “Prepetition ABL Lender”) as lender and administrative agent (in such capacity, the “Prepetition ABL Agent”)
Balance Outstanding	<ul style="list-style-type: none"> \$29.0 million
Commitment	<ul style="list-style-type: none"> \$50 million revolving facility
Security & Guarantors	<ul style="list-style-type: none"> The obligors granted a security interest and continuing lien on all of their right, title and interest in substantially all of their assets The obligations under the Revolving Credit Facility are secured by (i) a first priority lien on the ABL Priority Collateral² (as defined in the Interim DIP Order), and (ii) a third priority lien on the Term Loan Priority Collateral³ (as defined in the Interim DIP Order) Sungard AS Canada delivered: (i) an Ontario law governed security agreement granting a security interest and lien in favour of the Prepetition ABL Agent over all of Sungard AS Canada’s present and future property except for certain commonly excluded assets; and (ii) a short form intellectual property security agreement granting a lien against Sungard AS Canada’s Canadian registered intellectual property, which security agreement was registered with the Canadian Intellectual Property Office (“CIPO”). In addition, Sungard AS Canada Parent pledged all of Sungard AS Canada’s Shares (collectively, the “Sungard AS Canada Shares”) The obligations under the Revolving Credit Facility are guaranteed by all Debtors other than Sungard AS Sungard AS Canada is a guarantor (in addition to being a borrower) pursuant to an Ontario law governed guarantee

² The ABL Priority Collateral includes certain accounts, rights to receive payments, intangibles, cash, inventory, and books and records.

³ The Term Loan Priority Collateral is collateral granted to the Prepetition ABL Agent or the agents for the prepetition term loans other than the ABL Priority Collateral

Prepetition 1L Term Loan Credit Agreement	
Borrowers	<ul style="list-style-type: none"> Sungard AS III
Lenders	<ul style="list-style-type: none"> A syndicate of lenders and Alter Domus Products Corp as the administrative agent (in such capacity, the “Prepetition 1L Agent”)
Balance Outstanding	<ul style="list-style-type: none"> \$108.2 million
Security & Guarantors	<ul style="list-style-type: none"> The obligations under the Prepetition 1L Term Loan Credit Agreement are secured by (i) a first priority lien on Term Loan Priority Collateral and (ii) a second priority lien on ABL Priority Collateral The obligations under the Prepetition 1L Term Loan Credit Agreement are guaranteed by all Debtors other than Sungard AS New Holdings, LLC (“Sungard AS”) Sungard AS Canada delivered (i) a security agreement in favour of the Prepetition 1L Agent granting a security interest and lien in favour of the Prepetition 1L Agent over all of Sungard AS Canada’s present and future property and assets except for certain commonly excluded assets; and (ii) a short form intellectual property security agreement in favour of the Prepetition 1L Agent granting a lien against its Canadian registered intellectual property, which security agreement was registered with CIPO. In addition, Sungard AS Canada Parent pledged the Sungard AS Canada Shares Sungard AS Canada is a guarantor pursuant to a New York law governed guarantee
Prepetition Non-Extending 2L Credit Agreement	
Borrowers	<ul style="list-style-type: none"> Sungard AS III Sungard AS Canada is neither a borrower nor a guarantor
Lenders	<ul style="list-style-type: none"> A syndicate of lenders that chose not to exchange their loans for new loans under the Prepetition New 2L Credit Agreement and Alter Domus Products Corp. as the administrative agent
Balance Outstanding	<ul style="list-style-type: none"> \$8.9 million
Security & Guarantors	<ul style="list-style-type: none"> The obligations under the Prepetition Non-Extending 2L Credit Agreement are secured by (i) a second priority lien on the Term Loan Priority Collateral and (ii) a third priority lien on the ABL Priority Collateral (in each case, other than the assets of, and equity in, Sungard AS Canada, Sungard Availability Services Holdings (Europe), Inc. and Sungard Availability Services, Ltd., and equity of Sungard Availability Services (France) SAS, Guardian iT, Sungard Availability Services Holdings (UK) Limited and Sungard AS UK) The obligations under the Prepetition Non-Extending 2L Credit Agreement are guaranteed by all Debtors other than (i) Sungard AS, (ii) Sungard Availability Services Holdings (Europe), Inc., (iii) Sungard Availability Services, Ltd. and (iv) Sungard AS Canada
Prepetition New 2L Credit Agreement	
Borrowers	<ul style="list-style-type: none"> Sungard AS III

Lender	<ul style="list-style-type: none"> • A syndicate of lenders and Alter Domus Products Corp. as the administrative agent (in such capacity, the “Prepetition 2L Agent”)
Balance Outstanding	<ul style="list-style-type: none"> • \$277.6 million
Security & Guarantors	<ul style="list-style-type: none"> • The obligations under the Prepetition New 2L Credit Agreement are secured by (i) a second priority lien on the Term Loan Priority Collateral and (ii) a third priority lien on the ABL Priority Collateral • The obligations under the Prepetition 2L Term Loan Credit Agreement are guaranteed by all Debtors other than Sungard AS • Sungard AS Canada delivered (i) a security agreement in favour of the Prepetition 2L Agent granting a security interest and lien in favour of the Prepetition 2L Agent over all of Sungard AS Canada’s present and future property and assets except for certain commonly excluded assets; and (ii) a short form intellectual property security agreement in favour of the Prepetition 2L Agent granting a lien against its Canadian registered intellectual property, which security agreement was registered with CIPO. In addition, Sungard AS Canada Parent pledged the Sungard AS Canada Shares • Sungard AS Canada is a guarantor pursuant to a New York law governed guarantee

3.10 The Proposed Information Officer understands that prior to the Petition Date, \$7.0 million of cash on hand was directed to Sungard Availability Services (UK) Limited to provide it with access to critical operational liquidity in order to ensure uninterrupted operations and preserve customer relationships in the United Kingdom and elsewhere. Notwithstanding this advance to the United Kingdom affiliate, the board of directors of the United Kingdom entity ultimately determined that administration proceedings in the United Kingdom were appropriate under the circumstances.

3.11 The Proposed Information Officer also understands that on March 24, 2022, the Debtors and the Prepetition ABL Agent entered into an amendment and waiver agreement pursuant to which, among other things, the Debtors agreed to restrict the use of \$13.5 million of Cash Collateral securing the Revolving Credit Agreement and the Prepetition ABL Agent agreed to waive the default arising from the administration proceedings in the United Kingdom.

- 3.12 As a result of, among other things, providing funding to the United Kingdom administration process, the Proposed Information Officer understands that the Debtors had inadequate cash on hand to prepare for the Chapter 11 Proceedings and to make certain critical payments to vendors, employees and professionals leading up to the commencement of the Chapter 11 Proceedings. Accordingly, the Debtors entered into the Prepetition Bridge Facility (as defined below) with certain of the Term Loan DIP Lenders (as defined below) on or about April 7, 2022 on the condition that the Debtors seek authorization from the U.S. Court at the “first-day motions” to use a portion of the Interim Term Loan DIP Amount (as defined below) to repay the Prepetition Bridge Facility in full. As described below, the Interim DIP Order entered by the U.S. Court authorized the Debtors to repay the Prepetition DIP Facility. Similarly, the Interim DIP Order authorized the Debtors to repay the ABL DIP Lenders \$13.5 million in respect of the Prepetition ABL Lenders’ cash collateral, which was a condition of the ABL DIP Facility (as defined below).
- 3.13 The Debtors, including Sungard AS Canada, are parties to various intercreditor agreements governing, among other things, the distributions of payments and the treatment of collateral between the lenders in connection with the above agreements.
- 3.14 In addition to the obligations described above, Sungard AS Canada, the Prepetition ABL Agent, the Prepetition 1L Agent, and the Prepetition 2L Agent entered into an amended and restated blocked account agreement with the Bank of Montreal in respect of the two bank accounts maintained in Canada by Sungard AS Canada.

3.15 The Proposed Information Officer requested that its legal counsel, Bennett Jones LLP, review the security granted by Sungard AS Canada to the Prepetition ABL Agent, the Prepetition 1L Agent and the Prepetition 2L Agent (collectively, the “**Agents**”). Bennett Jones LLP has completed its review and provided a verbal opinion to the Proposed Information Officer, which, subject to certain customary assumptions and qualifications, provides that: (a) the applicable security documents constitute legal, binding and enforceable obligations of Sungard AS Canada in favour of the Agents, as applicable; (b) each of the applicable security documents creates in favour of the applicable Agent a valid security interest in the personal property of Sungard AS Canada in the Province of Ontario under the laws of the Province of Ontario; and (c) each of the applicable security documents has been registered in all public offices provided for under Ontario and Alberta law where such registration is necessary to preserve, protect and perfect the security interests created by such security document in the applicable personal property.⁴ Written security opinions are expected to be delivered by Bennett Jones LLP in the near term.

Overview of Sungard AS Canada’s Business

3.16 Sungard AS is the ultimate parent of Sungard AS Canada, oversees the operations of the Canadian business and provides extensive direction and oversight from the United States, including from its headquarters in Wayne, Pennsylvania.

3.17 As noted above, Sungard AS Canada represents a comparatively small portion of the Company’s consolidated business (approximately 6% of consolidated revenue), with six

⁴ Bennett Jones LLP has only opined on matters of Ontario and Alberta law as it does not have offices in any other provinces where Sungard AS Canada has assets. The Proposed Information Officer is considering whether to engage local counsel for the purpose of completing a security review with respect to those jurisdictions.

leased facilities, four in Ontario and two in Quebec.⁵ Sungard AS Canada previously had operations in Alberta, but at this time, has only limited equipment remaining in Alberta and no operations.

3.18 As at December 31, 2021, Sungard AS Canada's total assets (excluding intercompany assets) had an unaudited book value of approximately \$32.0 million, representing approximately 5% of the Company's consolidated assets.

3.19 Sungard AS Canada employs approximately 35 full time employees in sales, technical operations, colocation services, recovery services, data centre operations and consulting and has one regional manager who oversees the Canadian operations.

3.20 Other than this local workforce, Sungard AS Canada is entirely reliant upon the Debtors' senior leadership team in the United States for all key management functions including decision making, accounting, finance, treasury, legal and other required back-office functions.

3.21 Pursuant to the Wages Order (defined below), the Debtors received authorization from the U.S. Court to pay certain prepetition employee amounts and expects to do so in the ordinary course, including amounts payable to employees located in Canada.

Cash Management System

3.22 As described in the Robinson Affidavit, Sungard AS Canada has two bank accounts maintained at Bank of Montreal, one denominated in Canadian dollars and the other in U.S. dollars (the "**Canadian Bank Accounts**"). The Canadian Bank Accounts are used in

⁵ See page 19 of the Robinson Affidavit for additional information regarding these leases.

connection with operating Sungard AS Canada's business, including for deposits of customer collections and funding payments to landlords, suppliers and employees.

3.23 The Canadian Bank Accounts are administered by the Debtors' treasury department in the United States and there are no Canadian-based signatories.

3.24 As described in the Robinson Affidavit, the Canadian Bank Accounts are subject to the security interests granted in connection with the Revolving Credit Agreement, the Prepetition 1L Term Loan Credit Agreement and the Prepetition New 2L Credit Agreement.

3.25 As at the Filing Date, the Canadian Bank Accounts held a total of approximately \$2 million.

Intercompany Transactions

3.26 A number of intercompany transactions occur between Sungard AS Canada and certain of the Debtors in the normal course of operations, including:

- (a) *Shared Services:* Sungard AS Canada relies on other entities in the Company for all of its administrative, tax, accounting, invoicing, IT, customer care, HR, legal and other functions and is party to the Intergroup Business Support Services Agreement dated January 1, 2018 (the "**Shared Services Agreement**"). Pursuant to the Shared Services Agreement, Sungard AS Canada is allocated its relative share of costs on a monthly basis as determined by a "cost plus" allocation method and makes a cash payment to a Debtor to settle its account on a monthly basis; and
- (b) *Intercompany Promissory Notes:* From time to time, Sungard AS Canada loans funds to other entities within the Company pursuant to certain interest-bearing

promissory notes. As of the Filing Date, there were four unsecured notes outstanding with a total amount owing to Sungard AS Canada of approximately \$30 million. The most recent note in the amount of approximately \$2.25 million was issued on April 1, 2022.

- 3.27 Pursuant to the Cash Management Order (defined below), the Debtors were granted the authority by the U.S. Court to continue the above arrangements and it is expected that normal course intercompany transactions will continue during the Restructuring Proceedings. The Proposed Information Officer understands that Sungard AS Canada will be making intercompany payments for postpetition intercompany charges in a manner consistent with prepetition payments, which are anticipated to be approximately \$1.2 million per month.

Unsecured Trade Creditors

- 3.28 Based on Sungard AS Canada's books and records, as at April 5, 2022, amounts payable to unsecured trade creditors are comprised of the following⁶:
- (a) approximately CAD\$470,000 payable to trade vendors;
 - (b) approximately CAD\$1.4 million owing to landlords, including unpaid April 2022 rents due April 1, 2022; and

⁶ The Proposed Information Officer's review of Sungard AS Canada's books and records remains ongoing and the Proposed Information Officer cautions that the amounts described above may change, and such change may be material.

(c) approximately CAD\$1.1 million for accrued utilities, taxes and other potential liabilities.

3.29 The Proposed Information Officer understands that: (a) amounts payable to this creditor group are intended to be stayed during the Restructuring Proceedings; and (b) because all Canadian rent obligations are due on the first of the month, rents for April 2022 represent pre-filing debts in accordance with U.S. bankruptcy laws and are not intended to be paid. The Proposed Information Officer understands that the landlords of the Sungard AS Canada leases are being treated the same as the landlords of the other Debtors in this respect. Certain of the landlords have retained insolvency counsel and have contacted counsel to the proposed Foreign Representative to discuss the foregoing. The Proposed Information Officer understands these discussions are ongoing.

4.0 CENTRE OF MAIN INTEREST

4.1 The Debtors, including Sungard AS Canada, are managed in the United States as an integrated group from a corporate, strategic and management perspective.

4.2 The Robinson Affidavit describes the Debtors' integrated business. Sungard AS Canada is dependent on certain of the Debtors located in the United States for key managerial, accounting, finance, IT and other critical functions typically performed by a corporate head office.

4.3 Sungard AS has asserted that the factors outlined in the Robinson Affidavit collectively rebut the presumption under the CCAA that Sungard AS Canada's centre of main interest is the location of its registered office, which in this case is a law firm that maintains certain

of Sungard AS Canada's corporate records. Furthermore, Sungard AS asserts that these factors indicate that the "mind and management", head office functions and senior management of the Debtors, including Sungard AS Canada, are located in the United States.

- 4.4 Based on the factors outlined in the Robinson Affidavit, the Proposed Information Officer concurs with Sungard AS's assertions that the Debtors' "centre of main interest" is in the United States – including with respect to Sungard AS Canada – and as such, it is appropriate to recognize the Chapter 11 Proceedings as a "foreign main proceeding" pursuant to the CCAA.

5.0 EVENTS LEADING TO THE RESTRUCTURING PROCEEDINGS

- 5.1 The Robinson Affidavit and the First Day Declaration describe the events leading up to the Restructuring Proceedings which are summarized below:

- (a) the Company previously undertook a chapter 11 restructuring in 2019 to implement a balance sheet restructuring transaction designed to reduce its overall leverage position. The 2019 restructuring did not however impact the Company's operations, nor did it address certain material lease obligations, which have continued to weigh heavily on the Company's financial performance and liquidity position;
- (b) these financial and operational difficulties have increased in recent years from a combination of the headwinds arising from the COVID-19 pandemic, increased competition in many of the markets the Company operates and an accelerating decline in the demand for certain legacy products and services;

- (c) to address ongoing liquidity challenges, the Company completed a number of sale-leaseback transactions of data centres in the U.S. and Canada. Notwithstanding these sales, ongoing financial pressures forced the Company to initiate a comprehensive review of its global operations and commence a comprehensive restructuring of its business;
- (d) for many of the reasons described above, as well as other unique difficulties including a significant spike in local energy costs, the Company's business in the United Kingdom required creditor protection and commenced administration proceedings under United Kingdom insolvency law on March 25, 2022;
- (e) during the weeks leading up to the Filing Date, the Company, with the assistance of its advisors, commenced discussions with an ad hoc group of term loan lenders (the "**Ad Hoc Group**") with respect to the terms of a potential chapter 11 restructuring. As part of these discussions and to support the business on an emergency basis, the Ad Hoc Group agreed to provide the Company with a prepetition bridge facility in the amount of \$7.0 million (the "**Prepetition Bridge Facility**"); and
- (f) the discussions with the Ad Hoc Group, as well as other stakeholders, ultimately culminated in a restructuring support agreement (the "**RSA**") which forms the basis for the Debtors' proposed comprehensive restructuring. The RSA provides the Company with the ability to explore a sale transaction of all, substantially all or one or more subsets of assets. This sale process will be underpinned by a "stalking horse" bid to be put forward by the Company's Term Loan DIP Lenders for

substantially all of the Debtor's assets (the "**Credit Bid**"). The Credit Bid will be subject to a reserve price (to be established during the sale process) with the intention of attracting one or more third-party bidders to submit qualified bids for the Debtors business and assets. A copy of the RSA is attached as Exhibit "C" to the Robinson Affidavit.

6.0 FIRST DAY ORDERS OF THE U.S. COURT

6.1 Sungard AS Canada is seeking recognition by this Court of certain of the First Day Orders that have been entered by the U.S. Court in the Chapter 11 Proceedings, as follows, each of which is defined and described in the Robinson Affidavit:

- (a) Foreign Representative Order (attached as Exhibit "A" to the Fernandes Affidavit);
- (b) Redaction Order (attached as Exhibit "I" to the Fernandes Affidavit);
- (c) Critical Vendors Order (attached as Exhibit "E" to the Fernandes Affidavit);
- (d) Insurance Order (attached as Exhibit "H" to the Fernandes Affidavit);
- (e) Utilities Order (attached as Exhibit "F" to the Fernandes Affidavit);
- (f) Employee Wages Order (attached as Exhibit "D" to the Fernandes Affidavit);
- (g) Taxes Order (attached as Exhibit "G" to the Fernandes Affidavit);
- (h) Equity Trading Order (attached as Exhibit "J" to the Fernandes Affidavit);
- (i) Interim Cash Management Order (attached as Exhibit "C" to the Fernandes Affidavit); and

(j) Interim DIP Order (attached as Exhibit “B” to the Fernandes Affidavit).

These First Day Orders are, for the most part, common in Chapter 11 proceedings. Copies of the First Day Orders and other documents related to the Chapter 11 Proceedings are available at the website maintained by Kroll: <https://cases.ra.kroll.com/sungardAS/>. The First Day Orders that are proposed to be recognized are summarized below.

(a) Foreign Representative Order

6.2 The Foreign Representative Order authorizes Sungard AS Canada to act as the Foreign Representative on behalf of itself and the other Debtors in any judicial proceeding in a foreign country, including in these CCAA Recognition Proceedings, and grants Sungard AS Canada, in its capacity as the Foreign Representative, the power to act in any way permitted by applicable foreign law. Pursuant to the Foreign Representative Order, the U.S. Court requests the aid and assistance of this Court to recognize the Chapter 11 Proceedings as a “foreign main proceeding” and Sungard AS Canada as a “foreign representative” under the CCAA.

(b) Redaction Order

6.3 The Redaction Order authorizes the Debtors to redact certain confidential and/or personal information of individuals from any filings with the U.S. Court. The Proposed Information Officer understands that orders of this type are typically granted in chapter 11 proceedings to preserve the privacy of individuals and prevent the potential abuse of personal information.

(c) Critical Vendors Order

- 6.4 The Critical Vendors Order, among other things, authorizes the Debtors to make payments of certain prepetition amounts to critical third-party vendors in an amount not to exceed \$4 million.

(d) Insurance Order

- 6.5 The Insurance Order, among other things, authorizes the Debtors to continue their prepetition insurance coverage, satisfy obligations related thereto, and amend, supplement and extend their insurance policies during the Chapter 11 Proceedings.

(e) Utilities Order

- 6.6 The Utilities Order approves the proposed form of adequate assurance of postpetition payment for certain utility providers, establishes procedures for resolving any objections by utility companies related to the proposed adequate assurance and prohibits the utility companies from terminating service solely on the basis of the commencement of the Chapter 11 Proceedings.

(f) Wages Order

- 6.7 The Wages Order, among other things, authorizes the Debtors to pay certain prepetition wages, salaries, other compensation, and reimbursable employee expenses and to continue the Company's employee benefits programs in the ordinary course. The Wages Order applies equally to Canadian and U.S. employees.

(g) Taxes Order

- 6.8 The Taxes Order, among other things, authorizes the Debtors to remit and pay all sales, use, excise, income, franchise, property, and other taxes and fees accrued prior to the Filing

Date and that will become payable during the Restructuring Proceedings. Canadian taxation authorities and United States taxation authorities are treated consistently.

(h) Equity Trading Order

- 6.9 The Equity Trading Order approves certain procedures and restrictions with respect to the transfer of equity interests in the Company, including common stock and warrants, and declaring the transfer of such equity interests in violation of the procedures void. The Proposed Information Officer understands this is primarily intended to preserve tax attributes of the Debtors by avoiding a change of control.

(i) Interim Cash Management Order

- 6.10 The Interim Cash Management Order, among other things, authorizes the Debtors to continue to operate their cash management system in the normal course, including maintaining existing bank accounts, and to continue to perform intercompany funding through the Cash Management System. As discussed in the Intercompany Transaction section above, Sungard AS Canada intends to continue to cash settle postpetition intercompany charges in the ordinary course.

(j) Interim DIP Order

- 6.11 The Interim DIP Order is described below.

7.0 DIP FACILITIES

- 7.1 As described in the Robinson Affidavit, the First Day Declaration, the Hedus Declaration and Nicholls Declaration, the Debtors, including Sungard AS Canada, require financing

during the Restructuring Proceedings to provide the necessary liquidity to maintain their business as a going concern, preserve value of their assets for all stakeholders, and fund the processes and transactions contemplated by the RSA.

7.2 Accordingly, as contemplated by the RSA, the Company secured access to debtor in possession financing facilities in the aggregate amount of \$335.9 million, comprised of:

- (a) a \$50.0 million senior secured revolving credit facility (the “**ABL DIP Facility**”, and together with the Term Loan DIP Facility, the “**DIP Facilities**”) provided by PNC Bank, National Association (“**PNC**”); and
- (b) a \$285.9 million senior secured multi-draw term loan facility (the “**Term Loan DIP Facility**”) consisting of (i) up to \$95.3 million of new money loans, and (ii) subject to the issuance of a Final DIP Order (as defined in the Robinson Affidavit), a roll-up of up to \$190.6 million of obligations under the Prepetition 1L Term Loan Credit Agreement and Prepetition New 2L Term Loan Credit Agreement provided by Certain Prepetition 1L Term Loan Lenders and Prepetition 2L Term Loan Lenders (collectively, the “**Term Loan DIP Lenders**”).

7.3 The Proposed Information Officer understands that the Debtors intend to seek relief relating to the DIP Facilities (as defined below) in two phases: first, the Interim DIP Order has been entered by the U.S. Court, and has approved certain emergency funding for the Debtors; and second, a final order (the “**Final DIP Order**”), which, if entered by the U.S. Court, will approve the additional funding and certain protections for the applicable lenders, as set out above. The hearing in respect of the Final DIP Order is currently scheduled to be heard on May 11, 2022. The Proposed Information Officer understands

that the Office of the United States Trustee raised certain objections to the Interim DIP Order. After hearing those objections, the U.S. Court granted the Interim DIP Order.

7.4 Key terms of the DIP Facilities include the following:

Term Loan DIP Facility		ABL DIP Facility
Borrowers	Sungard AS III, LLC (“ Borrower ”).	(a) Borrower and its direct and indirect subsidiaries other than Sungard AS Canada (the “ Canadian Borrower ”) that, as borrowers (the “ U.S. Borrowers ”), are parties to the Revolving Credit Agreement, and (b) the Canadian Borrower. The obligations of the Canadian Borrower and U.S. Borrowers are joint and several.
Guarantors	Holdings and all other of the Borrower’s subsidiaries and affiliates who are Debtors, including Sungard AS Canada.	
DIP Lenders	Those holders of obligations under the Prepetition 1L Term Loan Credit Agreement and Prepetition New 2L Credit Agreement parties to the RSA (the “ Initial Term Loan DIP Lender ”). Participation in the new-money portion of the Term Loan DIP Facility shall be offered, on a pro rata basis to all holders of obligations under the Prepetition 1L Term Loan Credit Agreement (all such holders electing to participate, collectively, the “ Term Loan DIP Lenders ”).	PNC (in such capacity, the “ ABL DIP Lender ”).
DIP Agents	Acquiom Agency Services LLC (the “ Term Loan DIP Agent ”).	PNC, as administrative agent and collateral agent (in such capacity, the “ ABL DIP Agent ”).

	Term Loan DIP Facility	ABL DIP Facility
DIP Facilities	<p>Tranche A: up to US\$41.15 million in new money loans available upon entry of the Interim DIP Order in the Chapter 11 Proceedings (the “Interim Term Loan DIP Amount”), and up to US\$54.15 million in new money loans available upon entry of the Final DIP Order in the Chapter 11 Proceedings (the “Final Term Loan DIP Amount”);</p> <p>Tranche B: Subject to the terms and entry of the Final DIP Order in the Chapter 11 Proceedings, a roll-up of certain obligations under the Prepetition 1L Term Loan Credit Agreement on a 2:1 ratio. This means that for every \$1 of new money advanced, the lender shall be entitled to roll up \$2 of obligations under the Prepetition 1L Term Loan Credit Agreement.</p> <p>Tranche C: Subject to the terms and entry of the Final DIP Order in the Chapter 11 Proceedings, a roll-up of certain obligations under the Prepetition New 2L Credit Agreement on terms similar to those under Tranche B.</p>	<p>A US\$50.0 million senior secured revolving credit facility pursuant to which:</p> <p>(a) upon entry of the Interim DIP Order, the first proceeds of the ABL Priority Collateral shall be deemed to reduce the Prepetition ABL Obligations (including letters of credit) and will be converted, on a dollar for dollar basis, into new postpetition loans or commitments. Additionally, the Debtors will reduce the outstanding Prepetition ABL Obligations by US\$13.5 million;</p> <p>(b) solely to the extent that any Prepetition ABL Obligations remain outstanding at the time the Final DIP Order is entered, such Prepetition ABL Obligations shall be automatically converted into postpetition loans or commitments.</p>
Maturity	120 calendar days after the Petition Date subject to no more than two extensions of thirty (30) days each, subject to the completion of certain conditions as described in the First Declaration.	The earlier of (i) the Stated Maturity Date, being the ‘Maturity Date’ as defined in the Term Loan DIP Facility; (ii) the date that is thirty (30) calendar days after the Petition Date, if the Final DIP Order has not been entered by the U.S. Court on or before such date; (iii) the effective date of any chapter 11 plan for the reorganization of any Debtor; (iv) the consummation of any sale or other disposition of all or substantially all of the assets of the Debtors; and (v) the date of the acceleration of the ABL DIP Loans and the termination of the ABL DIP Commitments.
Interest Rate	<p>Tranche A: L+9.50% payable monthly in cash; provided that, on any monthly interest payment date, the Borrower may elect to pay up to 8.50% of such interest in kind.</p> <p>Tranche B: L+7.50% payable monthly in cash; provided that, on any monthly interest payment date, the Borrower may elect to pay up to 6.50% of such interest in kind.</p> <p>Tranche C: L+6.75% payable monthly in cash; provided that, on any monthly interest payment date, the Borrower may elect to pay up to 5.75% of such interest in kind.</p>	All ABL DIP Loans and ABL DIP Obligations accrue interest at an interest rate per annum equal to the sum of three percent (3.00%) per annum plus the Alternate Base Rate, subject to the provisions of the Revolving Credit Agreement with respect to the Default Rate upon the postpetition occurrence and continuance of an Event of Default.
Budget	Subject to compliance with the approved DIP Budget	

Term Loan DIP Facility		ABL DIP Facility	
Chapter 11 Milestones	The Milestones stipulated in the RSA apply to the DIP Facilities		

7.5 The Interim DIP Order entered by the U.S. Court provides for the following priorities as between the Debtors' secured creditors in respect of the different classes of collateral provided as security by the Debtors in connection with the DIP:

	Term Loan Priority Collateral	ABL Priority Collateral	Canadian Collateral
Summary Collateral Description	Substantially all assets granted to the Prepetition ABL Agent or the agents for the prepetition term loans other than the ABL Priority Collateral	Substantially all assets, including certain accounts, rights to receive payments, intangibles, cash, inventory, and books and records	All assets and property of Sungard AS Canada located in Canada
Prepetition Priorities	1st. Prepetition ABL Agent's Prepetition Liens (as to ABL Priority Collateral) 2nd. Prepetition Term Loan Permitted Liens 3rd. Prepetition 1L Term Loan Liens 4th. Second Lien Term Loan	1st. Prepetition 1L Term Loan Liens (as to Term Loan Priority Collateral) 2nd. Prepetition 2L Term Loan Liens (as to Term Loan Priority Collateral) 3rd. Prepetition ABL Permitted Liens 4th. Prepetition ABL Liens	
Proposed Postpetition Priorities	1st. Carve-Out (US Professional Fees) 2nd. Prepetition Term Loan Permitted Liens 3rd. Term Loan DIP Liens 4th. Prepetition 1L Term Loan Adequate Protection Liens 5th. Prepetition 1L Term Loan Liens 6th. Prepetition 2L Term Loan Adequate Protection Liens 7th. Prepetition 2L Term Loan Liens 8th. ABL DIP Liens 9th. Prepetition ABL Adequate Protection Liens 10th. Prepetition ABL Liens	1st. Carve-Out (US Professional Fees) 2nd. Prepetition ABL Permitted Liens 3rd. ABL DIP Liens 4th. Prepetition ABL Adequate Protection Liens 5th. Prepetition ABL Liens 6th. Term Loan DIP Liens 7th. Prepetition 1L Term Loan Adequate Protection Liens 8th. Prepetition 1L Term Note Liens 9th. Prepetition 2L Term Loan Adequate Protection Liens 10th. Prepetition 2L Term Loan Liens	1st. Administration Charge 2nd. Carve-Out 3rd. ABL DIP Agent's Charge and Term DIP Agent's Charge

7.6 The Proposed Information Officer is of the view that each of the DIP Facilities and the proposed recognition of the Interim DIP Order is reasonable. The Proposed Information Officer considered the following to assess the reasonableness of the DIP Facilities:

- (a) Sungard AS Canada is a borrower or guarantor under the Revolving Credit Agreement, Prepetition 1L Term Loan Facility and Prepetition New 2L Credit Facility, and as such would be liable to the respective lender parties in the event of any enforcement of those facilities;
- (b) the DIP Facilities contemplated therein are required for the Debtors to implement the processes and transactions contemplated in and required by the RSA;
- (c) the amounts to be advanced by the DIP Facilities are as contemplated in a 13-week budget prepared by the Debtors' and their advisors and are in amounts sufficient to ensure the uninterrupted operation of the Debtors during the pendency of restructuring proceedings;
- (d) if the Debtors, including Sungard AS Canada, are unable to access additional liquidity, the operations of Sungard AS Canada would be discontinued in the near term as Sungard AS Canada does not have the corporate infrastructure required to operate on a standalone basis nor sufficient liquidity beyond the immediate short term;
- (e) given the nature of the Company's business, any service disruption or state of affairs that threatens a service disruption would be detrimental to the Company's reputation and could have a significant negative impact on enterprise value;

- (f) with respect to the ‘creeping roll-up’ provisions of the ABL DIP Facility approved pursuant to the Interim DIP Order, and relating to the repayment of certain emergency bridge facilities provided by PNC in the period immediately preceding the commencement of the Chapter 11 Proceedings, the Proposed Information Officer understands that this was required as a condition of the ABL DIP Facility by the ABL DIP Agent;
- (g) with respect to the roll-up provisions of the DIP Facilities, the Proposed Information Officer understands that these components are subject to approval pursuant to a Final DIP Order to be sought before the U.S. Court, where any affected parties will have an opportunity to raise concerns. In the event that the roll-up provisions are not approved or amended in the Final DIP Order, the DIP Facilities contain provisions to unwind the roll-up aspects of the ABL DIP Facility approved pursuant to the Interim DIP Order. The Proposed Information Officer understands that a hearing in respect of the Final DIP Order has been scheduled for May 11, 2022 before the U.S. Court; and
- (h) while the Proposed Information Officer is cognizant that such ‘roll-up’ provisions are not generally permitted under the CCAA, in the context of foreign recognition proceedings under Part IV of the CCAA, Canadian courts have recognized and approved DIP arrangements featuring ‘roll-up’ terms where doing so promotes the overall success of coordinated cross-border restructuring proceedings. As stated, the liquidity provided under the DIP Facilities is essential to ensure the uninterrupted operation of the Debtors during its restructuring.

7.7 Amounts outstanding under the DIP Facilities are proposed to be secured against the same assets of Sungard AS Canada that were secured by the secured prepetition facilities, by charges in favour of the ABL DIP Agent (the “**ABL DIP Agent’s Charge**”) and the Term Loan DIP Agent (the “**Term Loan DIP Agent’s Charge**”, and together with the ABL DIP Agent Charge the “**DIP Agents’ Charges**”), having the priorities set out in the above table. The Proposed Information Officer views the proposed DIP Agents’ Charges as reasonable in the circumstances, and consistent with typical practice in restructuring proceedings of this nature.

8.0 ADMINISTRATION CHARGE

8.1 In addition to the DIP Agents’ Charges, through the Supplemental Order the Debtors are seeking to establish the Administration Charge, in the maximum amount of CAD\$500,000, securing the professional fees of Canadian counsel to the Foreign Representative, the Information Officer and legal counsel to the Information Officer, Bennett Jones LLP.

8.2 The Administration Charge is a customary protection provided to professionals assisting with insolvency proceedings. The Proposed Information Officer has reviewed the quantum of the proposed Administration Charge in this case and believes it is reasonable and appropriate in the circumstances.

9.0 PROPOSED INITIAL ACTIVITIES OF THE INFORMATION OFFICER

9.1 The draft Supplemental Order proposes that following its appointment, the initial activities of the Information Officer will include:

- (a) establishing a website at www.alvarezandmarsal.com/SungardASCanada to make available copies of the Orders granted in the CCAA Recognition Proceedings as well as other relevant motion materials, reports and information;
- (b) coordinating publication of notice of the Chapter 11 Proceedings and CCAA Recognition Proceedings in *The Globe & Mail (National Edition)* newspaper, commencing within five business days from the date of the Initial Recognition Order, once a week for two consecutive weeks;
- (c) responding to creditor inquiries regarding the Restructuring Proceedings;
- (d) providing such assistance to the Foreign Representative in the performance of its duties as the Foreign Representative may reasonably request;
- (e) providing the Court with periodic reports on the status of the Restructuring Proceedings, which reports may include information relating to the property and the business of the Debtors or such other matters as may be relevant to these proceedings; and
- (f) engaging independent legal counsel in respect of the exercise of its powers and the performance of its obligations.

10.0 A&M CANADA'S QUALIFICATIONS TO ACT

10.1 A&M Canada was engaged by Sungard AS Canada effective March 29, 2022, for the purpose of preparing for the CCAA Recognition Proceedings. As such, the Proposed

Information Officer is familiar with the business and operations of Sungard AS Canada, and the key issues and stakeholders in the proposed CCAA Recognition Proceedings.

- 10.2 A&M Canada is a trustee within the meaning of subsection 2(1) of the *Bankruptcy and Insolvency Act* (Canada), has significant experience in connection with proceedings under the CCAA, including but not limited to acting as information officer in the CCAA recognition proceedings of Knotel Canada, Brooks Brothers Canada, Pier 1 Imports, Jack Cooper Ventures, Payless Shoes, Modular Space, LightSquared, Durabla Canada, TLC Vision and Chemtura Canada.
- 10.3 A&M Canada is related to Alvarez & Marsal Holdings, LLC. Alvarez & Marsal Holdings, LLC is an independent international professional services firm, providing, among other things, bankruptcy, insolvency and restructuring services. The senior A&M Canada professional personnel with carriage of this matter include experienced insolvency and restructuring practitioners who are Chartered Professional Accountants, Chartered Insolvency and Restructuring Professionals and Licensed Insolvency Trustees, and whom have acted in cross-border restructurings and CCAA matters of a similar nature in Canada.
- 10.4 The Proposed Information Officer has retained Bennett Jones LLP to act as its independent legal counsel.
- 10.5 A&M Canada has consented to act as Information Officer should this Court approve the requested Supplemental Order. A copy of the consent is attached hereto as **Appendix “D”**.

11.0 RECOMMENDATIONS

- 11.1 The Proposed Information Officer has reviewed, together with its legal counsel, the terms of the Initial Recognition Order and the Supplemental Order, and believes that the relief sought by Sungard AS Canada, as set out in the form of orders submitted to the Court for approval, is fair and reasonable in the circumstances, having regard to the current status of Sungard AS Canada and the other Debtors. The Proposed Information Officer believes that the terms of the Supplemental Order relating to its role as Information Officer are fair and reasonable, and consistent with the terms of appointments of information officers in other recognition proceedings under the CCAA.
- 11.2 Based on the foregoing, the Proposed Information Officer respectfully recommends that this Court grant the relief requested by Sungard AS Canada in the Initial Recognition Order and Supplemental Order.

All of which is respectfully submitted to the Court this 13th day of April, 2022.

ALVAREZ & MARSAL CANADA INC.

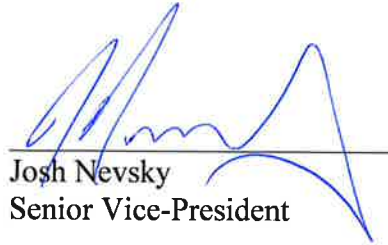
**Proposed Information Officer of Sungard Availability Services (Canada) Ltd./Sungard,
Services de Continuite des Affaires (Canada) Ltee, and not in its personal or corporate
capacity**

Per:



Alan J. Hutchens
Senior Vice-President

Per:



Josh Nevsky
Senior Vice-President

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED Court File No.: CV-22- 00679628-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT 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

**PRE-FILING REPORT OF THE PROPOSED
INFORMATION OFFICER**

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Jesse Mighton (LSO# 62291J)

Tel: (416) 777-6255

Email: mightonj@bennettjones.com

Thomas Gray (LSO# 82473H)

Tel: (416) 777-7924

Email: grayt@bennettjones.com

Counsel for Alvarez & Marsal Canada Inc., solely in
its capacity as the Proposed Information Officer and
not in its personal or corporate capacity

Appendix “B”

Lease Rejection Motion

**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)
)	

**DEBTORS' OMNIBUS MOTION
FOR ENTRY OF AN ORDER (I) AUTHORIZING AND
APPROVING THE REJECTION OF CERTAIN UNEXPIRED LEASES OF
NON-RESIDENTIAL REAL PROPERTY AND (II) GRANTING RELATED RELIEF**

If you object to the relief requested, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on May 31, 2022 at 2:00 p.m. (prevailing Central Time) in Courtroom 400, 4th Floor, 515 Rusk Street, Houston, TX 77002. Participation at the hearing will be permitted by audio and video connection or in-person.

Audio communication will be by use of the Court's dial-in facility. You may access the facility at 832-917-1510. Once connected, you will be asked to enter the conference room number. Judge Jones's conference room number is 205691. Video communication will be by use of the GoToMeeting platform. Connect via the free GoToMeeting application or click the link on Judge Jones's home page. The meeting code is "JudgeJones". Click the settings icon in the upper right corner and enter your name under the personal information setting.

Hearing appearances must be made electronically in advance of both electronic and in-person hearings. To make your appearance, click the "Electronic Appearance" link on Judge Jones's home page. Select the case name, complete the required fields and click "Submit" to complete your appearance.

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.

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) state the following in support of this motion (the “Motion”):²

Relief Requested

1. By the Motion, the Debtors seek entry of an order, substantially in the form attached hereto (the “Order”), (i) authorizing the Debtors to reject certain unexpired leases of non-residential real property listed on Schedule 1 to the Order (collectively, the “Rejected Leases”) effective to the dates specified on Schedule 1 to the Order and (ii) granting related relief, including permitting the Debtors to abandon certain personal property located on the premises associated with the Rejected Leases (the “Personal Property”).

Jurisdiction and Venue

2. The United States Bankruptcy Court for the Southern District of Texas (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. § 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b). The Debtors confirm their consent to the entry of a final order.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a) and 363 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and Rule 9013-1 of the Local Bankruptcy Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

² A description of the Debtors and their businesses, and the facts and circumstances supporting this Motion, are set forth in the *Declaration of Michael K. Robinson, Chief Executive Officer and President of the Debtors in Support of Chapter 11 Petitions and First Day Motions* [Docket No. 7] (the “First Day Declaration”). Capitalized terms used but not defined herein have the meaning ascribed to such terms in the First Day Declaration.

Background

5. On April 11, 2022 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to Bankruptcy Code sections 1107(a) and 1108. On the Petition Date, the Court entered an order [Docket No. 27] authorizing the procedural consolidation and joint administration of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). On April 25, 2022, an official committee of unsecured creditors (the “Committee”) was appointed by the United States Trustee (the “U.S. Trustee”) [Docket No. 137].

6. Also on April 11, 2022, Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuite des Affaires (Canada) Ltee (“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.

7. The Debtors and their non-Debtor affiliates (collectively, the “Company”) provide high availability, cloud-connected infrastructure services built to deliver business resilience to their customers in the event of an unplanned business disruption, ranging from man-made events to natural disasters. Headquartered in Wayne, Pennsylvania, the Debtors employ approximately 585 individuals in the United States and Canada. The Company operates 55 facilities (comprising 24 data centers and 31 work area recovery centers) and provides services to approximately 2,001 customers across the United States, the United Kingdom, Canada, Ireland, France, India, Belgium,

Luxembourg and Poland. The Company generated approximately \$587 million in revenue for fiscal year 2021 and, as of the Petition Date, the Debtors had approximately \$424 million in aggregate principal amount of prepetition funded debt obligations.

The Rejected Leases

8. As part of their global businesses, the Debtors are party to a number of non-residential real property leases pursuant to which the Debtors lease the facilities referenced above. The facilities are, among other things, used to support the Debtors' workplace recovery business and to house their key infrastructure. To preserve and maximize the value of their estates for the benefit of all creditors, the Debtors seek to reject the Rejected Leases effective as of the corresponding date for each Rejected Lease as listed on Schedule 1 to the proposed Order. The Debtors have determined in their reasonable business judgment that the Rejected Leases are not integral to the Debtors' chapter 11 efforts or are not otherwise beneficial to the Debtors' estates, while presenting burdensome liabilities. Further, the Debtors believe that continuing to operate under the Rejected Leases will encumber the Debtors' reorganization and sale efforts. The Debtors also seek to abandon, effective as of the corresponding date for each Rejected Lease as listed on Schedule 1 to the proposed Order, any personal property that remains as of such date on any of the premises of the Rejected Leases. In light of the Debtors' efforts to preserve and maximize the value of their estates, and to avoid incurring costs and expenses that are not integral to the Debtors' business operations and their chapter 11 efforts, the relief requested herein is necessary and appropriate.

Basis for Relief

I. Rejection of the Rejected Leases Constitutes a Sound Exercise of the Debtors' Reasonable Business Judgment.

9. Bankruptcy Code section 365(a) provides that a debtor in possession, “subject to the court’s approval, may . . . reject any executory contract or unexpired lease of the debtor.” 11 U.S.C. § 365(a). “This provision allows a trustee to relieve the bankruptcy estate of burdensome agreements which have not been completely performed.” *Stewart Title Guar. Co. v. Old Republic Nat’l Title Ins. Co.*, 83 F.3d 735, 741 (5th Cir. 1996) (citing *In re Murexco Petroleum, Inc.*, 15 F.3d 60, 62 (5th Cir. 1994)); *see also In re Orion Pictures Corp.*, 4 F.3d 1095, 1098 (2d Cir. 1993) (noting that the purpose of rejection of executory contracts is to permit the debtor-in-possession to renounce title to and abandon burdensome property).

10. A debtor’s rejection of an executory contract or unexpired lease is ordinarily governed by the “business judgment” standard. *See Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (“It is well established that ‘the question whether a lease should be rejected . . . is one of business judgment.’” (quoting *Grp. of Institutional Inv’rs v. Chicago, M., St. P. & P. R. Co.*, 318 U.S. 523, 550 (1943))); *see also In re Texas Sheet Metals, Inc.*, 90 B.R. 260, 264 (Bankr. S.D. Tex. 1988) (“The traditional business judgment standard governs the rejection of ordinary executory contracts.”).

11. Rejection of an executory contract or an unexpired lease is appropriate where such rejection would benefit the estate. *See In re Pisces Energy, LLC*, No. 09-36591-H5-11, 2009 WL 7227880, at *6 (Bankr. S.D. Tex. Dec. 21, 2009) (“Courts apply the ‘business judgment test,’ which requires a showing that the proposed course of action will be advantageous to the estate and the decision be based on sound business judgment.”); *see also Orion Pictures*, 4 F.3d at 1098–99

(stating that Bankruptcy Code section 365 permits a debtor in possession, subject to court approval, to decide which executory contracts would be beneficial to reject).

12. Upon finding that a debtor exercised its sound business judgment in determining that the rejection of certain contracts or leases is in the best interests of its creditors and all parties in interest, a court should approve the rejection under Bankruptcy Code section 365(a). *See In re Summit Land Co.*, 13 B.R. 310, 315 (Bankr. D. Utah 1981) (holding that, absent extraordinary circumstances, court approval of a debtor's decision to assume or reject an executory contract "should be granted as a matter of course").

13. Here, rejection of the Rejected Leases is well within the Debtors' business judgment and is in the best interest of their estates. Eliminating certain unnecessary costs is critical to the Debtors' efforts to preserve and maximize the value of their estates and reduce the potential administrative costs in these chapter 11 cases. The Rejected Leases are burdensome, provide no economic value to the Debtors' estates and are unnecessary to the Debtors' restructuring efforts. As such, any continued expense maintaining the Rejected Leases, or any attempt to market such agreements, would needlessly deplete assets of the Debtors' estates. In contrast, rejection of the Rejected Leases would result in a significant cost savings to the Debtors' estates on a go-forward basis, reducing the Company's annual rent by approximately \$1.8 million. Thus, rejection is appropriate under the circumstances and reflects the Debtors' sound business judgment.

II. Bankruptcy Code Section 554(a) Authorizes Abandonment of the Abandoned Property.

14. Bankruptcy Code section 554(a) provides that "[a]fter notice and hearing, the trustee may abandon any property of the estate that is burdensome to the estate or that is of inconsequential value and benefit to the estate." 11 U.S.C. § 554(a). Courts generally give deference to a debtor's decision to abandon property. *See In re Vel Rey Props., Inc.*, 174 B.R. 859,

867 (Bankr. D.D.C. 1994) (“Clearly, the court should give deference to the trustee’s judgment in such matters.”). Unless the abandonment of the subject property would be harmful to the public, once a debtor has shown that the retention of such property is burdensome or of inconsequential value to the estate, a court should approve the abandonment. *Id.*

15. The Debtors have determined that the cost of removing and storing the Personal Property for future sale exceeds its value. Furthermore, the Debtors have concluded that any further efforts to market the Personal Property in place would delay the Debtors’ exit of the subject properties and cause them to incur additional rent. Accordingly, authorizing the Debtors to abandon the Personal Property is in the best interests of the Debtors and their estates.

Reservation of Rights

16. 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 Motion or any order granting the relief requested by this Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors’ estates; (g) a waiver or limitation of the Debtors’, or any other party in interest’s, rights under the Bankruptcy Code or any other applicable law; or (f) a concession by the Debtors that any liens (contractual, common law, statutory or otherwise) that may be satisfied pursuant to the relief requested in this

Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity or perfection or to seek avoidance of all such liens.

Notice

17. The Debtors will provide notice of this Motion to: (a) the Office of the United States Trustee for the Southern District of Texas; (b) counsel for the Committee; (c) the entities listed as holding the 30 largest unsecured claims against the Debtors (on a consolidated basis); (d) counsel for PNC Bank, National Association, as the administrative agent under the Debtors' prepetition revolving credit facility and ABL DIP facility; (e) counsel for Alter Domus Products Corp., as the administrative agent under each of the Debtors' prepetition term loan facilities; (f) counsel for the ad hoc group of term loan lenders and the term loan DIP lenders; (g) counsel for Acquiom Agency Services LLC, as term loan DIP agent under the Debtors' term loan DIP facility; (h) the United States Attorney's Office for the Southern District of Texas; (i) counsel to the Information Officer; (j) the Internal Revenue Service; (k) the United States Securities and Exchange Commission; (l) the Environmental Protection Agency and all similar state environmental agencies for states in which the Debtors conduct business; (m) the state attorneys general in the states where the Debtors conduct their business operations; (n) counterparties to the Rejected Leases; and (o) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no further notice is necessary.

WHEREFORE, the Debtors request entry of an order, substantially in the form of the Order filed with this Motion, granting the relief requested herein and granting such other relief as the Court deems just, proper and equitable.

Dated: May 6, 2022
Houston, Texas

/s/ Rebecca Blake Chaikin

JACKSON WALKER LLP

Matthew D. Cavanaugh (TX Bar No. 24062656)
Jennifer F. Wertz (TX Bar No. 24072822)
Rebecca Blake Chaikin (S.D. Bar No. 3394311)
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

*Proposed 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*)
Matthew D. Friedrich (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
mfriedrick@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

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

Certificate of Accuracy

I certify that the foregoing statements are true and accurate to the best of my knowledge. This statement is being made pursuant to Bankruptcy Local Rule 9013-1(i).

/s/ Rebecca Blake Chaikin
Rebecca Blake Chaikin

Certificate of Service

I certify that on May 6, 2022, I caused a copy of the foregoing document to be served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas.

/s/ Rebecca Blake Chaikin
Rebecca Blake Chaikin

**UNITED STATES BANKRUPTCY COURT
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)
)	
)	Re: Docket No ____

**ORDER (I) AUTHORIZING AND APPROVING
THE REJECTION OF CERTAIN UNEXPIRED LEASES OF
NON-RESIDENTIAL REAL PROPERTY AND (II) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”) granting the Debtors authority to (i) reject certain unexpired leases of non-residential real property (the “Rejected Leases”) effective retroactive to the corresponding date on Schedule 1 attached to this Order, and (ii) abandon certain personal property (the “Personal Property”) located at the premises of the Rejected Leases, all as more fully set forth in the Motion; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and due, sufficient, and proper notice of the Motion having been provided under the circumstances and in accordance with the

¹ 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.

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

Bankruptcy Rules and the Bankruptcy Local Rules, and it appearing that no other or further notice need be 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 Rejected Leases listed on Schedule 1 attached hereto are rejected under Bankruptcy Code section 365 effective as of the date specified for each Rejected Lease as listed on Schedule 1.

2. The Debtors are authorized to abandon any Personal Property located at the premises identified on Schedule 1 hereto free and clear of all liens, claims, encumbrances, interests and rights of third parties. The applicable counterparty to each Rejected Lease may dispose of such Personal Property without further notice to any party claiming an interest in such abandoned Personal Property.

3. The counterparty to each Rejected Lease must file a proof of claim, if at all, on or before the later of (a) the deadline for filing proofs of claim established in these chapter 11 cases and (b) thirty (30) days after the entry of this Order, or else be forever barred.

4. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, priority of, basis for, or validity of any claim against a Debtor entity under the Bankruptcy Code or other applicable non-bankruptcy 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 the Motion or any order granting the relief requested by the Motion or any order granting the relief requested by the Motion 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, except for the rejection of the Rejected Leases; (f) an admission as to the validity, priority, enforceability, or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (h) a waiver of any claims that the Debtors may have against any counterparty to a Rejected Lease, whether or not claims arise under, are related to the rejection of, or are independent of the Rejected Leases.

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

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

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

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

Houston, Texas
Dated: _____, 2022

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Schedule 1

Rejected Leases

No.	Non-Debtor Counterparty	Counterparty Address	Debtor Counterparty	Facility Type	Location Address	Rejection Effective Date	Abandoned Personal Property
1	QAB #1 Investments Limited Ltd.	245 Victoria Ave, Suite 801 Westmount (Quebec) H3Z 2M6	Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuïté des Affaires (Canada) Ltee	Workplace Recovery	7405 Trans Canada Highway, Suite 200 Saint-Laurent, Province of Quebec -And- 3950 de la Cote-Vertu Boulevard, Suite 100 City of Montreal	May 31, 2022	Miscellaneous FF&E
2	Centre Pointe Limited Partnership	c/o North Pointe Realty, Inc. 5915 Landerbrook Drive, Suite 120 Mayfield Heights, OH 44124	Sungard Availability Services, LP	Workplace Recovery	155 Montrose W. Ave, Copley Township, Ohio 44321	May 31, 2022	Miscellaneous FF&E
3	Primera Towers (FL) Joint Venture LLC	c/o Parmenter, LLC 615 Crescent Executive Court, Suite 112 Lake Mary, FL 32746 Att: Property Manager	Sungard Availability Services, LP	Workplace Recovery	300 Primera Blvd. Lake Mary, FL 32746	May 31, 2022	Miscellaneous FF&E

IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED Court File No.:CV-22-00679628-00CL

**AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT 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

**FIRST REPORT OF THE
INFORMATION OFFICER**

BENNETT JONES LLP

One First Canadian Place
Suite 3400, P.O. Box 130
Toronto, Ontario
M5X 1A4

Sean Zweig (LSO# 57307I)

Tel: (416) 777-6254

Email: zweigs@bennettjones.com

Jesse Mighton (LSO# 62291J)

Tel: (416) 777-6255

Email: mightonj@bennettjones.com

Thomas Gray (LSO# 82473H)

Tel: (416) 777-7924

Email: grayt@bennettjones.com

Counsel for Alvarez & Marsal Canada Inc., solely in
its capacity as the Information Officer and not in its
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