

**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

MOTION RECORD

**(Recognition of Foreign Order)
(Returnable October 21, 2022)**

October 14, 2022

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SUPERIOR COURT OF JUSTICE
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(CANADA) LTEE UNDER SECTION 46 OF THE *COMPANIES'
CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS
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TAB 1

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

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

**NOTICE OF MOTION
(Recognition of Foreign Order)
(Returnable October 21, 2022)**

The applicant, Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuité des Affaires (Canada) Ltée ("**Sungard AS Canada**"), in its capacity as foreign representative (the "**Foreign Representative**") of itself, as well as the other Debtors (as defined below), will make a motion to a Judge presiding over the Commercial List on October 21, 2022, at 9:00 am, or as soon after as the motion can be heard.

PROPOSED METHOD OF HEARING: The motion is to be heard by Zoom videoconference.

THE MOTION IS FOR:

1. An order recognizing, enforcing, and giving full force and effect in all provinces and territories of Canada pursuant to section 49 of the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**"), the *Order (I) Approving Settlement Stipulation with Certain Landlords and Chubb Insurance Company of Canada and (II) Granting Related Relief* (the "**Settlement Stipulation Order**"), if granted by the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**") in the cases (the "**Chapter 11 Cases**") commenced by the Debtors under Chapter 11, title 11 of the United States Code (the "**Bankruptcy Code**").

2. An order abridging the time for service and filing of this Notice of Motion and the Motion Record and dispensing with service thereof on any interested party other than those served within these proceedings; and
3. Such further and other relief as this Honourable Court may deem just.

THE GROUNDS FOR THIS MOTION ARE:

Background

4. For over 40 years, Sungard AS Canada and 11 of its U.S.-based affiliates (collectively, the “**Debtors**”) and their non-Debtor affiliates (the “**Company**”) have established and maintained resilient and recoverable information technology environments for myriad businesses, including financial institutions, healthcare, manufacturing, logistics, transportation, and general services. In Canada, services are provided through Sungard AS Canada.
5. On April 11, 2022 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under the Bankruptcy Code in the U.S. Bankruptcy Court, and Sungard AS Canada commenced proceedings (the “**Canadian Proceedings**”) under Part IV of the CCAA.
6. On the same date, Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an interim stay of proceedings in respect of Sungard AS Canada as well as Sungard AS New Holdings III, LLC and Sungard Availability Services LP (“**Sungard AS**”), pending the hearing by this Court of the Foreign Representative’s initial application to, among other things, recognize Sungard AS Canada’s Chapter 11 Case as a foreign main proceeding.
7. On April 12, 2022, the U.S. Bankruptcy Court entered various orders in the Chapter 11 Cases, including an order authorizing Sungard AS Canada to act as the Foreign Representative of itself and the other Debtors in any proceedings in Canada.
8. On April 14, 2022, the Court granted an order, as requested by the Foreign Representative, (a) recognizing Sungard AS Canada as the Foreign Representative of itself and the other Debtors in respect of the Chapter 11 Cases; (b) recognizing the United States of America as the centre of main interests for Sungard AS Canada; and (c) recognizing Sungard AS Canada’s Chapter 11 Case as a “foreign main proceeding” (the “**Initial Recognition Order**”). On the same day, the Court granted a second order (the “**Supplemental Order**”), among other things, (a) recognizing certain orders entered by

the U.S. Bankruptcy Court in the Chapter 11 Cases; (b) granting two charges with respect to interim financing over the property of Sungard AS Canada in Canada and an administration charge; and (c) appointing Alvarez & Marsal Canada Inc. as the information officer (the “**Information Officer**”) in the Canadian Proceedings.

9. Since granting the Initial Recognition Order and Supplemental Order, the Court has granted orders recognizing and giving full force and effect in all provinces and territories of Canada to additional orders from the U.S. Bankruptcy Court, as requested by the Foreign Representative, including, among others:
 - (a) on May 16, 2022, recognizing an order setting bar dates for filing proofs of claim;
 - (b) on June 2, 2022, recognizing an order approving the rejection of certain unexpired real property leases as of May 31, 2022, including, among others, the lease in respect of the properties located at 7405 Trans Canada Highway, Saint-Laurent and 3950 Boulevard de la Côte-Vertu, City of Montreal;
 - (c) on August 3, 2022, recognizing an order approving the rejection of certain unexpired real property leases as of July 31, comprised of, among other things, the lease in respect of the property at 6535 Millcreek Drive, City of Mississauga;
 - (d) on August 12, 2022, recognizing an order approving Digital Toronto Nominee Inc.’s (the “**Markham Landlord**”) emergency motion for limited relief from the automatic stay (the “**Lift Stay Order**”); and
 - (e) on September 29, 2022, recognizing an order approving the rejection of certain unexpired real property leases as of September 30, 2022, comprised of, among other things, the lease in respect of the property at 2330 Argentia Road, City of Mississauga.
10. On September 23, 2022, the Debtors filed the *Debtors’ Motion for Entry of an Order (I) Approving Settlement Stipulation with Certain Landlords and Chubb Insurance Company of Canada and (II) Granting Related Relief* (the “**Settlement Stipulation Motion**”) with the U.S. Bankruptcy Court, seeking entry of the Settlement Stipulation Order.

Recognition of U.S. Bankruptcy Court Order

11. To facilitate the Chapter 11 Cases and these Canadian Proceedings, the Foreign Representative is seeking recognition of the Settlement Stipulation Order, if granted by the U.S. Bankruptcy Court.
12. No hearing in the U.S. Bankruptcy Court has been scheduled with respect to the Settlement Stipulation Motion, however the Settlement Stipulation Order may be entered

without a hearing if no objections are received by the objection deadline of October 14, 2022. If the Settlement Stipulation Order is granted by the U.S. Bankruptcy Court, it will be provided to this Court and the service list in the Canadian Proceedings in advance of the hearing of this motion.

The Settlement Stipulation Order

13. As of the Petition Date, the Debtors were burdened with sizeable, fixed costs, including high lease expenses. In Canada, the Debtors' lease portfolio included 5 leases for 6 locations, including a lease (the "**Markham Lease**") for the property at 371 Gough Road, Markham, Ontario (the "**Markham Leased Premises**").
14. The Debtors analyzed their lease portfolio based on, among other things, profitability, service offerings, revenue outlook, customer concentration and market conditions applicable to the specific facilities. The Debtors explored multiple possible options with respect to all of their leases, including whether such leases should be (i) assumed or assumed and assigned on existing terms, (ii) rejected immediately, or (iii) renegotiated, either to achieve rental savings if a lease were to be assumed, or to provide for a "soft" exit to minimize customer attrition and risk to the Debtors' overall restructuring objectives, even if the lease could not be assumed economically. Immediate rejection of certain uneconomical leases (including the Leases, as defined below) was not a viable option given the potential for significant adverse effects on certain customers and on the Debtors' ongoing sale and restructuring efforts.
15. An additional variable in the Debtors' evaluation of the Markham Lease was the treatment of the Bond securing the Debtors' obligations under such lease. Specifically, the Markham Lease requires Sungard AS Canada to provide to the Markham Landlord an irrevocable letter of credit payable to the Markham Landlord in the amount of CAD\$922,389.75 (together with any and all related documents, including any and all continuation certificates, the "**Bond**"). As a substitute and replacement for a letter of credit, Sungard AS Canada had historically maintained a surety bond, with Sungard AS Canada as principal, Chubb Insurance of Canada ("**Chubb**") as the surety, and the Markham Landlord as obligee, in the sum of CAD\$922,389.75. The Debtors are party to an indemnification agreement with Chubb, and the Debtors' overall surety bond program is collateralized by a letter of credit issued under the Debtors' debtor-in-possession ("**DIP**") asset-based lending facility in the amount of USD\$1 million. As such, any rejection by the Debtors of

the Markham Lease would cause the Markham Landlord to seek a payout under the Bond, and the costs of any payout under the Bond would be borne by the Debtors' estates through the funding of the letter of credit. The Debtors refrained from making any decisions with respect to the Markham Lease until all options had been explored and it was clear that the Markham Lease would not be assumed by the Debtors under the plan of reorganization, or assumed and assigned to a third party in a sale transaction.

16. On August 12, 2022, the Markham Landlord obtained the Lift Stay Order of the U.S. Bankruptcy Court permitting it to deliver a notice of default to Sungard AS Canada and confirming that the stay did not prohibit the Markham Landlord from calling on the Bond. The Lift Stay Order was recognized by this Court by an order issued August 18, 2022.
17. The Debtors ultimately determined that the lease (the "**Houston Lease**") with respect to the property at 12175 North Freeway, Houston, Texas (the "**Houston Leased Premises**") and the Markham Lease (together, with the Houston Lease, the "**Leases**") should be renegotiated to provide for a soft exit. Given the number and identity of the customers that receive services from Sungard AS Canada and Sungard AS, (such Debtor entities each, a "**Tenant**", and collectively, the "**Tenants**") at the Markham Leased Premises and the Houston Leased Premises (the "**Leased Premises**"), an immediate exit from the Leased Premises would not be in the best interests of the estates and potentially could be value destructive.
18. The Debtors have engaged in extensive, arm's length negotiations with Digital Realty Trust L.P. (an affiliate of the Markham Landlord) and Chubb. These negotiations have concluded in an agreement regarding the Houston Lease and the Markham Lease, which is detailed in the settlement stipulation (the "**Settlement Stipulation**"), attached as Exhibit "A" to the Settlement Stipulation Motion, which is attached to the Affidavit of Michael K. Robinson sworn October 14, 2022 (the "**Robinson Affidavit**").
19. The Settlement Stipulation allows for the restructuring of the Debtors' obligations to reduce their costs while coordinating longer periods for the Debtors, and their customers, to exit the Leased Premises without causing undue disruption.
20. Recognizing the need to limit the administrative costs to the estate, including rent obligations, the Settlement Stipulation permits certain actions to be taken, subject to the occurrence of the "Approval Effective Date" and that such actions will be unwound if the Approval Effective Date does not occur. With respect to the Markham Leased Premises,

the Approval Effective Date is the date on which this Court enters an order recognizing the Settlement Stipulation Order of the U.S. Bankruptcy Court (if granted).

21. The key terms of the Settlement Stipulation include:
 - (a) a modification of the lease terms and a consensual rejection, effective December 31, 2022 (the “**Rejection Effective Date**”), of the Leases;
 - (b) a modification and reduction of the monthly base rent of the Leases;
 - (c) a waiver of all claims that arose on or before September 30, 2022 in relation to the Leases, with the exception of any claims relating to (i) payment of “Additional Rent” (as defined in the Leases) on the terms and conditions set forth in the Settlement Stipulation; (ii) payment of any allowed claim on account of any physical damage to the Leased Premises that occurred on or after the Petition Date and before the Rejection Effective Date; and (iii) payment of any allowed administrative expense claim against the Debtors and their estates in respect of accrued and unpaid rent for the period between April 11, 2022 and April 30, 2022;
 - (d) a payment in the amount of CAD\$850,000 by Chubb to the Markham Landlord and the full release of the Bond held by the Markham Landlord following the execution of the Settlement Stipulation;
 - (e) continued cooperation between the Tenants and landlords under the Leases (the “**Landlords**”) with the transition of customers of the Tenants to the Landlords;
 - (f) a provision which provides the Landlords an opportunity to inspect the Leased Premises to document any damage thereto prior to the date of approval of the Settlement Stipulation;
 - (g) the application of the USD\$1.8 million payment made by the Debtors to the Landlords on or about April 8, 2022 on a *pro rata* basis among the Leases, in accordance with the schedule set out within the Settlement Stipulation; and
 - (h) an agreement that the modified lease rents shall constitute allowed administrative expense claims under the Bankruptcy Code.
22. The terms of the Settlement Stipulation are outlined in greater detail in the Robinson Affidavit.
23. The Settlement Stipulation Motion is supported by the ad hoc group of term loan lenders and term loan DIP lenders. The Official Committee of Unsecured Creditors has reviewed the terms of the Settlement Stipulation and has indicated that it has no objection to the requested relief.

Other Grounds

24. The provisions of the CCAA, including Part IV thereof;
25. The provisions of the *Rules of Civil Procedure*, R.R.O. 1990, Reg. 194, including Rules 1.04, 1.05, 2.03, 3.02, 16 and 37 thereof; and
26. Such further and other grounds as the lawyers may advise and this Honourable Court may permit.

THE FOLLOWING DOCUMENTARY EVIDENCE will be used at the hearing of the motion:

27. The Affidavit of Michael K. Robinson, sworn October 14, 2022, and the exhibits attached thereto;
28. The Sixth Report of the Information Officer, to be filed; and
29. Such further and other evidence as the lawyers may advise and this Honourable Court may permit.

October 14, 2022

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Lawyers for the Foreign Representative

TO: SERVICE 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

Court File No. CV-22-00679628-00CL

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

PROCEEDING COMMENCED AT TORONTO

**NOTICE OF MOTION
(Recognition of Foreign Order)**

CASSELS BROCK & BLACKWELL LLP

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Lawyers for the Foreign Representative

TAB 2

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

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

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

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

**AFFIDAVIT OF MICHAEL K. ROBINSON
(sworn October 14, 2022)**

I, Michael K. Robinson, of the City of Wilmington, in the state of North Carolina, MAKE
OATH AND SAY:

1. I am the Chief Executive Officer and President of each of the Debtors¹ (together with their direct and indirect non-Debtor subsidiaries, the "**Company**"), including Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuité des Affaires (Canada) Ltée ("**Sungard AS Canada**"). I have served in this position since May 2019. I also serve on the Board of Managers of the Company's ultimate parent Sungard AS New Holdings, LLC and the applicable governing body of each other Debtor.

¹ "**Debtors**" means the following entities that are "debtors" in the Chapter 11 Cases: 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 Continuité des Affaires (Canada) Ltée; 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 a result of my tenure with the Company, my review of public and non-public documents, and my discussions with other senior executives, I am generally familiar with the Company's businesses, financial condition, day-to-day operations, and books and records, and, as such, have knowledge of the matters contained in this affidavit. Where I do not possess such personal knowledge, I have stated the source of my information and, in all such cases, believe the information to be true. In preparing this affidavit, I have consulted with legal, financial and other advisors to the Company, and other members of the senior management of the Company.

3. I swear this affidavit in support of the motion filed by Sungard AS Canada in its capacity as foreign representative of itself (the "**Foreign Representative**") for certain relief pursuant to Part IV of the *Companies' Creditors Arrangement Act* R.S.C., 1985, c. C-36, as amended (the "**CCAA**"). The Motion is seeking an order, among other things, recognizing and giving full force and effect in all provinces and territories of Canada, pursuant to section 49 of the CCAA, to the *Order (I) Approving Settlement Stipulation with Certain Landlords and Chubb Insurance Company of Canada and (II) Granting Related Relief* (the "**Settlement Stipulation Order**"), should the order be granted by the United States Bankruptcy Court for the Southern District of Texas (the "**U.S. Bankruptcy Court**") in the cases (the "**Chapter 11 Cases**") commenced by the Debtors under Chapter 11, title 11 of the United States Code (the "**Bankruptcy Code**").

4. A copy of the Debtor's motion filed in respect of the Settlement Stipulation Order (the "**Settlement Stipulation Motion**"), including the proposed Settlement Stipulation Order, is attached hereto as **Exhibit "A"**.

5. Further background on these proceedings is available on the website maintained by the Information Officer (defined below) at <https://www.alvarezandmarsal.com/SungardASCanada>. Copies of documents filed in the U.S. Bankruptcy Court in connection with these Chapter 11 Cases can be found on the Debtors' case website administered by Kroll Restructuring Administration LLC, the Debtors' claims and noticing agent, <https://cases.ra.kroll.com/sungardas/>.

I. OVERVIEW

A. The Company and Sungard AS Canada

6. The Company provides high availability, cloud-connected infrastructure services built to deliver business resilience to its customers in the event of an unplanned business disruption, ranging from man-made events to natural disasters. As of the Petition Date (as defined below), the Debtors employed approximately 585 individuals in the United States and Canada, operated 52 facilities (comprising 24 data centers and 28 work area recovery centers) and provided services to approximately 2,000 customers across the United States, the United Kingdom, Canada, Ireland, France, India, Belgium, Luxembourg and Poland. The Company generated approximately US\$587 million in revenue for fiscal year 2021 and, as of the Petition Date, the Debtors had approximately US\$424 million in aggregate principal amount of prepetition funded debt obligations.

7. In Canada, the Company provides services through Sungard AS Canada. Sungard AS Canada is a borrower or guarantor in respect of over US\$400 million of the Debtors' indebtedness and has granted security to the lenders or agents for the lenders as security for those loans. In addition, Sungard AS Canada relies on other Debtors for substantially all of its back-office functions, as the Company operates as a consolidated business and all executive-level decision making is centralized in the United States. The services provided to Sungard AS Canada by other Debtors are delivered pursuant to the terms of an intercompany shared services agreement.

B. Procedural Background

8. On April 11, 2022 (the “**Petition Date**”), the Debtors filed voluntary petitions for relief under the Bankruptcy Code in the U.S. Bankruptcy Court and Sungard AS Canada commenced proceedings (the “**Canadian Proceedings**”) under the CCAA to recognize its Chapter 11 Case.

9. On the same date, Justice Conway of the Ontario Superior Court of Justice (Commercial List) (the “**Court**”) granted an interim stay of proceedings in respect of Sungard AS Canada, as well as Sungard AS New Holdings III, LLC and Sungard Availability Services, LP, pending the hearing on the Foreign Representative’s initial application to, among other things, recognize Sungard AS Canada’s Chapter 11 Case as a foreign main proceeding.

10. On April 12, 2022, the U.S. Bankruptcy Court entered various orders in the Chapter 11 Cases, including an order authorizing Sungard AS Canada to act as the Foreign Representative of itself and the other Debtors in any proceedings in Canada.

11. On April 14, 2022, the Court entered an order, among other things, (a) recognizing Sungard AS Canada as the Foreign Representative of itself and the other Debtors in respect of the Chapter 11 Cases; (b) recognizing the United States of America as the centre of main interests for Sungard AS Canada; and (c) recognizing Sungard AS Canada’s Chapter 11 Case as a “foreign main proceeding” (the “**Initial Recognition Order**”). The Court also granted an order, among other things, (a) recognizing certain orders entered by the U.S. Bankruptcy Court in the Chapter 11 Cases including an Interim order to approve emergency funding for the Debtors; (b) granting two charges in respect of post filing financing and an administration charge; and (c) appointing Alvarez & Marsal Canada Inc. as the information officer (the “**Information Officer**”) in the Canadian Proceedings (the “**Supplemental Order**”).

12. Since granting the Initial Recognition Order and Supplemental Order, the Court has granted orders recognizing and giving full force and effect in all provinces and territories of Canada to additional orders from the U.S. Bankruptcy Court, including, among others:

- (a) on May 16, 2022, recognizing an order setting bar dates for filing proofs of claim;
- (b) on June 2, 2022, recognizing an order approving the rejection of certain unexpired real property leases as of May 31, 2022, comprised of, among others, the lease in respect of the properties located at 7405 Trans Canada Highway, Saint-Laurent and 3950 Boulevard de la Côte-Vertu, City of Montreal;
- (c) on August 3, 2022, recognizing an order approving the rejection of certain unexpired real property leases as of July 31, 2022, comprised of, among other things, the lease in respect of the property at 6535 Millcreek Drive, City of Mississauga;
- (d) on August 18, 2022, recognizing an order approving Digital Toronto Nominee Inc.'s (the "**Markham Landlord**") emergency motion for limited relief from the automatic stay (the "**Lift Stay Order**"); and
- (e) on September 29, 2022, recognizing an order approving the rejection of certain unexpired real property leases as of September 30, 2022, comprised of, among other things, the lease in respect of the property at 2330 Argentia Road, City of Mississauga.

II. SETTLEMENT STIPULATION ORDER

13. As of the Petition Date, the Debtors were burdened with sizeable, fixed costs, including high lease expenses. In Canada, the Debtors' lease portfolio included 5 leases for 6 locations,

including the property at 371 Gough Road, Markham, Ontario (the “**Markham Leased Premises**”).

14. The Debtors analyzed their lease portfolio based on, among other things, profitability, service offerings, revenue outlook, customer concentration and market conditions applicable to the specific facilities. The Debtors explored multiple possible options with respect to all their leases, including whether such leases should be (i) assumed or assumed and assigned on existing terms, (ii) rejected immediately, or (iii) renegotiated, either to achieve rental savings if a lease were to be assumed, or to provide for a “soft” exit to minimize customer attrition and risk to the Debtors’ overall restructuring objectives, even if the lease could not be assumed economically. Immediate rejection of certain uneconomical leases (including the Leases, as defined below) was not a viable option given the potential for significant adverse effects on certain customers and on the Debtors’ ongoing sale and restructuring efforts.

15. An additional variable in the Debtors’ evaluation of the Markham Lease² was the treatment of the Bond (as defined below) securing the Debtors’ obligations under such lease. Specifically, the Markham Lease requires Sungard AS Canada to provide to the Markham Landlord an irrevocable letter of credit payable to the Markham Landlord in the amount of CAD\$922,389.75 (together with any and all related documents, including any and all continuation certificates, the “**Bond**”). As a substitute and replacement for a letter of credit, Sungard AS Canada had historically maintained a surety bond, with Sungard AS Canada as principal, Chubb Insurance Company of Canada (“**Chubb**”) as the surety (together with its past, present and future affiliates, including ACE INA Insurance, the “**Surety**”) and the Markham Landlord as obligee, in the sum of CAD\$922,389.75. The Debtors are party to an indemnification agreement with Chubb, and the

² The “**Markham Lease**” means that certain lease, including any amendments or modifications, dated May 30, 2012, between Sungard AS Canada, as tenant, and the Markham Landlord for the premises located at 371 Gough Road, Markham, Ontario, Canada (comprised of “Premises-A”, as more particularly described in the Markham Lease, “**Markham Premises A**” and “Premises-B”, as more particularly described in the Markham Lease, “**Markham Premises B**”).

Debtors' overall surety bond program is collateralized by a letter of credit issued under the Debtors' debtor-in-possession asset-based lending facility in the amount of USD\$1 million. As such, any rejection by the Debtors of the Markham Lease would cause the Markham Landlord to seek a payout under the Bond, and the costs of any payout under the Bond would be borne by the Debtors' estates through the funding of the letter of credit. The Debtors refrained from making any decisions with respect to the Markham Lease until all options had been explored and it was clear that the Markham Lease would not be assumed by the Debtors under a reorganization plan or assumed and assigned to a third party in a sale transaction.

16. On August 12, 2022, the Markham Landlord obtained the Lift Stay Order of the U.S. Bankruptcy Court permitting it to deliver a notice of default to Sungard AS and confirming that the stay did not prohibit the Markham Landlord from calling on the Bond. The Lift Stay Order was recognized by this Court by order issued August 18, 2022.

17. The Debtors ultimately determined that the Houston Lease³ and the Markham Lease (together, the "**Leases**") should be renegotiated to provide for a soft exit. Given the number and identity of the customers that receive services from Sungard AS Canada and Sungard AS, as the entities of the Debtors registered as tenants to the Leases (each a "**Tenant**", and collectively, the "**Tenants**") at the Markham Leased Premises and the Houston Leased Premises (together, the "**Leased Premises**"), an immediate exit by the Debtors from the Leased Premises would not be in the best interests of the estates and could be value-destructive.

18. The Debtors have engaged in extensive, arm's length negotiations with Digital Realty Trust L.P., which is an affiliate of several of the Debtors' landlords. The Debtors included Chubb in the discussions to facilitate a fully consensual agreement, limit any litigation fees that might

³ The "**Houston Lease**" means that certain lease, including any amendments or modifications, dated August 16, 2004, between Sungard Availability Services, LP, as tenant ("**Sungard AS**") and Digital Greenspoint, L.P., as landlord (the "**Houston Landlord**") for the premises located at 12175 North Freeway, Houston, Texas (the "**Houston Leased Premises**").

otherwise be incurred by the parties in connection with a payout on the Bond and provide for a modest reduction in the ultimate payout on the Bond, thereby reducing Chubb's indemnification claim against the Debtors.

19. These extensive negotiations have concluded in an agreement regarding the Leases, which is detailed in the settlement stipulation (the "**Settlement Stipulation**"), attached to the Settlement Stipulation Motion as Exhibit A.

20. The Settlement Stipulation allows for the restructuring of the Debtors' obligations to reduce their costs while coordinating longer periods for the Tenants, and their customers, to exit the Leased Premises without causing undue disruption.

21. Recognizing the need to limit the administrative costs to the estate, including rent obligations, the Settlement Stipulation permits certain actions to be taken, subject to the occurrence of the "Approval Effective Date" (as defined in the Settlement Stipulation) and that such actions will be unwound if the Approval Effective Date does not occur. With respect to the Markham Leased Premises, the Approval Effective Date is the date on which this Court enters an order recognizing the Settlement Stipulation Order of the U.S. Bankruptcy Court (if granted).

22. The Settlement Stipulation is a detailed document that is the product of lengthy negotiations. The key terms of the Settlement Stipulation can be summarized as follows:⁴

- (a) **Consensual Rejection and Modified Term.** The Tenants and both the Houston Landlord and the Markham Landlord (collectively, the "**Landlords**") have agreed to a consensual rejection of Leases under the Debtors' chapter 11 plan. However, rejection will not be effective until December 31, 2022 (the "**Rejection Effective Date**"). Until the Rejection Effective Date, the Tenant will continue to occupy and

⁴ The following is a summary only and in the event of any discrepancy between this summary and the Settlement Stipulation, the Settlement Stipulation shall control.

provide services to their customers at the Leased Premises while cooperating with the Landlords on a coordinated transition of the customers, other than the Excluded Customers.⁵ Markham Premises B, which currently is unoccupied, was surrendered to the Markham Landlord before October 1, 2022. After the Approval Effective Date, the Markham Landlord may dispose of personal property abandoned by the Tenant in Markham Premises B. Similarly, following the Rejection Effective Date, the Debtors are authorized to abandon any remaining personal property in the Leased Premises;

- (b) **Modified Rent.** Sungard AS's monthly base rent (as defined in the Houston Lease) will be reduced to USD\$40,782.00 from the current rate of USD\$130,650.77. Sungard AS Canada's monthly base rent in respect of the Markham Lease will be reduced to CAD\$154,718.00 from the current rate of CAD\$549,643.28 (Sungard AS's modified lease rent together with Sungard AS Canada's modified lease rent, the "**Modified Lease Rent**"). The Tenants will continue to pay, without modification, all "Additional Rent" (as defined in the Leases) during the modified lease term;
- (c) **Claim Waiver.** The Landlords shall not file or assert any claims against the Debtors or the Debtors' estates arising on or before September 30, 2022. The foregoing waiver, however, will not apply to: (i) payment of Additional Rent on the terms and conditions set forth in the Settlement Stipulation; (ii) payment of any allowed claim on account of any physical damage to the Leased Premises that occurred on or after the Petition Date and before the Rejection Effective Date ("**Postpetition Property Damages**"); and (iii) payment of any allowed

⁵ The "**Excluded Customers**" means of all customers at the Leased Premises whose customer contracts may be assumed and assigned by the Debtors to a third party

administrative expense claim against the Debtors and their estates in respect of accrued and unpaid rent for the period between April 11, 2022 and April 30, 2022;

- (d) **Bond.** No later than 10 days following the execution of the Settlement Stipulation, Chubb shall pay to the Markham Landlord CAD\$850,000 (the “**Bond Proceeds**”) in full satisfaction of the Bond. Upon the Surety making payment to the Markham Landlord in the amount of the Bond Proceeds: the Bond is fully released and fully discharged; the original Bond shall be returned to the Surety; and the Surety’s past, present and future liability and/or obligations under or in connection with the Bond and/or the Markham Lease shall be deemed fully terminated and otherwise extinguished. Under the Settlement Stipulation, the Debtors acknowledge and agree that: (i) the Surety has a valid indemnity claim against the Surety’s indemnitors; (ii) the Surety may look to any security in its favour to pay the Markham Landlord the Bond Proceeds, including, without limitation, by using proceeds of that certain irrevocable standby letter of credit bearing reference number 18133893-00-000 to pay the Markham Landlord the aforementioned Bond Proceeds and/or to reimburse the Surety for, among other things, the payment of the Bond Proceeds to the Markham Landlord; (iii) the Surety is not acting as a volunteer by way of the aforementioned payment of the Bond Proceeds to the Markham Landlord; and (iv) the payment of the Bond Proceeds from the aforementioned security shall not limit or reduce any claim of the Surety against the Debtors’ estates. In no event shall the Surety receive total payments from said security, plus payment, if any, from the Debtors’ estates, greater than the amount of the Surety’s entire indemnity claim. Upon receipt of the Bond Proceeds, the Markham Landlord will waive any further requirement under the Markham Lease

for Sungard AS Canada to maintain a letter of credit or performance bond to secure its obligations.

- (e) **Customer Transition.** Until the Rejection Effective Date, the Tenants and Landlords shall cooperate on the transition of customers of the Tenants to the Landlords, other than the Excluded Customers;
- (f) **Restoration and Damages.** With respect to the Leased Premises, the Tenants shall not be obligated for any restoration costs arising under the Leases or otherwise (i) prior to the Inspection Date,⁶ (ii) from removing any personal property of the Tenants or (iii) for any excluded conditions such as ordinary wear and tear. The “Released Obligations” (as defined in the Settlement Stipulation) will not include any physical damage to the Leased Premises that occurred on or after the Petition Date and before the Rejection Effective Date, and the Landlords and Tenants reserve all rights with respect thereto.
- (g) **Prepetition Rent.** The Landlords shall apply the USD\$1.8 million payment made by the Debtors on or about April 8, 2022 as follows, in each case, on a pro rata basis among the following: (i) first, to any unpaid obligations of the Debtors for the period of March 1, 2022 through and including March 31, 2022 arising under the Digital Leases⁷; (ii) second, to any unpaid obligations of the Debtors for the period of April 1, 2022 through and including April 10, 2022 arising under the Leases; and (iii) third, to any unpaid obligations of the Debtors for the period of April 11, 2022 through and including April 30, 2022 arising under the Digital Leases; provided that, notwithstanding the foregoing, if the Carlstadt Lease is assumed and

⁶ The “**Inspection Date**” means the date that the controlling inspection occurs.

⁷ The “**Digital Leases**” include the Leases, the Carlstadt Lease and the Piscataway Leases (as defined in the Settlement Stipulation).

assigned to a third party, and such third party pays all cure costs associated with the Carlstadt Lease, then the \$1.8 million shall be applied on a pro rata basis among only the Houston Lease, the Markham Lease and the Piscataway Leases and otherwise applied in the same manner as set forth in the Settlement Stipulation. The Landlords shall file amended proofs of claim in the Chapter 11 Cases reflecting the foregoing application of payments.

- (h) **Allowed Claim.** The Modified Lease Rent shall constitute allowed administrative expense claims under the Bankruptcy Code. In the event that the Tenants are found to have materially defaulted in their obligations under the Settlement Stipulation, the Landlords will be entitled to payment in an amount equal to, but not to exceed the sum of all Modified Lease Rent through the Rejection Effective Date plus any Modified Lease Rent accruing during any holdover tenancy (if any).

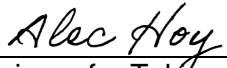
23. The relief sought pursuant to the Settlement Stipulation Motion is supported by the ad hoc group of term loan lenders and term loan debtor in possession lenders. The official committee of unsecured creditors has reviewed the terms of the Settlement Stipulation and has indicated that it has no objection.

24. I understand that no hearing has been scheduled with respect to the Settlement Stipulation Motion, but that the Settlement Stipulation Order may be entered without a hearing if no objections are received by the objection deadline of October 14, 2022. I further understand that if the Settlement Stipulation Order is granted, it will be provided to this Court and the service list in the Canadian Proceedings in advance of the hearing.

IV. CONCLUSION

25. I believe the relief set out herein is necessary for the protection of the Debtors' property and for the benefit of their creditors and their estates.

SWORN BEFORE ME by video conference on this 14th day of October, 2022. This affidavit was commissioned remotely in accordance with O. Reg. 431/20, Administering Oath of Declaration Remotely. The affiant was located in the City of Charlotte, in the state of North Carolina and I was located in the City of Toronto in the Province of Ontario.



A commissioner for Taking Affidavits
(or as may be)



Michael K. Robinson

Commissioner Name: Alec Hoy
LSO# 85489K

This is Exhibit “**A**” referred to in the Affidavit of Michael K. Robinson sworn before me on October 14, 2022 by videoconference in accordance with O. Reg 431/20.

Alec Hoy

Commissioner for Taking Affidavits (or as may be)

Commissioner Name: Alec Hoy
LSO# 85489K

**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' MOTION FOR ENTRY OF AN
ORDER (I) APPROVING SETTLEMENT STIPULATION
WITH CERTAIN LANDLORDS AND CHUBB INSURANCE
COMPANY OF CANADA AND (II) GRANTING RELATED RELIEF**

If you object to the relief requested, you must respond in writing. Unless otherwise directed by the Court, you must file your response electronically at <https://ecf.txsb.uscourts.gov/> within twenty-one days from the date this motion was filed. If you do not have electronic filing privileges, you must file a written objection that is actually received by the clerk within twenty-one days from the date this motion was filed. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

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

Preliminary Statement

1. By this Motion, the Debtors seek approval of a settlement with two of the Debtors’ landlords that are affiliates of Digital Realty Trust, L.P. (“Digital”). Over the course of several

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.

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.

months, the Debtors have engaged in extensive, arm's-length negotiations with Digital culminating in an agreement regarding two of the Debtors' leases with affiliated entities of Digital, in Houston, Texas and in Markham, Canada, which is memorialized in the settlement stipulation (the "Settlement") attached hereto as Exhibit A.³

2. The Settlement is part of the Debtors' overall efforts to rationalize and optimize their lease portfolio, which, as of the Petition Date, consisted of 27 leased data center and workplace facilities. The Debtors analyzed their lease portfolio based on, among other things, profitability, service offerings, revenue outlook, customer concentration and market conditions applicable to the specific facilities. The Debtors developed a lease rationalization plan that was shared with their primary stakeholders, and, based on that plan, determined to reject certain leases immediately rather than incur the carrying costs associated with staying in those leases for the duration of these chapter 11 cases. However, an immediate rejection of certain other uneconomical leases (including the Leases) was not a viable option given the potential for significant adverse effects on certain customers and on the Debtors' ongoing sale and restructuring efforts. For the

³ Specifically, the leases subject to the Settlement are: (a) that certain lease dated August 16, 2004 (including any amendments or modifications thereto, the "Houston Lease") between Sungard Availability Services, LP, as tenant ("Sungard AS") and Digital Greenspoint, L.P., as landlord (the "Houston Landlord") for the premises located at 12175 North Freeway, Houston, TX (the "Houston Leased Premises"); and (b) that certain lease dated May 30, 2013 (including any amendments or modifications thereto, the "Markham Lease" and, together with the Houston Lease, the "Leases") between Sungard Availability Services (Canada) Ltd., as tenant ("Sungard AS Canada" and, together with Sungard AS, the "Tenants") and Digital Toronto Nominee, Inc., as landlord (the "Markham Landlord" and, together with the Houston Landlord, the "Landlords") for the premises located at 371 Gough Road, Markham, Ontario, Canada (the "Markham Leased Premises" and, together with the Houston Leased Premises, the "Leased Premises"). The Markham Leased Premises further comprise "Premises-A" (as more particularly described in the Markham Lease, "Markham Premises A") and "Premises-B" (as more particularly described in the Markham Lease, "Markham Premises B"). The Settlement does not modify the Carlstadt Lease or the Piscataway Leases. The "Carlstadt Lease" means that certain lease between Digital Commerce Boulevard, LLC and Sungard AS for the premises at 410 Commerce Boulevard, Carlstadt, New Jersey 07072. The "Piscataway Leases" means (i) that certain contract dated September 24, 2014 between Digital Piscataway, LLC and Sungard AS for space and services at 365 S. Randolphville Road, Piscataway, New Jersey; and (ii) that certain contract dated January 6, 2022 between Digital Piscataway, LLC and Sungard AS for space and services at 3 Corporate Place, Piscataway, New Jersey. The Piscataway Leases have been rejected pursuant to this Court's order at Docket No. 651. The Carlstadt Lease is subject to assumption and assignment to 365 SG Operating Company LLC. See Docket Nos. 591, 607.

leases in this latter category, the Debtors have engaged with their landlords, including Digital, on restructuring the Debtors' obligations to reduce the Debtors' costs and, if applicable, to coordinate longer periods for the Debtors and their customers to exit those sites without causing undue disruption.

3. The terms of the Settlement accomplish these goals. Specifically, among other things, the Debtors and the Landlords have agreed under the Settlement to the consensual rejection of the Leases as part of the Debtors' chapter 11 plan, with the effective date of the rejection not occurring until December 31, 2022 (the "Rejection Effective Date").⁴ From October 1, 2022 through and until the Rejection Effective Date (the "Modified Term"), the Settlement provides that the Debtors will pay a reduced rent for both of the Leases that will, in the aggregate, result in approximately \$1.1 million of costs savings to the Debtors' estates as compared to if the Debtors were to pay the rental rate now in effect for the same period. Further, the Debtors and the Landlords have undertaken to cooperate on a coordinated transition of certain of the Debtors' customers at those sites to the Landlords, if the customer so elects. For customers that will not be transitioned to the Landlords, the extended period prior to the Rejection Effective Date will provide those customers with adequate time to exit the Leased Premises and make alternative service arrangements. Finally, certain of the Debtors' customers at the Markham Leased Premises are anticipated to be assumed and assigned to the buyer of the Debtors' cloud and managed services business ("CMS"), which this Court approved on September 14, 2022 [Docket No. 659]. If the Debtors had moved to reject the Markham Lease and immediately exit the site, it could have had an adverse impact on the Debtors' sale of their CMS business. The Settlement instead will ensure that the buyer has sufficient time to make alternative arrangements directly with the Landlords.

⁴ Under the Settlement, the Debtors will surrender Markham Premises B (which currently is empty) immediately.

4. In exchange for these concessions, the Landlords required a high level of certainty that the Debtors would honor their bargain through the Rejection Effective Date. Rather than incur the expense of entering into new, postpetition lease agreements, the Debtors, with the support of the ad hoc group of term loan lenders and the term loan DIP lenders (the “Ad Hoc Group”), have agreed to provide the Landlords with an allowed administrative expense claim for any unpaid obligations under the Settlement on the terms and conditions set forth therein. In addition, the Debtors’ obligations under the Markham Lease are secured by a surety bond (the “Bond”) issued by Chubb Insurance Company of Canada (“Chubb”). Because assuming or assigning the Markham Lease ultimately proved not to be a realistic option for the Debtors, the Landlords would in any event seek to recoup its damages from the rejection through a payout on the Bond irrespective of the Settlement or any other agreement. As such, after the Debtors and the Landlords had negotiated the framework for the Settlement, the Debtors included Chubb in the discussions in order to facilitate a fully consensual agreement, limit any litigation fees that might otherwise be incurred by the parties in connection with a payout on the Bond and provide for a modest reduction in the ultimate payout on the Bond, thereby reducing Chubb’s indemnification claim against the Debtors.

5. In view of the foregoing and as further set forth herein, the Debtors believe that the relief requested in this Motion is in the best interests of the Debtors’ estates, reflects a sound exercise of the Debtors’ business judgment and should be approved. The Motion is supported by the Ad Hoc Group. The Committee (as defined below) has reviewed the Settlement and has no objection to the requested relief.

Relief Requested

6. By the Motion, the Debtors seek entry of an order, substantially in the form attached hereto (the “Order”), (a) approving the Settlement between the Debtors, Chubb and the Landlords, (b) authorizing the parties to the Settlement to perform any and all obligations contemplated by the Settlement, (c) deeming the Leases to be modified during the Modified Term to reflect the terms stipulated to by the parties in the Settlement and (d) granting related relief.

Jurisdiction and Venue

7. 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.

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

9. The bases for the relief requested herein are sections 105(a), 363, 503(b) and 507 of title 11 of the United States Code (the “Bankruptcy Code”), Rules 2002, 6004 and 9019 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”).

Background

10. 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].

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

The Settlement

12. As described in the First Day Declaration, the Debtors entered these chapter 11 cases burdened with sizeable fixed costs, including high lease expenses. Since commencing these chapter 11 cases, the Debtors have sought to consensually restructure their lease portfolio and rationalize their space requirements within the framework of the Debtors’ overall restructuring and sale processes. The Debtors explored multiple possible options with respect to all of their leases, including whether such leases should be (i) assumed or assumed and assigned on existing terms, (ii) rejected immediately or (iii) renegotiated, either to achieve rental savings if a lease were to be assumed or to provide for a “soft” exit to minimize customer attrition and risk to the Debtors’ overall restructuring objectives. The Debtors ultimately determined that the Markham Lease and Houston Lease should be renegotiated to provide for such a soft exit. Given the number and identity of the customers that receive services from the Debtors at the Leased Premises, an immediate exit by the Debtors from the Leased Premises would not be in the best interests of the estates and potentially could be value-destructive.

13. An additional variable in the Debtors' evaluation of the Markham Lease was the treatment of the Bond securing the Debtors' obligations under such lease. Specifically, the Markham Lease requires Sungard AS Canada to provide to the Markham Landlord an irrevocable letter of credit payable to the Markham Landlord in the amount of CAD 922,389.75. As a substitute and replacement for a letter of credit, Sungard AS Canada had historically maintained a surety bond, with Sungard AS Canada as principal, Chubb as the surety and the Markham Landlord as obligee, in the penal sum of CAD 922,389.75. The Debtors are party to an indemnification agreement with Chubb, and the Debtors' overall surety bond program is collateralized by a letter of credit issued under the Debtors' DIP ABL facility in the amount of \$1 million. As such, any rejection by the Debtors of the Markham Lease would cause the Markham Landlord to seek a payout under the Bond, and the costs of any payout under the Bond would be borne by the Debtors' estates through the funding of the letter of credit. As such, the Debtors refrained from making any decisions with respect to the Markham Lease until all options had been explored and it was clear that Markham Lease would not be assumed by the Debtors or assumed and assigned to a third party.

14. Discussions with the Landlords on a potential gradual exit from the Leases began in mid-June. On July 27, 2022, the Markham Landlord filed *Digital Realty's Emergency Motion for Limited Relief from the Automatic Stay* [Docket No. 518] (the "Stay Relief Motion"), seeking relief from the automatic stay imposed under Bankruptcy Code section 362 to take actions necessary to submit a claim to Chubb under the Bond. The Debtors and Chubb did not oppose the Stay Relief Motion, and the Court entered an order granting the Stay Relief Motion on August 12, 2022 [Docket No. 566].

15. Following entry of the order granting the Stay Relief Motion, the Debtors and the Landlords continued their discussions and, eventually, included Chubb in those discussions in order to facilitate a comprehensive settlement agreement on all open issues between the parties. Ultimately, on September 23, 2022, the parties executed the Settlement.

16. The key terms of the Settlement are as follows.⁵

- **Consensual Rejection and Modified Term.** The Tenants and the Landlords have agreed to a consensual rejection of the Leases. The Leases will be rejected under the Debtors' chapter 11 plan; however, the parties have agreed that the effectiveness of such rejection will not occur until the Rejection Effective Date (i.e., December 31, 2022). Until the Rejection Effective Date, the Tenants will continue to occupy and provide services to their customers at the Leased Premises while cooperating with the Landlords on a coordinated transition of such customers to Landlords (other than the Excluded Customers).⁶
- **Modified Rent.** Sungard AS's Monthly Base Rent (as defined in the Houston Lease) will be reduced to \$40,782.00 from the current rate of \$130,650.77. Sungard AS Canada's Monthly Base Rent in respect of Markham Lease will be reduced to CAD 154,718.00 from the current rate of CAD 549,643.28. The Tenants will continue to pay, without modification, all "Additional Rent" (as defined the Leases) during the Modified Term, which additional rent includes, but is not limited to, CAM charges, utility charges and insurance.
- **Claim Waiver.** The Landlords shall not file or assert any claims against the Debtors or the Debtors' estates arising on or before September 30, 2022. The foregoing waiver, however, will not apply to: (i) payment of Additional Rent on the terms and conditions set forth in the Settlement; (ii) payment of any allowed claim on account of Postpetition Property Damages; and (iii) payment of any allowed administrative expense claim against the Debtors and their estates in respect of accrued and unpaid rent for the period between April 11, 2022 and April 30, 2022.
- **Bond.** No later than 10 business days following execution of the Stipulation, the Surety shall pay to the Markham Landlord CAD \$850,000 (the "Bond Proceeds") in full satisfaction of the Bond. Notwithstanding anything in the Stipulation to the contrary, upon the Surety making payment to the Markham Landlord in the amount of the Bond Proceeds: the Bond is fully released and

⁵ Capitalized terms used in this section but not otherwise defined have the meaning ascribed to such terms in the Settlement. The following description of the Settlement is qualified in its entirety by the Settlement. In the event of any inconsistency between this summary and the Settlement, the Settlement controls.

⁶ Markham Premises B, which currently is unoccupied, will be surrendered to the Markham Landlord.

fully discharged; to the extent it can be located after reasonable efforts, the original Bond shall be returned to the Surety (however, no other terms herein shall be impacted if the original Bond cannot be located and/or returned to the Surety); and the Surety's past, present and future liability and/or obligations under or in connection with the Bond and/or the Markham Lease shall be deemed fully terminated and otherwise extinguished. In accordance with paragraph 3 of the *Order (I) Authorizing Debtors to (A) Continue Insurance Coverage Entered Into Prepetition and Satisfy Prepetition Obligations Related Thereto, and (B) Renew, Amend, Supplement, Extend, or Purchase Insurance Policies and (II) Granted Related Relief* [Docket No. 61], notwithstanding anything in the Stipulation to the contrary, the Debtors further acknowledge and agree that: (i) the Surety has a valid indemnity claim against the Surety's indemnitors; (ii) the Surety may look to any security in its favor to pay the Markham Landlord the Bond Proceeds, including, without limitation, by using proceeds of that certain irrevocable standby letter of credit bearing reference number 18133893-00-000 ("LC") to pay the Markham Landlord the aforementioned Bond Proceeds and/or to reimburse the Surety for, among other things, the payment of the Bond Proceeds to the Markham Landlord; (iii) the Surety is not acting as a volunteer by way of its payment of the aforementioned Bond Proceeds to the Markham Landlord; and (iv) the payment of the Bond Proceeds from the aforementioned security shall not limit or reduce any claim of the Surety against the Debtors' estates; *provided, however*, that in no event shall the Surety receive total payments from said security, plus payment, if any, from the Debtors' estates greater than the amount of the Surety's entire indemnity claim. For the avoidance of doubt, nothing herein shall transform the Surety's indemnity claim into a postpetition obligation to the extent it is not otherwise such an obligation. Subject to the Surety's sole obligation under the Stipulation, which is to remit the Bond Proceeds as set forth above, nothing in the Stipulation shall be deemed a waiver or estoppel, in whole or in part, of any of the Surety's rights, remedies or defenses under any and all applicable bond(s), agreement(s) and/or documents related to the Surety's surety program. Moreover, nothing in the Stipulation shall negatively impact the Surety's rights, interests and/or claims in and/or to the LC or any of the proceeds thereof, including, but not limited to, the proceeds that may be remaining after the Bond Proceeds are paid to the Markham Landlord and/or after the Surety reimburses itself for, among other things, the Surety's payment to the Markham Landlord.

- **Customer Transition.** Until the Rejection Effective Date, the Tenants and Landlords shall cooperate on the transition of customers of the Tenants to the Landlords, other than the Excluded Customers, and Digital shall have the right to contact all customers (other than the Excluded Customers).
- **Restoration and Damages.** On or prior to the Approval Effective Date, an inspection will be conducted of the Leased Premises to document and photograph the current condition thereof. With respect to the Leased Premises, the Tenants shall not be obligated for any restoration costs arising under the Leases or otherwise (i) prior to the Inspection Date, (ii) from removing any

personal property of the Tenants or (iii) for any Excluded Conditions. The foregoing Released Obligations will not include any physical damage to the Leased Premises that occurred on or after the Petition Date and before the Rejection Effective Date, and the Landlords and Tenants reserve all rights with respect thereto.

- **Prepetition Rent.** The Landlords shall apply the \$1.8 million payment made by the Debtors on or about April 8, 2022 as follows, in each case, on a pro rata basis among the Digital Leases: (i) first, to any unpaid obligations of the Debtors for the period of March 1, 2022 through and including March 31, 2022 arising under the Digital Leases; (ii) second, to any unpaid obligations of the Debtors for the period of April 1, 2022 through and including April 10, 2022 arising under the Digital Leases; and (iii) third, to any unpaid obligations of the Debtors for the period of April 11, 2022 through and including April 30, 2022 arising under the Digital Leases; *provided that*, notwithstanding the foregoing, if the Carlstadt Lease is assumed and assigned to a third party, and such third party pays all cure costs associated with the Carlstadt Lease, then the \$1.8 million shall be applied on a pro rata basis among only the Houston Lease, the Markham Lease and the Piscataway Leases and otherwise applied in the same manner as set forth in the Settlement. The Landlords shall file amended proofs of claim in the chapter 11 cases reflecting the foregoing application of payments.
- **Allowed Claim.** The Modified Lease Rent shall constitute allowed administrative expense claims under Bankruptcy Code sections 503(b) and 507. In the event that the Tenants are found to have materially defaulted in their obligations under the Settlement, the Landlords will be entitled to payment in an amount equal to, but not to exceed the sum of all Modified Lease Rents through the Rejection Effective Date plus any Modified Lease Rent accruing during any holdover tenancy (if any), as more particularly described in Section 2(l) of the Settlement.

17. The Debtors believe that the commercial resolution embodied in the Settlement is in the best interests of the Debtors and their estates.

Basis for Relief

I. The Settlement Is in the Best Interests of the Debtors' Estates.

18. Bankruptcy Rule 9019 provides, in relevant part, that “[o]n motion by the [debtor in possession] and after notice and a hearing, the court may approve a compromise or settlement. Fed. R. Bankr. P. 9019(a). “To minimize litigation and expedite the administration of a bankruptcy estate, [c]ompromises are favored in bankruptcy.” *Myers v. Martin (In re Martin)*, 91 F.3d 389,

393 (3d Cir. 1996). Settlements are considered a “normal part of the process of reorganization” and a “desirable and wise method[] of bringing to a close proceedings otherwise lengthy, complicated and costly.” *Rivercity v. Herpel (In re Jackson Brewing Co.)*, 624 F.2d 599, 602 (5th Cir. 1980) (citations omitted). Pursuant to Bankruptcy Rule 9019(a), a bankruptcy court may, after appropriate notice and a hearing, approve a compromise or settlement so long as the proposed settlement is fair, reasonable, and in the best interest of the estate. *See In re Age Ref. Inc.*, 801 F.3d 530, 540 (5th Cir. 2015). Ultimately, approval of a compromise is within the “sound discretion” of the bankruptcy court. *United States v. AWECO, Inc. (In re AWECO, Inc.)*, 725 F.2d 293, 298 (5th Cir. 1984).

19. Generally, the role of the bankruptcy court is not to decide the issues in dispute when evaluating a settlement. *Watts v. Williams*, 154 B.R. 56, 59 (S.D. Tex. 1993). Instead, the court should determine whether the settlement as a whole is fair and equitable. *Protective Comm. for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson*, 390 U.S. 414, 424 (1968). “Great judicial deference is given to the [debtor’s] exercise of business judgment.” *GBL Holding Co., Inc. v. Blackburn/Travis/Cole, Ltd. (In re State Park Bldg. Grp., Ltd.)*, 331 B.R. 251, 254 (Bankr. N.D. Tex 2005) (citation omitted). “As long as [the decision] appears to enhance a debtor’s estate, court approval of a debtor-in-possession’s decision ... should only be withheld if the debtor’s judgment is clearly erroneous, too speculative, or contrary to the provisions of the Bankruptcy Code.” *Richmond Leasing Co.*, 762 F.2d 1303, 1309 (5th Cir. 1985) (citation omitted).

20. The Debtors also seek authority to enter into the Settlement and carry out the terms of such agreement pursuant to Bankruptcy Code section 363. Specifically, Bankruptcy Code section 363 authorizes, in relevant part, a debtor in possession to “use, sell, or lease, other than in the ordinary course of business, property of the estate,” after notice and a hearing. 11 U.S.C. §

363(b)(1). Although section 363 does not specify a standard for determining when it is appropriate for a court to authorize the use, sale or lease of property of the estate, courts routinely authorize the use of debtor's property if it is based upon the reasonable business judgment of the debtor. *See, e.g., Institutional Creditors of Cont'l Air Lines, Inc. v. Cont'l Air Lines, Inc. (In re Cont'l Air Lines, Inc.)*, 780 F.2d 1223, 1226 (5th Cir. 1986) (“[F]or the debtor-in-possession or trustee to satisfy its fiduciary duty to the debtor, creditors and equity holders, there must be some articulated business justification for using, selling, or leasing the property outside the ordinary course of business.”) (citing *In re Lionel Corp.*, 722 F.2d 1063, 1071 (2d Cir. 1983)).

21. Based on the foregoing considerations, the Settlement represents a fair and reasonable compromise that is in the best interest of the Debtors' estates. Absent the Settlement, the Debtors' most likely option would be to reject the Leases immediately. If the Debtors were to move to reject the Leases and exit the Leased Premises—and, necessarily, also reject the contracts of the customers that receive services at the Leased Premises—without any mitigating measures, the harm to the Debtors' estates and the Debtors' restructuring efforts could be dire. Certain customers that receive services at the Leased Premises also receive services at sites that will be retained following the completion of the chapter 11 cases, either through a sale to a third-party purchaser or by the reorganized Debtors. An abrupt interruption of services at the Leased Premises could force unnecessary attrition throughout the Debtors' customer base, give rise to litigation between the Debtors and their customers (and potentially between the Debtors and their buyers) and jeopardize the momentum the Debtors have built so far in these chapter 11 cases. In short, an immediate rejection could imperil the Debtors' overall restructuring strategy.

22. The Settlement strikes the appropriate balance between the concerns of the Debtors and their creditors over continuing to carry the costs associated with the Leases and those of other

parties in interest. Indeed, many of the Debtors' customers have raised significant concerns informally and with this Court over the need for a transition period should their contracts be rejected, and the Settlement will help facilitate an appropriate transition period and minimize any disruption in services. Moreover, through the rental concessions available under the Settlement, the Debtors will be able to accomplish these objectives at a significantly reduced cost to the Debtors' estates.

23. The Debtors are at a critical juncture in these chapter 11 cases. The Debtors have negotiated sales with two buyers of certain portions of the Debtors' assets, which they are seeking to close in the relatively near future. The Debtors also are in the process of soliciting a chapter 11 plan that provides flexibility either for an equitization plan or for additional sales. By minimizing litigation and customer attrition risks and ensuring the Debtors have the resources needed to close their sales, the Settlement provides certainty to the Debtors and other parties in interest. The Debtors thoroughly evaluated all potential options available with respect to the Leases to determine the best option available to the Debtors and their estates under the current circumstances, and believe that the Settlement represents the best possible outcome. Accordingly, the decision to enter into the Settlement represents a reasonable exercise of the Debtors' business judgment.

24. The Settlement also satisfies the additional factors that bankruptcy courts in this jurisdiction consider when evaluating proposed settlements. Specifically, the Fifth Circuit has set forth a three-factor balancing test that courts must consider: "(1) [t]he probability of success in litigating the claim subject to settlement, with due consideration for the uncertainty in fact and law; (2) [t]he complexity and likely duration of litigation any attendant expense, inconvenience, and delay; and (3) [a]ll other factors bearing on the wisdom of the compromise." *In re Roquomore*, 393 B.R. 474, 479 (Bankr. S.D. Tex. 2008) (citation omitted).

25. Under the rubric of the third factor, the Fifth Circuit has set forth two additional factors that bear on the decision to approve a proposed settlement. *First*, the court should consider “the paramount interest of creditors with proper deference to their reasonable views.” *Conn. Gen. Life Ins. Co. v. United Cos. Fin. Corp. (Matter of Foster Mortg. Corp.)*, 68 F.3d 914, 917 (5th Cir. 1995); *see also Age Ref. Inc.*, 801 F.3d at 540 (noting the *Foster Mortgage* factors). “While the desires of the creditors are not binding, a court ‘should carefully consider the wishes of the majority of the creditors.’” *Foster Mortg. Corp.*, 68 F.3d at 917 (quoting *In re Transcon. Energy Corp.*, 764 F.2d 1296, 1299 (9th Cir. 1985)). *Second*, the court should consider the “extent to which the settlement is truly the product of arms-length bargaining, and not of fraud or collusion.” *Age Ref. Inc.*, 801 F.3d at 540; *Foster Mortg. Corp.*, 68 F.3d at 918 (citations omitted).

26. Here, the Settlement is the product of arm’s-length negotiations among sophisticated parties with counsel, reflects an appropriate balance between the parties’ respective litigation positions should any of the claims subject to the Settlement be litigated and is supported by the Ad Hoc Group. Further, the Committee has indicated that it has no objection to the Motion. Litigating any of the claims subject to the Settlement would be costly and of uncertain benefit to the Debtors’ estates. The Debtors would also risk exposing themselves to litigation with their customers and other parties if they chose to immediately reject the Leases and exit the Leased Premises. Several customers have argued that, in the event of any rejection of their contracts, they will request an adequate transition period from the Court before exiting the sites. Regardless of the Debtors’ views on these objections, if the Court were to determine that the Debtors could not reject the Leases without giving their customers an extended period of time to exit the Leased Premises, then the Debtors could face even higher administrative costs, to the detriment of the Debtors’ estates and creditors. Accordingly, the negotiated resolution set forth in the Settlement

lessens the potential administrative costs attendant to maintaining the Leases while minimizing any disruptions to the customers' businesses.

II. The Modified Lease Rent Should Be Granted Administrative Expense Status Pursuant to Sections 503(b) and 507(a)(2).

27. The Modified Lease Rent (as defined in the Settlement) constitutes "necessary costs and expenses of preserving the estate" under Bankruptcy Code section 503(b)(1)(A) and should be approved. The full payment of the Modified Lease Rent during the Modified Term was necessary to secure the Landlords' agreement to the terms of the Settlement. The Landlords would not have agreed to the terms of the Settlement if there was any possibility that the Landlords would not receive the benefits it bargained for. As such, the Debtors agreed that if the Debtors fail to meet their Modified Lease Rent obligations under the Settlement, the Landlords would be entitled to payment of both (a) the past due Modified Lease Rent and (b) the sum of all future, unpaid Modified Lease Rents through the Rejection Effective Date.

28. The Debtors believe that this arrangement is reasonable and necessary. The alternative to the Settlement would have been for the Debtors to reject the Leases and, subsequently, enter into new, postpetition agreements with the Landlords. Rather than incur the incremental legal expense and time associated with negotiating new agreements, the parties determined that the Settlement would accomplish the same goals in a more streamlined approach. Because any claim for breach under a postpetition agreement would be treated as an administrative expense claim, the Debtors' agreement to the priority of the Modified Lease Payments under the Settlement results in the same economic effect to the estates as would have occurred if the parties had entered into a new, postpetition agreement. Accordingly, the Modified Lease Rent should be accorded administrative expense priority because such amounts are actual and necessary costs of preserving and maximizing the value of the Debtors' estates.

III. Bankruptcy Code Section 554(a) Authorizes Abandonment of Property at the Leased Premises.

29. 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.*

30. Upon the Approval Effective Date, the Debtors intend to abandon (if not otherwise transferred) the Premises B Personal Property in connection with the surrender of Markham Premises B (each as defined in the Settlement). In addition, upon the Rejection Effective Date, the Debtors intend to abandon (if not otherwise transferred) the Houston and Markham Personal Property (as defined in the Settlement) at the Leased Premises. The Debtors have determined that the cost of removing and storing any personal property remaining on the Leased Premises 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 obligations. Accordingly, authorizing the Debtors to abandon the personal property is in the best interests of the Debtors and their estates.

Reservation of Rights

31. Except as otherwise set forth herein or in the Settlement, 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; (f) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable law; or (g) 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.

Waiver of Bankruptcy Rules 6004(a) and 6004(h)

32. The Debtors request that the Court enter an order providing that notice of the relief requested herein satisfies Bankruptcy Rule 6004(a) and that the Debtors have established cause to exclude such relief from the 14-day stay period under Bankruptcy Rule 6004(h), which is necessary to implement the relief requested in this Motion.

Notice

33. The Debtors will provide notice of this Motion to: (a) the U.S. Trustee; (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' 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; and (n) 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: September 23, 2022
Houston, Texas

/s/ Matthew D. Cavanaugh

JACKSON WALKER LLP

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Certificate of Service

I certify that on September 23, 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/ Matthew D. Cavanaugh
Matthew D. Cavanaugh

**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) APPROVING SETTLEMENT STIPULATION
WITH CERTAIN LANDLORDS AND CHUBB INSURANCE
COMPANY OF CANADA 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”) approving the settlement stipulation between the Debtors, the Landlords and Chubb and granting related relief, 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 Bankruptcy Rules and the Bankruptcy Local Rules, and it appearing that no other or further notice need be

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 or the Settlement, as applicable.

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

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

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

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

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

- a. *Houston Landlord.* With respect to the Houston Lease, as modified by the Settlement, in an amount no less than USD \$122,346.00 in respect of the modified Monthly Base Rent plus any Additional Rent that may become due and payable during or attributable to any period during the Modified Term.
- b. *Markham Landlord.* With respect to the Markham Lease, as modified by the Settlement, in an amount no less than CAD \$464,154.00, in respect of

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

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

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

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

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

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

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

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

Houston, Texas

Dated: _____, 2022

DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Settlement

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

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

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

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

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

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

Recitals

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

STIPULATION

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

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

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

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

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

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

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

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

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

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

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

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

- j. *Security Deposit.* Upon receipt of the Bond Proceeds, the Markham Landlord shall waive any further requirement under the Markham Lease for Sungard AS Canada to maintain a letter of credit or performance bond to secure its obligations. The Landlords reserve all rights to require a letter of credit or performance bond in connection with any new leases or agreements that they may negotiate with any of the Debtors in the future. Nothing herein shall require the Surety to issue and/or execute any such bond(s) requested by either of the Landlords.

- k. *Restoration and Damages.* On or prior to September 30, 2022, the Landlords shall inspect the Leased Premises and document and photograph as appropriate the current condition thereof (the “Landlord Inspection”), and the Landlords shall make available to the Tenants the result of the Landlord Inspection. The Tenants shall have the option to be present at the time of the Landlord Inspection, and the Landlords shall give the Tenants no less than three business days’ prior written notice of the date and time of the Landlord Inspection. In the event that the Tenants disagree with the findings in the Landlord Inspection, the Tenants shall have the option to hire a third-party inspector to inspect the Leased Premises, with the identity of the third-party inspector to be jointly determined by the Landlords and Tenants. In such event, the inspection report produced by the third-party inspector (the “Third Party Inspection”) shall govern and control. The date that the controlling inspection that occurs as described hereunder shall hereinafter be referred to as the “Inspection Date.” With respect to the Leased Premises, the Tenants shall not be obligated for any restoration costs arising under the Leases or otherwise (i) prior to the Inspection Date, (ii) from removing any personal property of the Tenants or (iii) for any Excluded Conditions (as defined below) (each of the foregoing, collectively, the “Released Obligations”), and the Landlords each irrevocably release the Tenants of any and all such Released Obligations and any and all claims associated therewith; *provided* that, for the avoidance of doubt, any physical damage (other than Excluded Conditions) to the Leased Premises that occurred on or after the Petition Date and before the Rejection Effective Date shall not be Released Obligations (any such damages, “Postpetition Property Damages”), and the Landlords and Tenants

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Dated: September 23, 2022
Houston, Texas

/s/Matthew D. Cavanaugh

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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

Court File No.: CV-22-00679628-00CL

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

PROCEEDING COMMENCED AT TORONTO

**AFFIDAVIT OF MICHAEL K. ROBINSON
(sworn October 14, 2022)**

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Lawyers for the Foreign Representative

TAB 3

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

THE HONOURABLE MADAM) FRIDAY, THE 21st
JUSTICE CONWAY) DAY OF OCTOBER, 2022

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

**ORDER
(RECOGNITION OF FOREIGN ORDER)**

THIS MOTION, made by Sungard Availability Services (Canada) Ltd./Sungard, Services de Continuité des Affaires (Canada) Ltée in its capacity as the foreign representative (the "**Foreign Representative**") of itself and the other Debtors (as defined in the affidavit of Michael K. Robinson sworn October 14, 2022 (the "**Robinson Affidavit**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C., 1985, c. C-36, as amended (the "**CCAA**") for an Order, among other things, recognizing and giving full force and effect in all provinces and territories of Canada to the Settlement Stipulation Order (defined below), substantially in the form enclosed in the Motion Record, was heard by judicial videoconference via Zoom at Toronto, Ontario.

ON READING the Notice of Motion, the Robinson Affidavit, and the Sixth Report of Alvarez & Marsal Canada Inc., in its capacity as Information Officer dated ●, 2022, each filed, and upon hearing the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and counsel for the other parties appearing on the counsel slip; and no one else appearing

although duly served as appears from the affidavit of service of William Onyeaju sworn October ●, 2022.

SERVICE AND DEFINITIONS

1. THIS COURT ORDERS that the time for service of the Notice of Motion and the Motion Record is hereby abridged and validated so that this Motion is properly returnable today and hereby dispenses with further service thereof.

2. THIS COURT ORDERS that capitalized terms used herein and not otherwise defined have the meaning given to them in the Robinson Affidavit.

RECOGNITION OF FOREIGN ORDER

3. THIS COURT ORDERS that the *Order (I) Approving Settlement Stipulation with Certain Landlords and Chubb Insurance Company of Canada and (II) Granting Related Relief* (the “**Settlement Stipulation Order**”) of the U.S. Bankruptcy Court made in the Chapter 11 Cases is hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to section 49 of the CCAA. A copy of the Settlement Stipulation Order is attached hereto as **Schedule “A”**.

GENERAL

4. THIS COURT HEREBY REQUESTS the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or in the United States of America to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective counsel and agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies are hereby respectfully requested to make such orders and to provide such assistance to the other Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the other Debtors, the Foreign Representative, and the Information Officer, and their respective counsel and agents in carrying out the terms of this Order.

5. THIS COURT ORDERS that the Foreign Representative and the Information Officer shall be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

6. THIS COURT ORDERS AND DECLARES that this Order shall be effective as of 12:01 AM on the date of this Order.

The Honourable Justice Conway

Schedule “A”

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

Court File No. CV-22-00679628-00CL

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

PROCEEDING COMMENCED AT TORONTO

**RECOGNITION ORDER
(RECOGNITION OF FOREIGN ORDER)**

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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

Court File No. CV-22-00679628-00CL

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

PROCEEDING COMMENCED AT TORONTO

**MOTION RECORD
(RECOGNITION OF FOREIGN ORDER)
(RETURNABLE OCTOBER 21, 2022)**

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