



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

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

THE HONOURABLE MADAM)

TUESDAY, THE 19th

JUSTICE KIMMEL)

DAY OF JULY, 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 July 12, 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 substantially in the form enclosed in the Motion Record, was heard by judicial videoconference via Zoom at Toronto, Ontario due to the COVID-19 crisis.

ON READING the Notice of Motion, the Robinson Affidavit, the Affidavit of William Onyeaju sworn July 18, 2022, and the Second Report of Alvarez & Marsal Canada Inc., in its capacity as Information Officer dated July 14, 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 July 12, 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 following order, granted by the U.S. Bankruptcy Court made in 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) *Order (I) Approving the Debtors' Key Employee Retention Program, (II) Authorizing the Debtors to Honor and Pay Certain Compensation Obligations, and (III) Granting Related Relief (the "KERP Order")*, a copy of which 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 a.m. on the date of this Order.



Digitally signed by
Jessica Kimmel
Date: 2022.07.20
01:05:19 -04'00'

The Honourable Justice Kimmel

Schedule "A"

ENTERED

July 13, 2022

Nathan Ochsner, Clerk

**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 421 and 485 |

ORDER (I) APPROVING THE DEBTORS’ KEY EMPLOYEE RETENTION PROGRAM, (II) AUTHORIZING THE DEBTORS TO HONOR AND PAY CERTAIN COMPENSATION OBLIGATIONS, AND (III) GRANTING RELATED RELIEF

Upon the motion (the “Motion”)² of the Debtors for entry of an order (this “Order”): (i) approving the Debtors’ Key Employee Retention Program (the “KERP”); (ii) authorizing the Debtors to honor and pay certain compensation obligations; and (iii) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; 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 it may enter a final order consistent with Article III of the United States Constitution; 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 this Court having found that the relief requested in the Motion is in the best interests of the Debtors’ estates, their creditors and other parties in interest; and this Court having found

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 have the meanings ascribed to them in the Motion.

that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion and at the Hearing establish just cause for the relief granted herein; and upon all of the proceedings had before this Court; and after due deliberation and sufficient cause appearing therefor, it is HEREBY ORDERED THAT:

1. Pursuant to Bankruptcy Code sections 363(b) and 503(c), the KERP is hereby approved.
2. The Debtors are authorized, but not directed, to take all actions necessary to implement the KERP and make the payments contemplated thereunder at the times specified in the Motion without the need for further Court approval.
3. If any award under the KERP is forfeited by a KERP Participant as described in the Motion, the Debtors are authorized to: (i) re-grant the value of a such forfeited award to other non-insider key employees, provided that such forfeited Proposed KERP Payment be allocated to an employee providing similar services to the Company; and (ii) grant the Proposed KERP Payments to additional KERP Participants using any remaining, unallocated amounts under the KERP Budget, as described in the Motion and in only accordance with the terms of this Order.
4. The Debtors are authorized to implement the Modified Sales Commission Program, which Modified Sales Commission Program shall be effective retroactively to May 1, 2022.
5. The Debtors are authorized to honor and make payments in the ordinary course on account of the Compensation Obligations, including payments on account of (i) Overdue Sales

Commissions, (ii) the Project-Based Retention Agreements and (iii) Prepetition Severance Obligations.

6. The Debtors shall maintain a schedule of amounts paid related to the Compensation Obligations made pursuant to this Order, including the following information: (a) the name of the payee; (b) the date and amount of the payment; (c) the category or type of payment; and (d) the Debtor or non-Debtor that made the payment. The Debtors shall provide a copy of such schedule to the U.S. Trustee, the advisors to the DIP Lenders and the advisors to the Creditors' Committee on the 12th of every month.

7. The Debtors shall not make any payments on account of the Compensation Obligations to any Insiders (as such term is defined in Bankruptcy Code section 101(31)) without further order of this Court.

8. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an admission as to the amount of, 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 the Motion or any order granting the relief requested by the Motion or a finding that any particular claim is an administrative expense claim or other priority claim; (e) a request or authorization to assume, adopt or reject any agreement, contract or lease pursuant to Bankruptcy Code section 365; (f) an admission as to the validity, priority, enforceability or perfection of any lien on, security interest in or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, rights under the Bankruptcy Code or any other applicable

law; or (h) a concession by the Debtors that any liens (contractual, common law, statutory or otherwise) that may be satisfied pursuant to the relief requested in the 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.

9. Notwithstanding anything in this Order to the contrary, any payment to be made, or any authorization contained hereunder, shall be subject to the terms of any orders authorizing debtor in possession financing or the use of cash collateral approved by this Court in these chapter 11 cases (including with respect to any budget governing or relating to such use), including, without limitation, the *Final Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Authorizing the Debtors to Repay Certain Prepetition Secured Indebtedness, (IV) Granting Liens and Providing Superpriority Administrative Expense Status, (V) Granting Adequate Protection, (VI) Modifying the Automatic Stay and (VII) Granting Related Relief* [Docket No. 220] (as each order may be amended or become final in accordance with the terms thereof, the “DIP Order”) and the Approved Budget (as defined in the DIP Order); and to the extent there is any inconsistency between the terms of such DIP Order and any action taken or proposed to be taken hereunder, the terms of such DIP Order and the Approved Budget shall control.

10. Notice of the Motion satisfies the requirements of Bankruptcy Rule 6004(a), and the Bankruptcy Local Rules are satisfied by such notice.

11. Notwithstanding Bankruptcy Rule 6004(h), the terms and conditions of this Order are immediately effective and enforceable upon entry.

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

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

Signed: July 13, 2022.



DAVID R. JONES
UNITED STATES BANKRUPTCY JUDGE

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

**ORDER
(RECOGNITION OF FOREIGN ORDER)**

CASSELS BROCK & BLACKWELL LLP

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

Ryan Jacobs LSO#: 59510J

Tel: 416.860.6465
rjacobs@cassels.com

Jane Dietrich LSO#: 49302U

Tel: 416.860.5223
jdietrich@cassels.com

Natalie E. Levine LSO#: 64908K

Tel: 416.860.6568
nlevine@cassels.com

Lawyers for the Foreign Representative