

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

|  |   |                               |
|--|---|-------------------------------|
| In re:                                   | ) | Chapter 11                    |
| AVAYA INC., <i>et al.</i> , <sup>1</sup> | ) | Case No. 23-90088 (DRJ)       |
|  | ) |                               |
| Debtors.                                 | ) | (Jointly Administered)        |
|  | ) | (Emergency Hearing Requested) |

**DEBTORS' EMERGENCY  
MOTION FOR ENTRY OF INTERIM  
AND FINAL ORDERS (I) AUTHORIZING  
THE DEBTORS TO (A) CONTINUE USING  
THE CASH MANAGEMENT SYSTEM, (B) MAINTAIN  
EXISTING BANK ACCOUNTS AND BUSINESS FORMS  
AND BOOKS AND RECORDS, AND (C) CONTINUE USING  
THE INVESTMENT ACCOUNT AND THE INVESTMENT POLICY,  
(II) AUTHORIZING CONTINUED INTERCOMPANY TRANSACTIONS,  
(III) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION  
INTERCOMPANY TRANSACTIONS, AND (IV) GRANTING RELATED RELIEF**

Emergency relief has been requested. Relief is requested not later than 9:00 a.m. (prevailing Central Time) on February 15, 2023.

If you object to the relief requested or you believe that emergency consideration is not warranted, you must appear at the hearing if one is set, or file a written response prior to the date that relief is requested in the preceding paragraph. Otherwise, the Court may treat the pleading as unopposed and grant the relief requested.

A hearing will be conducted on this matter on February 15, 2023, at 9:00 a.m. (prevailing Central Time) in Courtroom 400, 4th floor, 515 Rusk Street, Houston, Texas 77002. Participation at the hearing will only be permitted by an audio and video connection.

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

**Hearing appearances must be made electronically in advance of both electronic and**

<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <http://www.kccllc.net/avaya>. The location of Debtor Avaya Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.



**in-person hearings. To make your appearance, click the “Electronic Appearance” link on Judge Jones’s homepage. Select the case name, complete the required fields and click “Submit” to complete your appearance.**

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

### **Relief Requested**

1. The Debtors seek entry of interim and final orders, substantially in the attached form (respectively, the “Interim Order” and “Final Order”), (a) authorizing the Debtors to (i) continue using the Cash Management System, including honoring certain prepetition obligations related thereto, (ii) maintain existing Bank Accounts, Business Forms, and Books and Records, and (iii) continue using the Investment Account and the Investment Policy, (b) authorizing the Debtors to continue Intercompany Transactions, (c) granting administrative expense status to all Postpetition Intercompany Transactions, and (d) granting related relief. The Debtors request that the Court schedule a final hearing within approximately twenty-one days after the commencement of these Chapter 11 Cases to consider entry of the Final Order.

### **Jurisdiction and Venue**

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

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

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<sup>2</sup> The Debtors, together with their non-Debtor affiliates (collectively, “Avaya” or the “Company”), are a leading provider of mission-critical, real-time communication applications. The facts and circumstances supporting this Motion are set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Avaya Holdings Corp. and Certain of Its Affiliates and Subsidiaries, in Support of the Debtors’ Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), filed contemporaneously with the filing of this Motion and incorporated by reference herein. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the First Day Declaration.

4. The bases for the relief requested herein are sections 105, 345, 362, 363, 364, and 503 of title 11 of the United States Code (the “Bankruptcy Code”), rules 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1(b) of the Bankruptcy Local Rules for the Southern District of Texas (the “Bankruptcy Local Rules”).

### **Background**

5. On the date hereof (the “Petition Date”), the Debtors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code.

6. The Debtors have filed a motion requesting joint administration of these Chapter 11 Cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these Chapter 11 Cases and no official committees have been appointed or designated.

### **The Cash Management System**

7. To facilitate the efficient operation of their businesses, the Debtors and their non-Debtor affiliates use an integrated, centralized cash management system (the “Cash Management System”) to collect, transfer, and disburse funds generated by their operations. The Cash Management System facilitates cash monitoring, forecasting, and reporting and enables the Debtors to maintain control over the administration of approximately thirty-seven bank accounts (together with any other bank accounts the Debtors may open in the ordinary course of their businesses, the “Bank Accounts”)<sup>3</sup> and one investment account (the “Investment Account”) owned by the Debtors and maintained with multiple banks

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<sup>3</sup> For the avoidance of doubt, the Bank Accounts do not include two accounts held by Citibank N.A. (“Citibank”) for letter of credit cash collateralization purposes. The Debtors typically have an interest in such accounts but do not maintain unilateral control over the funds deposited in them.

(collectively, the “Cash Management Banks”), including those set forth on **Exhibit A** attached hereto and reflected on the diagram of the Cash Management System attached hereto as **Exhibit B**. The Debtors’ finance department oversees the Cash Management System and implements cash management controls for entering, processing, and releasing funds.

8. The Cash Management System is similar to those commonly employed by businesses comparable in size and scale to the Debtors. Indeed, large, multinational businesses use integrated systems to help control funds, ensure cash availability for each entity, and reduce administrative expenses by facilitating the movement of funds among multiple entities. As described herein, given the economic and operational scale of the Debtors’ business, any disruption to the Cash Management System would be materially detrimental to the Debtors’ operations to the detriment of their estates and stakeholders. To minimize the disruption and to maximize the value of the Debtors’ estates, the Debtors request authority to continue operating the Cash Management System during the course of these Chapter 11 Cases.

**I. The Bank Accounts and Flow of Funds.**

9. The Cash Management System is tailored to meet the Debtors’ operating needs—enabling the Debtors to control and monitor corporate funds, ensure cash availability and liquidity, comply with the requirements of their financing agreements, and reduce administrative expenses by facilitating the movement of funds and the development of accurate account balances.

**A. The Bank Accounts.**

10. The Debtors’ Bank Accounts and Investment Account are held by the following Debtors: (a) twenty Bank Accounts and one Investment Account owned by Avaya Inc.; (b) two Bank Accounts owned by Avaya Management L.P.; (c) two Bank Accounts owned by Avaya Federal Solutions, Inc. (“Avaya Federal”); (d) one Bank Account owned by Avaya Holdings Corp.; (e) one Bank Account owned by Intellisist, Inc. (“Intellisist”); (f) one Bank Account owned

by Avaya Cloud Inc. (“Avaya Cloud”); (g) seven Bank Accounts owned by Avaya EMEA, Ltd. (“Avaya EMEA”); (h) two Bank Accounts owned by Sierra Asia Pacific, Inc. (“Sierra AP”); and (i) one Bank Account owned by Sierra Communication International LLC (“Sierra Communication”).

11. The Debtors’ primary Cash Management Bank is J.P. Morgan Chase Bank, N.A. (“JPMorgan”), where the Debtors maintain twenty of the Bank Accounts. In addition to accounts maintained at JPMorgan, the Debtors also maintain: (a) four Bank Accounts at Bank of America, N.A. (“BOA”); (b) one Bank Account at Delaware Trust Co. (“Delaware Trust”); (c) eleven Bank Accounts at Citibank; (d) one Bank Account at Saudi British Bank; and (e) the Investment Account at Goldman, Sachs & Co. (“Goldman Sachs”).

12. The Debtors’ cash on-hand is largely comprised of proceeds from the Debtors’ ongoing business operations. As of the Petition Date, the aggregate balance of funds held in the Bank Accounts and the Investment Account is approximately \$45.61 million. The Bank Accounts include the following Debtor-owned and Debtor-controlled accounts, each serving a dedicated function:

| Accounts  | Description of Accounts   |
|---|---|
| <p><b><u>Main Concentration Account</u></b><br/><i>JPMorgan Account ending 4399</i></p> | <p>Avaya Inc. maintains a master—or “concentration”—account at JPMorgan (the “<u>Main Concentration Account</u>”), which is the Company’s main operating account into which funds are swept daily from: (a) the Debtors’ three main deposit accounts and (b) the Debtors’ BOA Master Account (as defined herein).</p> <p>Funds from the Main Concentration Account, in turn, are transferred to (a) the Debtors’ Disbursement Accounts, as necessary, to fund disbursements from such accounts, including disbursements necessary to fund the Debtors’ Customs Account, and (b) the Operating Accounts to fund general operating needs (each as defined herein).</p> <p>In addition, excess funds in the Main Concentration Account are deposited into the Debtors’ Investment Transfer Account (as defined herein) at JPMorgan and then transferred to the Debtors’ Investment Account at Goldman Sachs.</p> |

| Accounts  | Description of Accounts   |
|---|---|
|   | The Main Concentration Account is subject to a Deposit Account Control Agreement in favor of Citibank. As of the Petition Date, the Main Concentration Account had a balance of zero.   |
| <p><b><u>Deposit Accounts</u></b></p> <p><i>JPMorgan Account ending 7562</i><br/> <i>JPMorgan Account ending 4724</i><br/> <i>JPMorgan Account ending 6707</i><br/> <i>JPMorgan Account ending 6390</i><br/> <i>Citibank Account ending 5852</i><br/> <i>Citibank Account ending 8000</i></p> | <p>Avaya Inc. and Avaya Management maintain four deposit accounts at JPMorgan and two deposit accounts at Citibank (collectively, the “<u>Deposit Accounts</u>”), which are funded by accounts receivable, licensing payments, reimbursements from the Company’s various channel partners,<sup>4</sup> and other miscellaneous sources. Deposit Accounts ending 7562, 4724, and 6707, are zero balance accounts, which are swept daily to the Main Concentration Account.</p> <p>Deposit Account ending in 7562 is a customer receipt account funded by checks. This account handles accounts receivable from Avaya Inc. and Avaya Federal as well as receipts from Avaya Inc.’s partner program.<sup>5</sup></p> <p>Deposit Account ending in 4724 is a customer receipt account funded by EFT and ACH payments. This account also handles accounts receivable from Avaya Inc. and Avaya Federal, as well as Avaya Inc.’s partner program.</p> <p>Deposit Account ending in 6707 is a multi-purpose account, handling licensing receipts, intercompany receipts, reimbursements from the Debtors’ various channel partners, and other miscellaneous customer check deposits and receipts.</p> <p>Deposit Account ending in 6390 is a multi-purpose account, funded by check, EFT, ACH receipts, and other miscellaneous receipts and is maintained by Avaya Management.</p> <p>Deposit Accounts ending in 5852 and in 8000 are multi-purpose deposit accounts maintained by Avaya Inc.</p> |
| <p><b><u>Disbursement Accounts</u></b></p> <p><i>JPMorgan Account ending 4410</i><br/> <i>JPMorgan Account ending 4509</i><br/> <i>JPMorgan Account ending 6715</i><br/> <i>JPMorgan Account ending 4432</i><br/> <i>JPMorgan Account ending 6382</i></p>                                     | <p>Avaya Inc., Avaya Management, and Avaya Federal maintain five disbursement accounts (the “<u>Disbursement Accounts</u>”) at JPMorgan, which are funded with cash manually transferred from the Main Concentration Account, or another designated account, sufficient to cover certain of the Debtors’ accounts payable in the ordinary course.</p> <p>Disbursement Account ending in 4410 funds the Debtors’ general accounts payable account, servicing the Debtors’ operating expenses in the ordinary course.</p> <p>Disbursement Account ending in 4509 is a controlled disbursement account utilized to fund checks issued by the Debtors for accounts payable.</p>   |

<sup>4</sup> A “channel partner” is a company that partners with a manufacturer or producer of technology, such as the Debtors, to market and sell products, services, or technologies.

<sup>5</sup> Avaya Inc.’s partner program is a rewards program for Avaya Inc. resell partners, offering sales incentives, collaboration, support, and education.

| Accounts   | Description of Accounts  |
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|  | <p>Disbursement Account ending in 6715 is a miscellaneous wire disbursement account used to make payments that are unable to be processed through the Debtors' standard accounts payable process manually. For example, this account is utilized to fund the Customs Account, as necessary, with cash received from the Main Concentration Account.</p> <p>Disbursement Account ending in 4432 is utilized to fund the accounts payable obligations of Avaya Federal.</p> <p>Disbursement Account ending in 6382 funds Avaya Management's disbursements for operations in the ordinary course of business, including general accounts payable, and payroll.</p>  |
| <p><b><u>Payroll Accounts</u></b></p> <p><i>JPMorgan Account ending 1412</i><br/><i>JPMorgan Account ending 1984</i></p>   | <p>The Debtors maintain two payroll accounts (the "<u>Payroll Accounts</u>") at JPMorgan to fund payroll expenses to, and on account of, the Debtors' employees. Each Payroll Account is funded from the Main Concentration Account, or another designated account, in an amount sufficient to cover payroll disbursements prior to their initiation each pay period.</p> <p>Payroll Account ending in 1412 is utilized to fund the payroll obligations of Avaya Inc. and its employees.</p> <p>Payroll Account ending in 1984 is utilized to fund the payroll obligations of Avaya Federal and its employees.</p>   |
| <p><b><u>Operating Accounts</u></b></p> <p><i>JPMorgan Account ending 9756</i><br/><i>JPMorgan Account ending 6801</i><br/><i>JPMorgan Account ending 3147</i></p> | <p>Intellisist, Avaya Holdings Corp., and Sierra Communication each maintain one Bank Account at JPMorgan (the "<u>Operating Accounts</u>").</p> <p>Operating Account ending in 9756 is a general operating account owned by Intellisist used for payroll, general, accounts payable, customer receipts, and to disburse and receive funds to and from certain of the Debtors' international non-Debtor affiliates. As of the Petition Date, this account held a balance of \$779,000.</p> <p>Operating Account ending in 6801 is a general operating account owned by Avaya Holdings Corp. used to receive corporate tax refunds and make payments on its funded debt and taxes. As of the Petition Date, this account held a zero balance.</p> <p>Operating Account ending in 3147 is a general operating account for Sierra Communication used to both disburse and receive funds to and from certain of the Debtors' international non-Debtor affiliates. As of the Petition Date, this account held a zero balance.</p> |
| <p><b><u>Investment Account</u></b></p> <p><i>Goldman Sachs Account ending 9100</i></p>  | <p>Avaya Inc. maintains the Investment Account at Goldman Sachs, which is funded with excess cash from the Main Concentration Account via transfers through the Investment Transfer Account. As more fully described below, the funds in the Investment Account are invested, at the Debtors' discretion, by Goldman Sachs, as agent, in various money market funds. Such investments can generally be liquidated upon demand.</p> <p>Keeping excess cash in the investments permits the Debtors to maximize the value realized from their excess cash on-hand while maintaining the ability to access funds as needed to transfer back to the Investment Transfer Account, and then, to the Main Concentration Account. The total</p>   |

| Accounts   | Description of Accounts  |
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|  | amount deposited into the Investment Account varies depending on the Debtors' overall liquidity. As of the Petition Date, there is zero cash invested in money market funds through the Investment Account.  |
| <p><b><u>BOA Accounts</u></b></p> <p><i>BOA Master Account ending 0975</i><br/> <i>BOA Deposit Account ending 0988</i><br/> <i>BOA Deposit Account ending 0991</i><br/> <i>BOA Deposit Account ending 3441</i></p> | <p>Avaya Inc. maintains one master account (the "<b><u>BOA Master Account</u></b>") and three deposit accounts (the "<b><u>BOA Deposit Accounts</u></b>"), at BOA (collectively, the "<b><u>BOA Accounts</u></b>"). The BOA Deposit Accounts handle customer credit card and customer payments in connection with the Debtors' DevConnect Program.<sup>6</sup> Each of the BOA Deposit Accounts in turn, is a zero balance account that is swept daily into the BOA Master Account. At all times, the BOA Master Account maintains a minimum balance of \$200,000, with funds in excess of this amount being transferred into the Main Concentration Account as needed. As of the Petition Date, the BOA Accounts had a combined balance of approximately \$259,000.</p> <p>BOA Master Account ending in 0975 serves as the Debtors' concentration account at BOA, and, as noted above, maintains a \$200,000 minimum balance at all times. On a discretionary basis, the Debtors transfer cash from the BOA Master Account to the Main Concentration Account to fund the Debtors' business operation or investment practices.</p> <p>BOA Deposit Account ending in 0988 receives customer credit card payments in connection with the Debtors' SAP products and services.</p> <p>BOA Deposit Account ending in 0991 handles customer credit card payments in connection with legacy telecommunications systems.</p> <p>BOA Deposit Account ending in 3441 handles customer payments in connection with the Debtors' DevConnect Program.</p> |
| <p><b><u>Customs Account</u></b></p> <p><i>JPMorgan Account ending 7418</i></p>  | <p>JPMorgan Account ending in 7418 is a disbursement account funded, as needed, from Avaya Inc.'s Disbursement Account ending in 6715 with cash received from the Main Concentration Account to pay US Customs and Border Protection fees (the "<b><u>Customs Account</u></b>"). As of the Petition Date, the Customs Account had a zero balance.</p>  |
| <p><b><u>Environmental Escrow Account</u></b></p> <p><i>Citibank Account ending 6392</i></p>   | <p>Avaya Inc. maintains one Bank Account at Citibank ending in 6392 (the "<b><u>Environmental Escrow Account</u></b>"). The Environmental Escrow Account is an escrow account required by Illinois law, which must be maintained for twenty-nine years. The Environmental Escrow Account has never had any activity. As of the Petition Date, the Environmental Escrow Account had a zero balance.</p>   |
| <p><b><u>IP Escrow Account</u></b></p> <p><i>Delaware Trust Account ending 5418</i></p>  | <p>Avaya Inc. maintains one Bank Account at Delaware Trust ending in 5418 (the "<b><u>IP Escrow Account</u></b>"). The IP Escrow Account is an escrow account for the Allied Securities Trust, intellectual property licensing, and patents. The IP Escrow Account has never had a balance.</p>  |
| <p><b><u>Avaya Cloud Account</u></b></p> <p><i>JPMorgan Account ending 2044</i></p>  | <p>Avaya Cloud maintains one Bank Account at JPMorgan ending in 2044 (the "<b><u>Avaya Cloud Account</u></b>"). The Avaya Cloud Account is a general operating account covering both receipts and disbursements in connection with Avaya Cloud's cloud-based product offerings. It is self-sustaining</p>  |

<sup>6</sup> The DevConnect Program is a customer program whereby the Debtors enter into sales-agent agreements with companies who offer complementary products and services that work with the Avaya Inc. communications platforms.

| Accounts   | Description of Accounts  |
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|  | and has no direct connection to the Debtors' Main Concentration Account. As of the Petition Date, the Avaya Cloud Account held a balance of approximately \$954,000.   |
| <p><b><u>Branch Office Accounts</u></b></p> <p><i>Citibank Account ending 7017</i><br/> <i>Citibank Account ending 4019</i><br/> <i>Citibank Account ending 9021</i><br/> <i>Citibank Account ending 9005</i><br/> <i>Saudi British Bank Account ending 8001</i><br/> <i>JPMorgan Account ending 3522</i><br/> <i>Citibank Account ending 1018</i><br/> <i>Citibank Account ending 4005</i><br/> <i>Citibank Account ending 4008</i></p> | <p>The Debtors maintain nine foreign Bank Accounts (the "<u>Branch Office Accounts</u>") with respect to the operation of "branch" offices (collectively, the "<u>Branch Offices</u>") for Avaya EMEA and Sierra AP, respectively. Specifically, the Branch Offices are located in the following jurisdictions: (a) Greece (Avaya EMEA); (b) Portugal (Avaya EMEA); (c) Saudi Arabia (Avaya EMEA); (d) South Africa (Avaya EMEA); (e) Thailand (Sierra AP); and (f) Taiwan (Sierra AP). The Debtors are required to maintain the Branch Office Accounts in each of these foreign jurisdictions in order to conduct business therein.</p> <p>Citibank Account ending 7017 is a general operating account maintained by a branch office of Avaya EMEA in Greece. As of the Petition Date, the account held a balance of approximately \$109,000.</p> <p>Citibank Account ending 4019 is a general operating account maintained by a branch office of Avaya EMEA in Portugal. As of the Petition Date, the account held a balance of approximately \$901,000.</p> <p>Citibank Account ending 9021 is a general operating account maintained by a branch office of Avaya EMEA in Saudi Arabia. The account is primarily utilized for collections of accounts receivable, disbursements of accounts payable, and payment of payroll expenses in Saudi riyals. As of the Petition Date, the account held a balance of approximately \$4,000.</p> <p>Citibank Account ending 9005 is a general operating account maintained by a branch office of Avaya EMEA in Saudi Arabia. The account is primarily utilized for collections of accounts receivable, disbursements of accounts payable, and payment of payroll expenses in U.S. dollars. As of the Petition Date, the account held a zero balance.</p> <p>Saudi British Bank Account ending 8001 is a general operating account maintained by a branch office of Avaya EMEA in Saudi Arabia. The account is primarily utilized for collections of accounts receivable, and disbursements of accounts payable. As of the Petition Date, the account held a balance of approximately \$35,000.</p> <p>JPMorgan Account ending 3522 is a payroll account maintained by a branch office of Avaya EMEA in Saudi Arabia. The account is utilized for the payment of payroll expenses in Saudi riyals. As of the Petition Date, the account held a balance of approximately \$1,000.</p> <p>Citibank Account ending 1018 is a general operating account maintained by a branch office of Avaya EMEA in South Africa. As of the Petition Date, the account held a balance of approximately \$876,000.</p> <p>Citibank Account ending 4005 is a general operating account maintained by a branch office of Sierra AP in Thailand. As of the Petition Date, the account held a balance of approximately \$1,252,000.</p> |

| Accounts   | Description of Accounts   |
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|  | Citibank Account ending 4008 is a general operating account maintained by a branch office of Sierra AP in Taiwan. As of the Petition Date, the account held a balance of approximately \$1,119,000.   |
| <u>Utilities Escrow Account</u><br><br><i>JPMorgan Account ending 8754</i>                                   | JPMorgan Account ending in 8754 is a utilities escrow account (the “ <u>Utilities Escrow Account</u> ”) established to provide additional assurance of payment to the Debtors’ utility providers. As of the Petition Date, the Utilities Account had a zero balance.  |
| <u>Foreign Reserve Account</u><br><br><i>Citibank Account ending 7900</i>                                    | Citibank Account ending in 7900 shall serve as the Foreign Reserve Account (as defined herein) in connection with the DIP Financing (as defined herein) and shall be funded with \$40 million of proceeds from the DIP Financing under any order(s) of this Court approving DIP Financing (any such order, a “ <u>Financing Order</u> ”).   |
| <u>DIP Term Loan Proceeds Account/Investment Transfer Account</u><br><br><i>JPMorgan Account ending 4763</i> | <p>JPMorgan Account ending in 4763 is maintained by Avaya Inc. as both an investment transfer account and as the DIP term loan proceeds account in connection with the DIP Financing (respectively, the “<u>Investment Transfer Account</u>” and the “<u>DIP Term Loan Proceeds Account</u>”).</p> <p>In its role as the Investment Transfer Account, cash in the Main Concentration Account is transferred to the Investment Transfer Account and then to the Investment Account at Goldman Sachs. On a discretionary basis, positions held through the Investment Account are liquidated with the proceeds returning to the Investment Transfer Account, and then to the Main Concentration Account.</p> <p>In connection to the DIP Financing, the DIP Term Loan Proceeds Account shall be funded with the proceeds from the DIP Financing upon entry of a Financing Order as described in the DIP Motion.</p> |

## B. Description of Funds Processing.

13. A diagram setting forth the flow of funds among the Bank Accounts is attached hereto as Exhibit B. The following list describes the manner in which cash generally moves through the Cash Management System:

- **Receipts and Revenues.** As detailed above, the Debtors’ receipts and revenues are deposited into their various Deposit and Operating Accounts. With respect to zero balance accounts, funds received are swept to the Main Concentration Account on a daily basis. If such accounts are not zero balance accounts, the funds received are then either: (a) processed and deposited into the Main Concentration Account, the BOA Master Account, and/or the Deposit Accounts on a daily or discretionary basis; or (b) held separately from the Main Concentration Account for use by certain of the Company’s subsidiaries and affiliates such as Avaya Cloud, Avaya Management, Intellisist, and Avaya Holdings Corp.
- **Disbursements.** With respect to the zero balance Disbursement and Payroll Accounts tied to the Main Concentration Account, such accounts are funded, as

needed, by the Main Concentration Account with cash sufficient to satisfy the Debtors' obligations on a given day. Other non-zero-balance Bank Accounts are manually funded by the Main Concentration Account. The Debtors' Disbursement and Operating Accounts, which are not connected to the Main Concentration Account, but are nonetheless utilized to pay the Debtors' obligations, are either self-funded or funded via separate Deposit or Master Accounts such as the BOA Master Account.

- ***Excess Cash from Operations.*** The Debtors evaluate ongoing liquidity needs each week and sweep excess cash from business operations from the Main Concentration Account into the Investment Account through the Investment Transfer Account. These funds are then invested pursuant to the Debtors' Investment Policy in an effort to maximize the return on the Debtors' excess liquidity. The Debtors' various positions are then liquidated on an as needed basis and transferred to the Main Concentration Account through the Investment Transfer Account to fund the Debtors' ongoing business operations.

**C. Bank Fees**

14. The Debtors incur periodic service charges and other fees in connection with the maintenance of the Cash Management System (the "Bank Fees").<sup>7</sup> Bank Fees for each month are paid in arrears between the 15th and 22nd day of the following month and are automatically deducted from the Debtors' Bank Accounts as they are assessed by their respective Cash Management Banks. The Debtors seek authority to continue paying Bank Fees, including any Bank Fees that are owed as of the Petition Date, in the ordinary course on a postpetition basis, consistent with historical practice.

**D. The Debtors' Investment Policy.**

15. As noted above, on a weekly basis, the Debtors, after evaluating their upcoming liquidity needs, sweep excess cash from business operations from the Main Concentration Account

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<sup>7</sup> The average gross Bank Fees for the past three months was approximately \$105,000. The average gross Bank Fees for the same period in 2021 was approximately \$84,000. The average net Bank Fees for the past three months was approximately \$22,000. The average net Bank Fees for the same period in 2021 was approximately \$83,000. The credits received, which reduced the gross Bank Fees, were earned based on the average cash balance in the Debtors' various Bank Accounts.

into the Investment Account. The Debtors invest this excess cash pursuant to an internal investment policy (the “Investment Policy”).

16. In accordance with the Investment Policy, the Debtors invest cash in money market funds with a maximum tenor from trade date to effective maturity of thirteen months, including: (a) pre-approved money market funds with AAA credit ratings (the “Money Market Funds”), including (x) funds that invest in cash and United States Treasury securities, (y) funds that invest their assets in government securities or cash, or (z) funds that invest in Euro, Sterling, United States Dollar, and Australian Dollar denominated government and non-government money market instruments, securitizations and asset-backed commercial paper, cash deposits, repurchase agreements and reverse repurchase agreements, money market funds, debt securities, and corporate and sovereign variable and fixed rate bonds; (b) United States government sponsored entities with at the least the same credit rating as the United States government; (c) bank deposits; and (d) United States Treasury Bills, Notes, and Bonds. With respect to positions taken in the Money Market Funds pursuant to the Investment Policy, such positions are generally capable of being liquidated immediately, allowing the Debtors to effectively treat the Investment Account as an ordinary deposit account. As of the Petition Date, the Debtors had no cash in the Investment Account.

17. The primary objectives of the Investment Policy are the preservation of principal, liquidity, diversification of risk, and the maximization of taxable or after-tax total rate of return without compromising safety and liquidity. The Debtors request authority to continue the Investment Policy during the pendency of these Chapter 11 Cases.

## **II. Compliance With the U.S. Trustee Guidelines and the Bankruptcy Code.**

### **A. U.S. Trustee Authorized Depositories.**

18. The *Region 7 Guidelines for Debtors-in-Possession* (the “U.S. Trustee Guidelines”) generally require chapter 11 debtors to, among other things, deposit all estate funds into an account with an authorized depository that agrees to comply with the requirements of the U.S. Trustee. As of the Petition Date, the Debtors maintained the vast majority of their Bank Accounts at JPMorgan, Citibank, and BOA, each of which are designated as authorized depositories by the U.S. Trustee pursuant to the U.S. Trustee Guidelines. Delaware Trust, Saudi British Bank, and Goldman Sachs are the only Cash Management Banks that are not designated as authorized depositories pursuant to the U.S. Trustee Guidelines. Nevertheless, Delaware Trust, Saudi British Bank, and Goldman Sachs are well-capitalized, financially stable, and reputable institutions. Further, the principal basis for the exclusion of Saudi British Bank from the U.S. Trustee Guidelines is location, not financial soundness or stability. Indeed, Saudi British Bank is based outside of the United States and is thus less likely to be identified by the U.S. Trustee as an authorized depository. Cause exists to allow the Debtors to continue utilizing the existing Bank Accounts and the Investment Account with historical practices.

19. The Cash Management System is complex and critical to the ongoing stability of the Debtors’ businesses and smooth transition into chapter 11. Requiring the Debtors to transfer any of the Bank Accounts or the Investment Account to a designated authorized depository would place a needless and excessive administrative burden on the Debtors and impose significant, value-destructive costs to the Debtors’ estates. Further, relocating the Debtors’ Cash Management System to U.S.-only accounts could have potentially significant tax or regulatory impacts. In any event, the Debtors will continue to work in good faith with the U.S. Trustee to address any concerns regarding the continued use of these accounts on a postpetition basis.

**B. Business Forms and Books and Records.**

20. As part of the Cash Management System, the Debtors use a variety of preprinted business forms (including letterhead, correspondence forms, invoices, and other business forms) in the ordinary course of business (collectively, and as they may be modified from time to time, the “Business Forms”). The Debtors also maintain books and records to document their financial results and a wide array of operating information (collectively, the “Books and Records”). To avoid a significant disruption to their business operations and to minimize administrative expense to their estates, the Debtors request authorization to continue using all of the Business Forms and Books and Records in a manner consistent with prepetition practice, without reference to the Debtors’ status as chapter 11 debtors in possession.

**III. The Debtors’ Intercompany Transactions.**

21. In the ordinary course of business, the Debtors maintain business relationships with each other and their non-Debtor affiliates and regularly engage in transactions through various intercompany service agreements or intercompany notes (the “Intercompany Transactions”). Such Intercompany Transactions include: (a) intercompany loans pursuant to certain intercompany loan agreements; (b) licensing fees and royalties paid to certain Debtors by various international non-Debtor affiliates for the use of Debtor-owned marks or other intellectual property; (c) the payment of various obligations to non-Debtor affiliates in the ordinary course pursuant to intercompany arrangements that provide a certain minimum, market-based return for the sale of Avaya Inc. products and services; (d) the provision of various services to various Debtors and non-Debtor affiliates pursuant to intercompany service agreements; and (e) other expenses on account of ordinary course business expenses or operational restructuring initiatives. These Intercompany Transactions are structured in several different ways, including through

account receivables and payables,<sup>8</sup> fulfillment of contractual obligations, payment pursuant to intercompany loans, and capital contributions.

22. At any given time, as a result of the Intercompany Transactions, there may be claims owing by one Debtor to another Debtor or non-Debtor affiliate. For example, by the operation of the Cash Management System, the Debtors transfer funds out of the Main Concentration Account into various Disbursement Accounts and create intercompany balances among the Debtors. Each payment from a Debtor and each bookkeeping entry between Debtors and between Debtors and non-Debtor affiliates on account of a postpetition Intercompany Transaction (each, a “Postpetition Intercompany Transaction”) is an essential component of the Cash Management System. The Debtors maintain, and will continue to maintain, records of these transfers of cash and bookkeeping entries on a postpetition basis, and can ascertain, trace, and account for Postpetition Intercompany Transactions.

23. In certain instances, Intercompany Transactions between Debtors and between Debtors and non-Debtor affiliates are “netted” to allocate outstanding amounts due and owing. The Debtors request authority to continue these “netting” practices postpetition in the ordinary course. The Debtors additionally request authority to enter into Postpetition Intercompany Transactions between Debtors and non-Debtors, including the Initial Intercompany Transaction, as further described in the DIP Motion.<sup>9</sup> The Debtors have implemented internal mechanisms that

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<sup>8</sup> In the ordinary course of business, certain non-Debtor affiliates that have accrued payables for services rendered to the Debtors seek payment of such payables only in the amounts forecasted for future monthly services. Such arrangements, including the payment of any payables accrued prior to the Petition Date, are Postpetition Intercompany Transactions insofar as the non-Debtor affiliate seeks payment on account of future services, and seek authority to continue such Postpetition Intercompany Transactions in the ordinary course. For example, such payables include services rendered by non-Debtor foreign affiliates (the “NFAs”) Avaya India (SEZ) Pvt Ltd., Avaya Argentina S.R.L., and Avaya Communications Israel Ltd.

<sup>9</sup> Pursuant to their proposed postpetition secured debtor in possession financing (the “DIP Financing”), the Debtors have requested approval to use proceeds of a priming superpriority senior secured debtor in possession facility in the form of term loans (the “DIP Term Loan Facility”) to: (a) fund an initial Postpetition Intercompany

will permit them, with the assistance of their advisors, to accurately track the balance of all prepetition and Postpetition Intercompany Transactions.

24. Pursuant to the Initial Intercompany Transaction, the Debtors will loan \$50 million to certain NFAs (the “Group Companies”) that are parties to that certain cash pooling agreement with Citibank (the “Cash Pooling Bank”), which memorializes a cash management arrangement among the Cash Pooling Bank and the Group Companies (the “Cash Pooling Arrangement”). Under the Cash Pooling Arrangement, the Group Companies’ accounts of the same currency are consolidated and notionally treated by the Cash Pooling Bank as an aggregate amount on deposit, allowing each of the Group Companies to maintain positive and negative individual balances at various times.<sup>10</sup> As of March 31, 2023, the Cash Pooling Arrangement will transition from notional balances to physical balances, necessitating the actual transfer of funds among the Group Companies to reconcile the balances. As of February 5, 2023, each of the U.S. Dollar-, Euro-, and British Pound-denominated cash pools had U.S. Dollar equivalent net positive balances of \$12.7 million, \$5.0 million, and \$3.9 million, respectively. International operations, including

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Transaction in the form of an intercompany loan in an amount not to exceed \$50 million (the “Initial Intercompany Transaction”) by Sierra Communication to NFA Avaya International Sales Ltd and subsequently to certain NFAs to be used for working capital and the general corporate purposes of Sierra Communication’s foreign subsidiaries, including to fund certain cash pool accounts under the Cash Pooling Arrangement (as defined herein); and (b) to fund a deposit of up to \$40 million to a segregated account held by Avaya Inc. (the “Foreign Reserve Account”) for purposes of backstopping the liquidity of certain NFAs to the extent necessary to preserve the value of the Debtors’ international business, as described in *Debtors’ Emergency Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superiority Administrative Expense Claims, (III) Granting Adequate Protection to the Prepetition Secured Parties, (IV) Modifying the Automatic Stay, and (V) Granting Related Relief* (the “DIP Motion”) and subject to the Foreign Reserve Protocol and the Intercompany Transfer Mechanic (each as defined in the DIP Motion). As set forth more fully in the DIP Motion (and subject to the limitations described therein), the Debtors seek authority to make disbursements from the Foreign Reserve Account in accordance with the Foreign Reserve Protocol and the Intercompany Transfer Mechanic, with such disbursements being made pursuant to an intercompany loan agreement (except where prohibited by applicable local law), rather than as a contribution of capital.

<sup>10</sup> The Cash Pooling Bank maintains three separate cash pools under the Cash Pooling Arrangement—a U.S. dollar pool, a Euro pool, and a British pound pool.

those of the Group Companies, have historically accounted for approximately forty percent of Avaya's revenue. Minimizing the disruption to Avaya's foreign operations is necessary to preserve the value of the enterprise, directly benefiting the Debtors and their estates.

25. The Debtors' ability to engage in Postpetition Intercompany Transactions is critical to ensure the uninterrupted operation and preserve the value of their international business and effectuate an operational restructuring that was initiated prepetition to realize cost savings and efficiencies that will inure to the benefit of the Debtors' estates and their stakeholders.<sup>11</sup> The Intercompany Transactions are essential for the Debtors to process payroll, remit payments to vendors, effectuate their operational restructuring, and otherwise operate their business in a value-maximizing way. The ability to conduct Postpetition Intercompany Transactions is critical to the Debtors' successful restructuring efforts.

26. The Debtors seek to continue Postpetition Intercompany Transactions (including with respect to netting or setoffs), subject to the Intercompany Transfer Mechanic and Foreign Reserve Protocol.

27. Further, to ensure that each Debtor will not fund the operations of another entity at the expense of such Debtors' creditors, the Debtors request: (a) pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, that all valid postpetition payments from a Debtor to another Debtor or from a non-Debtor affiliate to a Debtor on account of a Postpetition Intercompany Transaction shall be accorded administrative expense status, subject and junior to the claims, including adequate protection claims, granted in connection with the DIP Financing in accordance

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<sup>11</sup> On January 11, 2023, a reduction in Avaya's workforce was authorized with respect to its employees in Europe in connection with cost-reduction actions. The reduction is aimed at aligning the size of the Debtors' workforce with its operational strategy and cost structure. Approximately \$45 million to \$51 million in expected cash-based expenditures, substantially all of which are expected to be related to employee severance and other termination benefits are anticipated as a result of these cost-reduction actions.

with any Financing Orders; and (b) unless prohibited by applicable law, that transfers made by a Debtor to a non-Debtor affiliate pursuant to a Postpetition Intercompany Transaction (including disbursements from the Foreign Reserve Account) shall be deemed a claim against, and loan to, such non-Debtor affiliate (and not a contribution of capital), except to the extent such Postpetition Intercompany Transactions are on account of antecedent debts.

### **Basis for Relief**

#### **I. The Court Should Approve the Debtors' Continued Use of the Cash Management System.**

28. The Cash Management System constitutes an ordinary course and essential business practice of the Debtors. The Cash Management System provides significant benefits to the Debtors including, among other things, the ability to control corporate funds, ensure the availability of funds when necessary, and reduce costs and administrative expenses by facilitating the movement of funds and developing timely and accurate account balance information. Thus, to ensure the stable operation of the Debtors' businesses and realize the benefits of the Cash Management System, the Debtors should be allowed to continue using the Cash Management System and should not be required to open new bank accounts.

29. The U.S. Trustee Guidelines require debtors to, among other things: (a) close all existing bank accounts and open new debtor in possession bank accounts; (b) establish one debtor in possession account for all estate monies required for the payment of taxes (including payroll taxes); (c) physically set aside all monies required by law to be withheld from employees or collected from others for taxes; (d) open a new set of books and records as of the commencement date of the case; (e) use new business forms indicating the debtor in possession status of the chapter 11 debtor, including checks that bear the designation "debtor in possession" and reference the bankruptcy case number on such checks; and (f) make all disbursements of estate funds by

check with a notation representing the reason for the disbursement. These guidelines are intended to provide a clear line of demarcation between prepetition and postpetition transactions and operations and to prevent inadvertent payment of prepetition claims. Considering the breadth and complexity of the Debtors' international businesses and financial affairs and the sheer volume of collections, disbursements, and movement of funds through the Cash Management System on a daily basis, enforcement of these provisions of the U.S. Trustee Guidelines during these Chapter 11 Cases would severely disrupt the ordinary financial operations of the Debtors by reducing efficiencies and causing unnecessary expense.

30. Continuation of the Cash Management System is permitted pursuant to section 363(c)(1) of the Bankruptcy Code, which authorizes the debtor in possession to “use property of the estate in the ordinary course of business without notice or a hearing.” Section 363(c)(1) of the Bankruptcy Code also allows a debtor in possession to engage in the ordinary course transactions required to operate its business without additional oversight from its creditors or the court. *In re Casbeer*, 793 F.2d 1436, 1441 n.12 (5th Cir. 1986); *In re Atravasada Land & Cattle Inc.*, 308 B.R. 255, 269 (Bankr. S.D. Tex. 2008); *see also In re Patriot Place, Ltd.*, 486 B.R. 773, 792 (Bankr. W.D. Tex. 2013) (“[U]nder [section] 363(c)(1) of the Bankruptcy Code, [the debtor] may engage in transactions within (or ‘inside’) the ordinary course of business of [the debtor], without prior bankruptcy court approval.”). Included within the purview of section 363(c) of the Bankruptcy Code is a debtor’s ability to continue the routine transactions necessitated by a debtor’s cash management system. *See Amdura Nat’l Distrib. Co. v. Amdura Corp. (In re Amdura Corp.)*, 75 F.3d 1447, 1453 (10th Cir. 1996). Bankruptcy courts treat requests for authority to continue utilizing existing cash management systems as a relatively “simple matter,” *see In re Baldwin-United Corp.*, 79 B.R. 321, 327 (Bankr. S.D. Ohio 1987), and have recognized that an

integrated cash management system “allows efficient utilization of cash resources and recognizes the impracticalities of maintaining separate cash accounts for the many different purposes that require cash.” *In re Columbia Gas Sys. Inc.*, 136 B.R. 930, 934 (Bankr. D. Del. 1992), *aff’d in part and rev’d in part*, 997 F.2d 1039 (3d Cir. 1993). As a result, courts have concluded that the requirement to maintain all accounts separately “would be a huge administrative burden and economically inefficient.” *Columbia Gas*, 997 F.2d at 1061; *see also In re Southmark Corp.*, 49 F.3d 1111, 1114 (5th Cir. 1995) (noting that debtor’s cash management system allowed it “to administer more efficiently and effectively its financial operations and assets”).

31. Requiring the Debtors to adopt a new cash management system during these Chapter 11 Cases would be expensive, burdensome, and unnecessarily disruptive to the Debtors’ operations. The Cash Management System provides the Debtors with the ability to, among other things, quickly assess the location and amount of funds, which, in turn, allows management to track and control such funds, ensure cash availability, and reduce administrative costs through a centralized method of coordinating the collection and movement of funds. Maintaining the current Cash Management System, however, will facilitate the Debtors’ smooth transition into chapter 11 by, among other things, avoiding administrative inefficiencies and expenses and minimizing delays in paying postpetition debts. Finally, maintaining the current Cash Management System will allow the Debtors’ treasury and accounting employees to focus on their daily responsibilities as opposed to reconstructing the Cash Management System.

32. Parties in interest will not be harmed by the Debtors’ maintenance of the Cash Management System, including the Bank Accounts and continuing Intercompany Transactions, because the Debtors have implemented appropriate mechanisms to ensure that Debtor entities will not make unauthorized payments on account of prepetition obligations.

Specifically, with the assistance of their advisors, the Debtors have implemented internal protocols that prohibit payments on account of prepetition debts, including prepetition accounts payable payments, without prior approval of the Debtors' treasury department. In light of such protective measures, maintaining the Cash Management System is in the best interests of the Debtors' estates and creditors.

**II. Authorizing the Banks to Continue to Maintain, Service, and Administer the Bank Accounts in the Ordinary Course of Business Is Warranted.**

33. The Debtors request that the Court authorize the Cash Management Banks to receive, process, honor, and pay, to the extent funds are available in each applicable Bank Account, any and all checks, electronic fund transfer, ACH payments and other instructions, and drafts payable through, or drawn or directed on, such Bank Accounts after the Petition Date by holders, makers, or other parties entitled to issue instructions with respect thereto, irrespective of whether such checks, drafts, electronic fund transfers, or ACH payments are dated prior or subsequent to the Petition Date. The Debtors also request that, to the extent a Cash Management Bank honors a prepetition check or other item drawn on any account that is the subject of this Motion, either at the direction of the Debtors or in a good-faith belief that the Court has authorized such prepetition check or item to be honored, such Cash Management Bank will not be deemed to be liable to the Debtors or to their estates on account of such prepetition check or other item honored postpetition. Such relief is reasonable and appropriate because the Cash Management Banks are not in a position to independently verify or audit whether the Debtors may pay a particular item in accordance with a Court order or otherwise. Considering the breadth and complexity of their operations, the Debtors need to conduct transactions by checks, wire transfers, ACH transfers, and other debits or electronic means. If the Debtors are denied the opportunity to conduct transactions by checks, wire transfers, ACH transfers, other debits or electronic means, or other methods used in the

ordinary course of business, the Debtors likely would have difficulty performing on their contracts and the Debtors' business operations would be disrupted unnecessarily, burdening the Debtors and their creditors with additional costs.

**III. The Debtors Should Be Granted Authority to Use Existing Business Forms and Books and Records.**

34. To avoid disruption of the Cash Management System and unnecessary expense, the Debtors request that they be authorized to continue to use their Business Forms and Books and Records, substantially in the form existing immediately before the Petition Date, without reference to their status as debtors in possession. Given the limited nature of the preprinted Business Forms, parties in interest will not be prejudiced if the Debtors are authorized to continue to use their Business Forms substantially in the forms existing immediately before the Petition Date. Parties doing business with the Debtors undoubtedly will be aware of their status as debtors in possession and, thus, changing forms such as checks and invoices would be an unnecessary additional expense and unduly burdensome.

35. The Debtors should be permitted to maintain their existing Books and Records rather than open a new set as required under the U.S. Trustee Guidelines. The Debtors use a sophisticated recordkeeping system that enables them to consolidate their Books and Records for financial reporting purposes while tracking operations and results of individual entities across their corporate structure. Continued use of the Debtors' current Books and Records, therefore, will maximize efficiency and reduce administrative strain on the Debtors in these Chapter 11 Cases.

**IV. Payment of Bank Fees and Prepetition Obligations Related to the Bank Accounts Will Facilitate a Smooth Transition into Chapter 11 and Benefit the Estates.**

36. The Debtors believe that they have authority to pay prepetition Bank Fees and continue satisfying these obligations as they arise during these Chapter 11 Cases because such payments are ordinary course. *See* 11 U.S.C. § 363(c) ("If the business of the debtor is authorized

to be operated under section . . . 1108 . . . and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.”). However, this motion seeks authority to pay such fees and satisfy such obligations out of an abundance of caution and in the event that payment of these obligations is not considered ordinary course.

37. Section 363(b) of the Bankruptcy Code permits a debtor to, subject to court approval, pay prepetition obligations where a sound business purpose exists for doing so. *See In re Ionosphere Clubs, Inc.*, 98 B.R. 174, 175 (Bankr. S.D.N.Y. 1989) (noting that section 363(b) of the Bankruptcy Code provides “broad flexibility” to authorize a debtor to honor prepetition claims where supported by an appropriate business justification). In addition, under section 1107(a) of the Bankruptcy Code, a debtor in possession has, among other things, the “implied duty of the debtor in possession to ‘protect and preserve the estate, including an operating business’ going-concern value.” *In re CEI Roofing, Inc.*, 315 B.R. 50, 59 (Bankr. N.D. Tex. 2004) (quoting *In re CoServ L.L.C.*, 273 B.R. 487, 497 (Bankr. N.D. Tex. 2002)); *see also In re Equalnet Commc’ns Corp.*, 258 B.R. 368, 369 (Bankr. S.D. Tex. 2000) (noting that courts authorize debtors to pay, outside of a plan, prepetition claims from “business transactions which are at once individually minute but collectively immense and critical to the survival of the business of the debtor.”).

38. Under section 105(a) of the Bankruptcy Code, “the Court may issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of the Bankruptcy Code.” 11 U.S.C. § 105(a); *see also In re CoServ*, 273 B.R. at 497 (finding that sections 105 and 1107 of the Bankruptcy Code provide the authority for a debtor in possession to pay pre-petition

claims); *In re Mirant Corp.*, 296 B.R. 427, 429 (Bankr. N.D. Tex. 2003) (noting that non-payment of prepetition claims may seriously damage a debtor’s business). The above-referenced sections of the Bankruptcy Code have been interpreted to authorize the postpetition payment of prepetition claims when the payments are critical to preserving the going-concern value of the debtor’s estate, as is the case here. *See, e.g., In re CoServ*, 273 B.R. at 497 (“[I]t is only logical that the bankruptcy court be able to use [s]ection 105(a) of the [Bankruptcy] Code to authorize satisfaction of the prepetition claim in aid of preservation or enhancement of the estate.”).

39. The Debtors request authority to pay prepetition Bank Fees as they become due in the ordinary course. Authority to make such payments is necessary to the Debtors’ operations, which are predicated on an uninterrupted flow of funds between Bank Accounts. If the Debtors do not pay their Bank Fees, then their relationships with the Cash Management Banks, which are crucial to their ongoing business operations, may be materially damaged. Further, the Debtors’ management and advisors may be forced to spend time and resources on unnecessary disputes with the Cash Management Banks. The Debtors believe that any interference or delay in any of these programs is unnecessary and unduly burdensome.

**V. The Court Should Authorize the Debtors to Continue Engaging in Postpetition Intercompany Transactions and Grant Administrative Expense Status to Postpetition Intercompany Transactions Among the Debtors and Non-Debtor Affiliates.**

40. Allowing the Debtors to engage in Postpetition Intercompany Transactions is in the best interests of the Debtors’ estates and their creditors, and the Debtors seek authority to enter into such Postpetition Intercompany Transactions.<sup>12</sup> Postpetition Intercompany Transactions

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<sup>12</sup> Except for the Initial Intercompany Transaction, the Debtors engage in Intercompany Transactions on a regular basis and such transactions are common among similar enterprises, the Debtors believe the Postpetition Intercompany Transactions are ordinary course transactions within the meaning of section 363(c)(1) of the Bankruptcy Code, and thus do not require the Court’s approval.

arising in the ordinary course are authorized as a matter of law pursuant to section 363(c)(1) of the Bankruptcy Code for which no additional relief is required. Further, as discussed herein, the Debtors will continue to maintain records of Postpetition Intercompany Transactions, including records of all current intercompany accounts receivables and payables, to facilitate parties' access to information where reasonably requested.

41. The relief requested herein fairly balances the Debtors' needs to facilitate the ordinary course operation of their business and effectuate their operational restructuring, minimize disruption, and preserve value, on the one hand, with the interests of their stakeholders and transparency, on the other hand. The requested relief will also ensure that a Debtor's estate will not be unduly burdened by the cost of transactions among Debtors and non-Debtor affiliates. The Intercompany Transactions are essential components of the Debtors' operations and the Postpetition Intercompany Transactions will result in efficiencies and cost savings to the Debtors, maximizing the value of the Debtors' estates. Any interruption of the Intercompany Transactions—including failure to advance or reimburse payments related to the Debtors' businesses and operational restructuring—would severely disrupt the Debtors' global operations and result in great harm to the Debtors' estates to the detriment of their stakeholders. Failure to continue Intercompany Transactions with certain non-Debtor affiliates would result in such entities lacking sufficient funds to pay obligations, including to employees and vendors that are providing critical services and goods that directly benefit the Debtors' estates and those certain costs, including severance obligations, related to the value-maximizing operational restructuring. Any material interruption in the provision of these critical services and goods—however brief—would disrupt the Debtors' operations and could cause irreparable harm to the Debtors' go-forward businesses, goodwill, employees, customer base, and market share.

42. Further, the Debtors request that this Court order: (a) that all valid postpetition payments from a Debtor to another Debtor or from a non-Debtor affiliate to a Debtor on account of a Postpetition Intercompany Transaction be accorded administrative expense status, subject and junior to the claims, including adequate protection claims, granted in connection with the DIP Financing in accordance with any Financing Orders and (b) unless prohibited by applicable law, transfers made by a Debtor to a non-Debtor affiliate pursuant to a Postpetition Intercompany Transaction (including disbursements from the Foreign Reserve Account) shall be deemed a claim against, and loan to, such Non-Debtor Affiliate (and not a contribution of capital), in each case except to the extent such Postpetition Intercompany Transactions are on account of antecedent debts. As noted above, the Debtors believe such relief is necessary to ensure that a particular Debtor's estate will not be required to fund the operations of other Debtors and non-Debtor affiliates without adequate recompense.

**VI. Cause Exists for Waiving the Deposit Requirements Under Section 345 of the Bankruptcy Code.**

43. The Debtors seek a limited waiver of the deposit requirements set forth in section 345 of the Bankruptcy Code. Section 345(a) of the Bankruptcy Code authorizes deposit or investment of money of estates, such as cash, as “will yield the maximum reasonable net return on such money, taking into account the safety of such deposit or investment.” For deposits that are not “insured or guaranteed by the United States or by a department, agency or instrumentality of the United States or backed by the full faith and credit of the United States,” section 345(b) of the Bankruptcy Code provides that the estate must require from the entity with which the money is deposited or invested a bond in favor of the United States secured by the undertaking of a corporate security, “unless the court for cause orders otherwise.” Additionally, under the U.S. Trustee Guidelines, debtors in possession must, among other things, close prepetition bank

accounts and open new “debtor in possession” operating, payroll, and tax accounts at one or more Authorized Depositories.

44. The Court’s ability to excuse strict performance of the deposit and investment requirements of section 345(b) of the Bankruptcy Code “for cause” arises from the 1994 amendments to the Bankruptcy Code. The legislative history of that amendment provides:

Section 345 of the Code governs investments of funds of bankruptcy estates. The purpose is to make sure that funds of a bankrupt that are obliged to creditors are invested prudently and safely with the eventual goal of being able to satisfy all claims against the bankruptcy estate. Under current law, all investments are required to be FDIC insured, collateralized or bonded. While this requirement is wise in the case of smaller debtors with limited funds that cannot afford a risky investment to be lost, it can work to needlessly handcuff larger, more sophisticated debtors. This section would amend the Code to allow the courts to approve investments other than those permitted by [s]ection 345(b) for just cause, thereby overruling.

*In re Columbia Gas Sys., Inc.*, 33 F.3d 294 (3d Cir. 1994); *see also In re Serv. Merch, Co., Inc.*, 240 B.R. 894, 896 (Bankr. M.D. Tenn. 1999) (quoting H.R. Rep. 103-834, 103rd Cong., 2nd Sess. 224 (Oct. 4, 1994); 140 Cong. Rec. H10767 (Oct. 4, 1994)).

45. In evaluating whether “cause” exists, courts consider the “totality of the circumstances,” considering several factors, such as:

- a. the sophistication of the debtor’s business;
- b. the size of the debtor’s business operations;
- c. the amount of the investments involved;
- d. the bank ratings (Moody’s and Standard & Poor) of the financial institutions where the debtor in possession funds are held;
- e. the complexity of the case;
- f. the safeguards in place within the debtor’s own business for ensuring the safety of the funds;

- g. the debtor's ability to reorganize in the face of a failure of one or more of the financial institutions;
- h. the benefit to the debtor;
- i. the harm, if any, to the debtor;
- j. the harm, if any, to the estate; and
- k. the reasonableness of the debtor's request for relief from section 345(b) requirements in light of the overall circumstances of the case.

*See In re Serv. Merch. Co.*, 240 B.R. at 896.

**A. The Bank Accounts, the Branch Office Accounts, and the Investment Account.**

46. The majority of the Bank Accounts comply with section 345(b) of the Bankruptcy Code because such Bank Accounts are maintained at banks insured by federal agencies, such as the FDIC. *See* 11 U.S.C. § 345(b). As of the Petition Date, the Debtors maintained domestic Bank Accounts at JPMorgan, Citibank, and BOA, each of which is insured by the FDIC. Additionally, JPMorgan, Citibank, and BOA are designated as authorized depositories by the U.S. Trustee pursuant to the U.S. Trustee Guidelines. Delaware Trust is the only domestic Cash Management Bank that is not designated as authorized depositories pursuant to the U.S. Trustee Guidelines. Nevertheless, Delaware Trust is a well-capitalized, financially stable, and reputable institution.

47. In addition to the domestic Bank Accounts, the Debtors maintain six Branch Office Accounts in foreign jurisdictions and the Investment Account at Goldman Sachs, none of which are FDIC insured. The Debtors maintain the Branch Office Accounts with JPMorgan, Citibank, and Saudi British Bank. JPMorgan and Citibank are authorized depositories under the U.S. Trustee Guidelines while Saudi British Bank is a well-capitalized financial institution. Maintenance of the Branch Office Accounts is integral to the Cash Management System as a whole. For instance, maintaining the Branch Office Accounts is a requirement for the Branch Offices to conduct

business in foreign jurisdictions—an essential element to the Debtors’ ability to service its global customer base and maintain revenue streams from abroad. Further, maintenance of the Investment Account provides substantial benefit with minimal risk to the Debtors’ estates. Goldman Sachs is a reputable, well-capitalized, and stable banking institution and the Debtors’ investment practices are prudent and subject to strict investment guidelines. The U.S. Trustee Guidelines should be waived with respect to the Bank Accounts, Branch Office Accounts, and Investment Account.

48. Requiring the Debtors to transfer these funds to other banks would be unduly burdensome to the Debtors’ global operations due to the vital role of the Bank Accounts, the Branch Office Accounts, and the Investment Account within the Cash Management System. Cause exists to waive the strict requirements of section 345(b) and U.S. Trustee Guidelines with respect to the non-authorized depositories and allow the Debtors to continue to maintain the Banks Accounts and the Investment Account in the ordinary course of business.

**B. The Investment Policy.**

49. The Debtors believe that the investment of excess funds generated from operations in the Investment Account in accordance with the Investment Policy complies with section 345 of the Bankruptcy Code. To the extent it does not, cause exists to waive such requirements. After evaluating their forecasted liquidity needs, the Debtors transfer excess cash not immediately needed for their business operations from the Debtors’ Main Concentration Account into the Investment Account through the Investment Transfer Account and invest such excess cash pursuant to the Investment Policy. The excess cash is invested with the objectives of preservation of principal, liquidity, diversification of risk, and the maximization of taxable or after-tax total rate of return without compromising safety and liquidity. The Debtors request the authority to continue to invest excess cash in the Investment Account during the pendency of these Chapter 11 Cases in accordance with the Investment Policy.

50. The Investment Policy is a disciplined strategy, permitting the Debtors to balance the need to maximize returns on excess cash while ensuring that such excess cash is readily available for use in the Debtors' business operations. The Money Market Funds utilized by the Debtors pursuant to the Investment Policy carry similar credit risks to direct investments in obligations insured or guaranteed by the United States or by departments, agencies, or instrumentalities of the United States, or backed by the full faith and credit of the United States. Moreover, the various positions taken by the Debtors in the Money Market Funds allow for funds to be made immediately available, effectively permitting the Debtors to utilize the Investment Account as a regular deposit account. Requiring the Debtors to abandon such practices would hamper the Debtors' liquidity needs.

51. The risks and costs associated with establishing new investment protocols and overseeing a transition into an investment policy that purely invests directly in those obligations specifically identified in section 345(b) is at least as large, if not larger, than any potential risk associated with the Debtors continuing the Investment Policy. Requiring the Debtors to modify the Investment Policy will only serve to distract the Debtors' management, slow the Debtors' momentum, and cause the Debtors' estates to incur potentially substantial costs to the detriment of all stakeholders. Adherence to the Investment Policy is likely to result in net benefit to the Debtors' estates. Moreover, a bond secured by the undertaking of a corporate surety would likely be unduly expensive, assuming such a bond were available, and could offset much of the financial gain derived from the Investment Policy.

52. If the Debtors are granted a waiver, the Debtors will not be burdened with the significant administrative difficulties and expenses relating to opening new accounts in a manner

that ensures all of their funds are fully insured or invested strictly in accordance with the restrictions established by section 345 of the Bankruptcy Code.

**Emergency Consideration**

53. The Debtors request emergency consideration of this Motion pursuant to Bankruptcy Rule 6003, which empowers a court to grant relief within the first twenty-one days after the commencement of a chapter 11 case “to the extent that relief is necessary to avoid immediate and irreparable harm.” An immediate and orderly transition into chapter 11 is critical to the viability of the Debtors’ operations. Failure to receive the requested relief during the first twenty-one days of these Chapter 11 Cases would imperil the Debtors’ restructuring and cause irreparable harm. The Debtors have satisfied the “immediate and irreparable harm” standard of Bankruptcy Rule 6003 and request that the Court approve the relief requested in this Motion on an emergency basis.

**Processing of Checks and Electronic Fund Transfers Should Be Authorized**

54. The Debtors have sufficient funds to make the payments described herein in the ordinary course of business by virtue of expected cash flows from ongoing business operations and anticipated access to cash collateral and debtor in possession financing. Under the Debtors’ existing cash management system, the Debtors can readily identify checks or wire transfer requests as relating to an authorized payment in respect of the relief requested herein. Checks or wire transfer requests that are not related to authorized payments will not be honored inadvertently. The Debtors request that the Court authorize all applicable financial institutions, when requested by the Debtors, to receive, process, honor, and pay any and all checks or wire transfer requests in respect of the relief requested herein.

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

55. 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 fourteen-day stay period under Bankruptcy Rule 6004(h).

**Reservation of Rights**

56. 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) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (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 this Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended, and should not be construed as, an admission as to the validity of any particular claim or a waiver of the Debtors' or any other party in interest's rights to subsequently dispute such claim.

**Notice**

57. The Debtors have provided notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee; (b) the holders of the thirty largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Akin Ad Hoc Group; (d) counsel to the PW Ad Hoc Group; (e) the Prepetition ABL Agent and counsel thereto; (f) the Prepetition Term Loan Agent and counsel thereto; (g) the 6.125% Senior Secured First Lien Notes Trustee and counsel thereto; (h) the 8.00% Exchangeable Senior Secured Notes Trustee and counsel thereto; (i) the 2.25% Convertible Notes Trustee and counsel thereto; (j) the DIP Term Loan Agent and counsel thereto; (k) the DIP ABL Agent and counsel thereto; (l) the Office of the United States Attorney for the Southern District of Texas; (m) the state attorneys general for states in which the Debtors conduct business; (n) the Internal Revenue Service; (o) the Securities and Exchange Commission; (p) the Environmental Protection Agency; (q) other governmental agencies having a regulatory or statutory interest in these cases; (r) the Cash Management Banks; and (s) any party that has requested notice pursuant to Bankruptcy Rule 2002. In light of the nature of the relief requested, no other or further notice is required.

The Debtors request that the Court enter the Interim Order and the Final Order granting the relief requested herein and such other relief as the Court deems appropriate under the circumstances.

Houston, Texas  
Dated: February 14, 2023

*/s/ Matthew D. Cavanaugh*

---

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

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

**Certificate of Accuracy**

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

*/s/ Matthew D. Cavanaugh*

\_\_\_\_\_  
Matthew D. Cavanaugh

**Certificate of Service**

I certify that on February 14, 2023, 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

**Exhibit A**

**Bank and Investment Accounts**

| <b>Entity</b>        | <b>Bank</b> | <b>Country</b> | <b>Currency</b> | <b>Account Number</b> | <b>Account Designation<sup>1</sup></b>     | <b>Account Balance</b> |
|----------------------|-------------|----------------|-----------------|-----------------------|--|------------------------|
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4399           | Main Concentration Account                 | \$0                    |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 7562           | Deposit                                    | \$713,000              |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4724           | Deposit                                    | \$5,069,000            |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 6707           | Deposit                                    | \$0                    |
| Avaya Inc.           | Citibank    | USA            | USD             | Ending 5852           | Deposit                                    | \$0                    |
| Avaya Inc.           | Citibank    | USA            | USD             | Ending 8000           | Deposit                                    | \$0                    |
| Avaya Management     | JPMorgan    | USA            | USD             | Ending 6390           | Deposit                                    | \$0                    |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4410           | Disbursement                               | \$1,402,000            |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4509           | Disbursement                               | \$771,000              |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 6715           | Disbursement                               | \$24,319,000           |
| Avaya Federal        | JPMorgan    | USA            | USD             | Ending 4432           | Disbursement                               | \$1,177,000            |
| Avaya Management     | JPMorgan    | USA            | USD             | Ending 6382           | Disbursement                               | \$630,000              |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 1412           | Payroll                                    | \$4,710,000            |
| Avaya Federal        | JPMorgan    | USA            | USD             | Ending 1984           | Payroll                                    | \$1,097,000            |
| Intellisist          | JPMorgan    | USA            | USD             | Ending 9756           | Operating                                  | \$779,000              |
| Avaya Holdings Corp. | JPMorgan    | USA            | USD             | Ending 6801           | Operating                                  | \$0                    |
| Sierra Communication | JPMorgan    | USA            | USD             | Ending 3147           | Operating                                  | \$0                    |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4763           | Investment Transfer/DIP Term Loan Proceeds | \$0                    |
| Avaya Inc.           | BOA         | USA            | USD             | Ending 0975           | Master Account                             | \$259,000              |
| Avaya Inc.           | BOA         | USA            | USD             | Ending 0988           | Deposit                                    | \$0                    |
| Avaya Inc.           | BOA         | USA            | USD             | Ending 0991           | Deposit                                    | \$0                    |
| Avaya Inc.           | BOA         | USA            | USD             | Ending 3441           | Deposit                                    | \$0                    |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 7418           | Customs                                    | \$0                    |

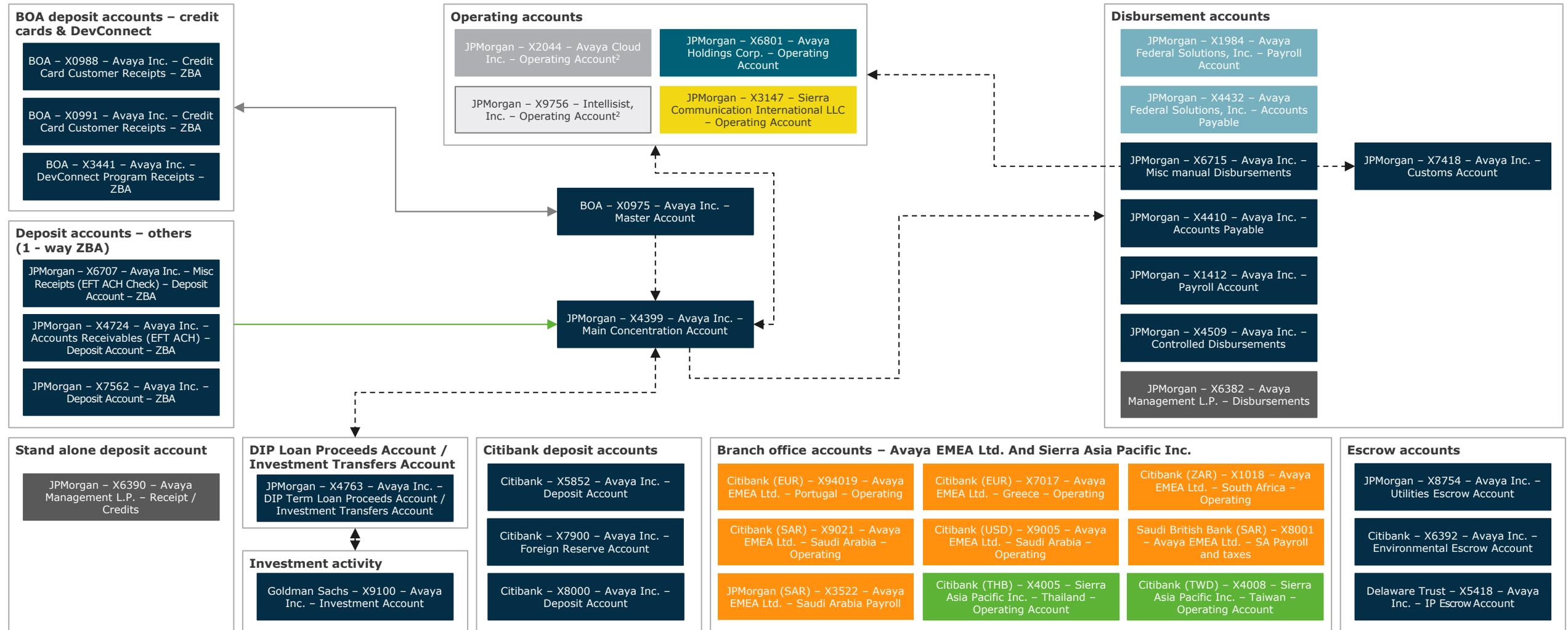
<sup>1</sup> These descriptions of Bank Account types are for illustrative purposes only. A single Bank Account may fall into more than one of the categories described above.

| <b>Entity</b> | <b>Bank</b>        | <b>Country</b> | <b>Currency</b> | <b>Account Number</b> | <b>Account Designation<sup>1</sup></b> | <b>Account Balance</b> |
|---------------|--------------------|----------------|-----------------|-----------------------|--|------------------------|
| Avaya Inc.    | Citibank           | USA            | USD             | Ending 6392           | Environmental Escrow                   | \$0                    |
| Avaya Inc.    | Delaware Trust     | USA            | USD             | Ending 5418           | IP Escrow                              | \$0                    |
| Avaya Cloud   | JPMorgan           | USA            | USD             | Ending 2044           | Operating                              | \$954,000              |
| Avaya EMEA    | Citibank           | Greece         | EUR             | Ending 7017           | Operating                              | \$109,000              |
| Avaya EMEA    | Citibank           | Portugal       | EUR             | Ending 4019           | Operating                              | \$901,000              |
| Avaya EMEA    | Citibank           | Saudi Arabia   | SAR             | Ending 9021           | Operating                              | \$4,000                |
| Avaya EMEA    | Citibank           | Saudi Arabia   | USD             | Ending 9005           | Operating                              | \$0                    |
| Avaya EMEA    | Saudi British Bank | Saudi Arabia   | SAR             | Ending 8001           | Operating                              | \$35,000               |
| Avaya EMEA    | JPMorgan           | Saudi Arabia   | SAR             | Ending 3522           | Payroll                                | \$1,000                |
| Avaya EMEA    | Citibank           | South Africa   | ZAR             | Ending 1018           | Operating                              | \$876,000              |
| Sierra AP     | Citibank           | Thailand       | THB             | Ending 4005           | Operating                              | \$1,252,000            |
| Sierra AP     | Citibank           | Taiwan         | TWD             | Ending 4008           | Operating                              | \$1,119,000            |
| Avaya Inc.    | Goldman Sachs      | USA            | USD             | Ending 9100           | Investment                             | \$0                    |
| Avaya Inc.    | JPMorgan           | USA            | USD             | Ending 8754           | Utilities Escrow                       | \$0                    |
| Avaya Inc.    | Citibank           | USA            | USD             | Ending 7900           | Foreign Reserve Account                | \$0                    |

**Exhibit B**

**Cash Management Schematic**

# Avaya – cash management schematic



Avaya Inc. 
  Avaya Holdings Corp. 
  Avaya Federal Solutions, Inc. 
  Avaya Management L.P. 
  Intellisist, Inc. 
  Avaya Cloud Inc. 
  Sierra Communication International LLC 
  Avaya EMEA Ltd. 
  Sierra Asia Pacific Inc.

→ Receipt of funds into main concentration account 
 ↔ Funds flow in and out of the account 
 - - - Manual funds flow in and out of the account

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

|   |  |   |
|---|--|---|
| <p>In re:</p> <p>AVAYA INC., <i>et al.</i>,<sup>1</sup></p> <p style="text-align: center;">Debtors.</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Chapter 11</p> <p>Case No. 23-90088 (DRJ)</p> <p>(Jointly Administered)</p> <p><b>Re: Docket No. ___</b></p> |
|---|--|---|

**INTERIM ORDER (I) AUTHORIZING  
THE DEBTORS TO (A) CONTINUE USING  
THE CASH MANAGEMENT SYSTEM, (B) MAINTAIN  
EXISTING BANK ACCOUNTS, BUSINESS FORMS, AND  
BOOKS AND RECORDS, AND (C) CONTINUE USING THE  
INVESTMENT ACCOUNT AND THE INVESTMENT POLICY,  
(II) AUTHORIZING CONTINUED INTERCOMPANY TRANSACTIONS,  
(III) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION  
INTERCOMPANY TRANSACTIONS, AND (IV) GRANTING RELATED RELIEF**

Upon the emergency motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an interim order (this “Interim Order”), (a) authorizing the Debtors to (i) continue using the Cash Management System, including honoring certain prepetition obligations related thereto, (ii) maintain existing Bank Accounts, Business Forms, and Books and Records, and (iii) continue using the Investment Account and the Investment Policy, (b) authorizing the Debtors to continue Intercompany Transactions, (c) granting administrative expense status to all Postpetition Intercompany Transactions, (d) scheduling a final hearing to consider approval of the Motion on a final basis, and (e) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and this Court having

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kcellc.net/avaya>. The location of Debtor Avaya Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

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 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 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, if any; and this Court having determined that the legal and factual bases set forth in support of the Motion 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. The final hearing (the "Final Hearing") on the Motion shall be held on \_\_\_\_\_, 2023, at \_\_\_:\_\_\_ .m., prevailing Central Time. Any objections or responses to entry of a final order on the Motion shall be filed on or before 4:00 p.m., prevailing Central Time, on \_\_\_\_\_, 2023. In the event no objections to entry of a final order on the Motion are timely received, the Court may enter such final order without need for the Final Hearing.

2. Subject to the limitations of this Interim Order, the Debtors are authorized to: (a) continue using the Cash Management System as described in the Motion and honor any prepetition obligations related to the use thereof, including, but not limited to, any existing prefunding arrangements consistent with prepetition practice with the Cash Management Banks; (b) designate, maintain, and close any or all of their existing Bank Accounts, including, but not limited to, the Bank Accounts identified on Exhibit 1 attached hereto, in the names and with the

account numbers existing immediately before the Petition Date; (c) deposit funds in and withdraw funds from the Bank Accounts by all means, including checks, wire transfers, ACH transfers, and other debits or electronic means; (d) treat their prepetition Bank Accounts for all purposes as debtor in possession accounts; (e) open new debtor in possession Bank Accounts; and (f) pay the Bank Fees, including any prepetition amounts, and any ordinary course Bank Fees incurred in connection with the Bank Accounts, and to otherwise perform their obligations under the Bank Account agreements; *provided* that in the case of each of (a) through (f), such action is taken in the ordinary course of business and consistent with prepetition practices.

3. The Debtors are authorized to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, and maintain and continue using, in their present form, the Books and Records; *provided* that once they have exhausted their existing stock of Business Forms, they shall ensure that any new Business Forms are clearly labeled “Debtor In Possession” and with respect to any Business Forms that exist or are generated electronically, the Debtors shall ensure that such electronic Business Forms are clearly labeled “Debtor In Possession” within ten (10) business days.

4. To the extent any of the Debtors’ Bank Accounts are not in compliance with section 345(b) of the Bankruptcy Code or any of the U.S. Trustee’s requirements or guidelines, the Debtors shall have until March 31, 2023, without prejudice to seeking an additional extension or waiver, to come into compliance with section 345(b) of the Bankruptcy Code; *provided* that nothing herein shall prevent the Debtors or the U. S. Trustee from seeking further relief from the Court to the extent that an agreement cannot be reached. The Debtors may obtain a further extension of the forty-five-day period referenced above by entering into a written stipulation with

the U.S. Trustee and filing such stipulation on the Court's docket without the need for further Court order.

5. The Debtors are authorized to continue investing funds in accordance with the Investment Policy, in each case, in the ordinary course of business and consistent with prepetition practices, and the requirements of section 345 of the Bankruptcy Code are hereby waived with respect to such deposit and investment practices.

6. Except as otherwise provided in this Interim Order and only to the extent sufficient funds standing in the Debtors' credit are available in each applicable Bank Account, all Cash Management Banks at which the Bank Accounts are maintained are authorized, but not directed, to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business, consistent with prepetition practices, including prefunding arrangements, and to receive, process, honor, and pay any and all checks, drafts, wire transfers, and ACH and other transfers issued, whether before or after the Petition Date, and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; *provided* that the Debtors will instruct the Cash Management Banks as to which checks, drafts, wire transfers (excluding any wire transfers or ACH transfers that the Cash Management Banks are obligated to settle), or other items presented, issued, or drawn, shall not be honored.

7. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

8. Except as otherwise provided in this Interim Order, the Cash Management Banks are authorized to charge, and the Debtors are authorized to pay, honor, or allow, prepetition and postpetition fees, costs, charges, overdrafts, dishonored or returned checks, and expenses, including the Bank Fees, and charge back returned items, whether such items were deposited prepetition or postpetition, to the Bank Accounts in the ordinary course of business and consistent with prepetition practices. Any such postpetition fees, costs, charges, overdrafts, dishonored or returned checks, and expenses, including the Bank Fees, or charge-backs that are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

9. As soon as practicable after entry of this Interim Order, the Debtors shall serve a copy of this Interim Order on the Cash Management Banks.

10. The Debtors are authorized and directed, subject to the terms of any Financing Order, to fund the Initial Intercompany Transaction and are authorized to continue Postpetition Intercompany Transactions in the ordinary course of business; *provided* that subject to the Intercompany Transfer Mechanic in all respects, each Debtor shall: (a) continue to pay its obligations consistent with such Debtor's prepetition practices with respect to intercompany transfers and obligations, and in no event shall any of the Debtors pay the prepetition or postpetition obligations of any other Debtor in a manner inconsistent with such Debtor's prepetition practices; (b) continue to maintain current records with respect to all transfers of cash so that all Intercompany Transactions may be readily ascertained, traced, and properly recorded on applicable intercompany accounts; and (c) on or before the fifteenth (15<sup>th</sup>) day of each month, provide the Notice Parties a monthly summary of any Postpetition Intercompany Transactions that occurred during the preceding month, which summary shall include (i) the name of the Debtor

transferor, (ii) the name of the transferee, (iii) the amount of the transfer, and (iv) the purpose of the transfer, with the first such summary to be provided to the Notice Parties no later than March 15, 2023.

11. Subject to the terms of any Financing Order, the Debtors' use of funds from the Foreign Reserve Account for any intercompany loans (the "Foreign Reserve Account Withdrawal") shall, in addition to the Intercompany Transfer Mechanic, be subject to the following procedures: (i) the Debtors shall submit in writing to the DIP Term Loan Agent, with a copy to the DIP ABL Agent and its advisors and the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, a withdrawal request (the "Foreign Reserve Account Withdrawal Notice"), which Foreign Reserve Account Withdrawal Notice shall include (a) the proposed foreign non-Debtor recipient of the transfer; (b) the proposed transfer amount; and (c) the proposed use of funds; and (ii) the DIP Term Loan Agent shall, within three (3) business days from receipt of the Foreign Reserve Account Withdrawal Notice, advise the Debtors if the Required DIP Term Lenders consent to any such Foreign Reserve Account Withdrawal, which consent shall not be unreasonably withheld.

12. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all valid postpetition payments on account of a Postpetition Intercompany Transaction (a) from a Debtor to another Debtor or (b) from a non-Debtor affiliate to a Debtor, shall in each case be accorded administrative expense status, subject and junior to the claims, including adequate protection claims, granted in connection with the DIP Financing in accordance with any Financing Order, except to the extent such Postpetition Intercompany Transactions are on account of antecedent debts.

13. Unless prohibited by applicable law, transfers made by a Debtor to a non-Debtor affiliate pursuant to a Postpetition Intercompany Transaction (including disbursements from the Foreign Reserve Account) shall be deemed a claim against, and loan to, such non-Debtor affiliate (and not a contribution of capital), except to the extent such Postpetition Intercompany Transactions are on account of antecedent debts.

14. The Debtors shall maintain accurate and detailed records of all transfers, including the Postpetition Intercompany Transactions, in accordance with their prepetition practices, so that all transactions may be ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

15. Except as otherwise set forth herein, the Debtors and the Cash Management Banks may, without further order of the Court, and to the extent permitted under the terms of any Financing Order, agree and implement changes to the Cash Management System and procedures in the ordinary course of business. The Debtors are only authorized to close any Bank Accounts after providing seven (7) days prior written notice to the Notice Parties.

16. The Debtors are authorized to open new bank accounts so long as (a) any such new account is with one of the Debtors' existing Cash Management Banks or with a bank that (i) is insured with the FDIC or the Federal Savings and Loan Insurance Corporation, (ii) is designated as an authorized depository by the U.S. Trustee, and (iii) agrees to be bound by the terms of this Interim Order and (b) the Debtors provide seven (7) days prior written notice to the Notice Parties of the opening of such account; *provided* that each account opened by any of the Debtors on or after the Petition Date at any bank shall, for purposes of this Interim Order, be deemed a Bank Account as if it had been listed on **Exhibit 1** attached hereto, and the bank at which

such new account is maintained shall, for purposes of this Interim Order, be deemed a Cash Management Bank.

17. Nothing contained herein shall prevent the Debtors from closing any Bank Accounts as they may deem necessary and appropriate, to the extent consistent with any orders of this Court relating thereto, and any relevant Cash Management Bank is authorized to honor the Debtors' requests to close such Bank Accounts.

18. The Cash Management Banks are authorized to debit the Debtors' accounts in the ordinary course of business and without further order of the Court on account of (a) all checks drawn on the Debtors' accounts that were cashed at the Cash Management Banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date; (b) all checks, ACH entries, or other items deposited in, or credited to, one of the Debtors' accounts with such bank prior to the Petition Date which have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition and postpetition amounts outstanding, if any, owed to the Cash Management Bank as Bank Fees for the maintenance of the Cash Management System and charge back returned items to the Bank Accounts in the ordinary course.

19. Notwithstanding any other provision of this Interim Order, should any Cash Management Bank honor a prepetition check or other item drawn on any account that is the subject of this Interim Order (a) at the direction of the Debtors to honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of customary item handling procedures, such Cash Management Bank shall not be deemed to be nor shall be liable to the

Debtors, their estates or any other person or entity, or otherwise be in violation of this Interim Order. The Cash Management Banks may rely, without a duty of inquiry, upon the failure of the Debtors to issue a stop payment order with respect to any item, whether such item is issued prepetition or postpetition, as a direction by the Debtors that such item be paid.

20. All time periods set forth in this Interim Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

21. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, and subject to the administrative status afforded pursuant to Paragraph 11 of this Interim Order, nothing in this Interim 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 section 365 of the Bankruptcy Code; (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 seek avoidance of all such liens.

22. Nothing in this Interim Order authorizes the Debtors to accelerate any payments not otherwise due prior to the date of the Final Hearing.

23. Notwithstanding anything to the contrary in this Interim Order, any payment made or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any) imposed on the Debtors under any order(s) of this Court approving the postpetition secured debtor in possession financing facility and the use of cash collateral (any such order, a "Financing Order"), including any documentation with respect to such financing and any budget in connection with such Financing Order. In the event of any conflict between the terms of this Interim Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

24. The contents of the Motion satisfy the requirements of Bankruptcy Rule 6003(b).

25. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

27. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Interim Order.

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

Dated: \_\_\_\_\_, 2023

---

UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Bank and Investment Accounts**

| <b>Entity</b>        | <b>Bank</b> | <b>Country</b> | <b>Currency</b> | <b>Account Number</b> | <b>Account Designation<sup>1</sup></b>     | <b>Account Balance</b> |
|----------------------|-------------|----------------|-----------------|-----------------------|--|------------------------|
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4399           | Main Concentration Account                 | \$0                    |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 7562           | Deposit                                    | \$713,000              |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4724           | Deposit                                    | \$5,069,000            |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 6707           | Deposit                                    | \$0                    |
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| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 6715           | Disbursement                               | \$24,319,000           |
| Avaya Federal        | JPMorgan    | USA            | USD             | Ending 4432           | Disbursement                               | \$1,177,000            |
| Avaya Management     | JPMorgan    | USA            | USD             | Ending 6382           | Disbursement                               | \$630,000              |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 1412           | Payroll                                    | \$4,710,000            |
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| Intellisist          | JPMorgan    | USA            | USD             | Ending 9756           | Operating                                  | \$779,000              |
| Avaya Holdings Corp. | JPMorgan    | USA            | USD             | Ending 6801           | Operating                                  | \$0                    |
| Sierra Communication | JPMorgan    | USA            | USD             | Ending 3147           | Operating                                  | \$0                    |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4763           | Investment Transfer/DIP Term Loan Proceeds | \$0                    |
| Avaya Inc.           | BOA         | USA            | USD             | Ending 0975           | Master Account                             | \$259,000              |
| Avaya Inc.           | BOA         | USA            | USD             | Ending 0988           | Deposit                                    | \$0                    |
| Avaya Inc.           | BOA         | USA            | USD             | Ending 0991           | Deposit                                    | \$0                    |
| Avaya Inc.           | BOA         | USA            | USD             | Ending 3441           | Deposit                                    | \$0                    |
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 7418           | Customs                                    | \$0                    |
| Avaya Inc.           | Citibank    | USA            | USD             | Ending 6392           | Environmental Escrow                       | \$0                    |

<sup>1</sup> These descriptions of Bank Account types are for illustrative purposes only. A single Bank Account may fall into more than one of the categories described above.

| <b>Entity</b> | <b>Bank</b>        | <b>Country</b> | <b>Currency</b> | <b>Account Number</b> | <b>Account Designation<sup>1</sup></b> | <b>Account Balance</b> |
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| Avaya Inc.    | Delaware Trust     | USA            | USD             | Ending 5418           | IP Escrow                              | \$0                    |
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| Avaya Inc.    | Goldman Sachs      | USA            | USD             | Ending 9100           | Investment                             | \$0                    |
| Avaya Inc.    | JPMorgan           | USA            | USD             | Ending 8754           | Utilities Escrow                       | \$0                    |
| Avaya Inc.    | Citibank           | USA            | USD             | Ending 7900           | Foreign Reserve Account                | \$0                    |

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

|   |  |   |
|---|--|---|
| <p>In re:</p> <p style="margin-left: 40px;">AVAYA INC., <i>et al.</i>,<sup>1</sup></p> <p style="margin-left: 80px;">Debtors.</p> | <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> <p>)</p> | <p>Chapter 11</p> <p>Case No. 23-90088 (DRJ)</p> <p>(Jointly Administered)</p> <p><b>Re: Docket No. ___</b></p> |
|---|--|---|

**FINAL ORDER (I) AUTHORIZING  
THE DEBTORS TO (A) CONTINUE USING  
THE CASH MANAGEMENT SYSTEM, (B) MAINTAIN  
EXISTING BANK ACCOUNTS, BUSINESS FORMS, AND  
BOOKS AND RECORDS, AND (C) CONTINUE USING THE  
INVESTMENT ACCOUNT AND THE INVESTMENT POLICY,  
(II) AUTHORIZING CONTINUED INTERCOMPANY TRANSACTIONS,  
(III) GRANTING ADMINISTRATIVE EXPENSE STATUS TO POSTPETITION  
INTERCOMPANY TRANSACTIONS, AND (IV) GRANTING RELATED RELIEF**

Upon the emergency motion (the “Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of a final order (this “Final Order”), (a) authorizing the Debtors to (i) continue using the Cash Management System, including honoring certain prepetition obligations related thereto, (ii) maintain existing Bank Accounts, Business Forms, and Books and Records, and (iii) continue using the Investment Account and the Investment Policy, (b) authorizing the Debtors to continue Intercompany Transactions, (c) granting administrative expense status to all Postpetition Intercompany Transactions, and (d) 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

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<sup>1</sup> A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <http://www.kcellc.net/avaya>. The location of Debtor Avaya Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is 350 Mount Kemble Avenue, Morristown, New Jersey 07960.

<sup>2</sup> Capitalized terms used but not otherwise defined herein have the meanings ascribed to them in the Motion.

found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2); and this Court having found that 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 that the Debtors' notice of the Motion and opportunity for a hearing on the Motion were appropriate 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, if any; and this Court having determined that the legal and factual bases set forth in support of the Motion 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. Subject to the limitations of this Final Order, the Debtors are authorized to: (a) continue using the Cash Management System as described in the Motion and honor any prepetition obligations related to the use thereof, including, but not limited to, any prefunding arrangements consistent with prepetition practice with the Cash Management Banks; (b) designate, maintain, and close any or all of their existing Bank Accounts, including, but not limited to, the Bank Accounts identified on **Exhibit 1** attached hereto, in the names and with the account numbers existing immediately before the Petition Date; (c) deposit funds in and withdraw funds from the Bank Accounts by all means, including checks, wire transfers, ACH transfers, and other debits or electronic means; (d) treat their prepetition Bank Accounts for all purposes as debtor in possession accounts; (e) open new debtor in possession Bank Accounts; and (f) pay the Bank Fees, including any prepetition amounts, and any ordinary course Bank Fees incurred in connection with the Bank

Accounts, and to otherwise perform their obligations under the Bank Account agreements; *provided* that in the case of each of (a) through (f), such action is taken in the ordinary course of business and consistent with prepetition practices.

2. The Debtors are authorized to continue using, in their present form, the Business Forms, as well as checks and other documents related to the Bank Accounts existing immediately before the Petition Date, and maintain and continue using, in their present form, the Books and Records; *provided* that once they have exhausted their existing stock of Business Forms, they shall ensure that any new Business Forms are clearly labeled “Debtor In Possession” and with respect to any Business Forms that exist or are generated electronically, the Debtors shall ensure that such electronic Business Forms are clearly labeled “Debtor In Possession” within ten (10) business days.

3. Section 345 of the Bankruptcy Code requiring that the Debtor Bank Accounts be maintained at U.S. Trustee authorized depositories is waived with respect to the Debtor Bank Accounts existing as of the Petition Date.

4. The Debtors are authorized to continue investing funds in accordance with the Investment Policy, in each case, in the ordinary course of business and consistent with prepetition practices, and the requirements of section 345 of the Bankruptcy Code are hereby waived with respect to such deposit and investment practices.

5. Except as otherwise provided in this Final Order and only to the extent sufficient funds standing in the Debtors’ credit are available in each applicable Bank Account, all Cash Management Banks at which the Bank Accounts are maintained are authorized, but not directed, to continue to service and administer the Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business, consistent with prepetition

practices, including prefunding arrangements, and to receive, process, honor, and pay any and all checks, drafts, wire transfers, and ACH and other transfers issued, whether before or after the Petition Date, and drawn on the Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be; ; provided that the Debtors will instruct the Cash Management Banks as to which checks, drafts, wire transfers (excluding any wire transfers or ACH transfers that the Cash Management Banks are obligated to settle), or other items presented, issued, or drawn, shall not be honored.

6. The Debtors are authorized to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these Chapter 11 Cases with respect to prepetition amounts owed in connection with the relief granted herein.

7. Except as otherwise provided in this Final Order, the Cash Management Banks are authorized to charge, and the Debtors are authorized to pay, honor, or allow, prepetition and postpetition fees, costs, charges, overdrafts, dishonored or returned checks, and expenses, including the Bank Fees, and charge back returned items, whether such items were deposited prepetition or postpetition, to the Bank Accounts in the ordinary course of business and consistent with prepetition practices. Any such postpetition fees, costs, charges, overdrafts, dishonored or returned checks, and expenses, including the Bank Fees, or charge-backs that are not so paid shall be entitled to priority as administrative expenses pursuant to section 503(b)(1) of the Bankruptcy Code.

8. As soon as practicable after entry of this Final Order, the Debtors shall serve a copy of this Final Order on the Cash Management Banks.

9. The Debtors are authorized and directed, subject to the terms of any Financing Orders, to fund the Initial Intercompany Transaction and are authorized to continue Postpetition Intercompany Transactions in the ordinary course of business; *provided* that subject to the Intercompany Transfer Mechanic in all respects, each Debtor shall: (a) continue to pay its obligations consistent with such Debtor's prepetition practices with respect to intercompany transfers and obligations, and in no event shall any of the Debtors pay the prepetition or postpetition obligations of any other Debtor in a manner inconsistent with such Debtor's prepetition practices; (b) continue to maintain current records with respect to all transfers of cash so that all Intercompany Transactions may be readily ascertained, traced, and properly recorded on applicable intercompany accounts; and (c) on or before the fifteenth (15<sup>th</sup>) day of each month, provide the Notice Parties a monthly summary of any Postpetition Intercompany Transactions that occurred during the preceding month, which summary shall include (i) the name of the Debtor transferor, (ii) the name of the transferee, (iii) the amount of the transfer, and (iv) the purpose of the transfer, with the first such summary to be provided to the Notice Parties no later than March 15, 2023.

10. Subject to the terms of any Financing Order, the Debtors' use of funds from the Foreign Reserve Account for any intercompany loans (the "Foreign Reserve Account Withdrawal") shall, in addition to the Intercompany Transfer Mechanic, be subject to the following procedures: (i) the Debtors shall submit in writing to the DIP Term Loan Agent, with a copy the DIP ABL Agent and its advisors and the advisors to the Akin Ad Hoc Group and the PW Ad Hoc Group, a withdrawal request (the "Foreign Reserve Account Withdrawal Notice"), which Foreign Reserve Account Withdrawal Notice shall include (a) the proposed foreign non-Debtor recipient of the transfer; (b) the proposed transfer amount; and (c) the proposed use of funds; and (ii) the

DIP Term Loan Agent shall, within three (3) business days from receipt of the Foreign Reserve Account Withdrawal Notice, advise the Debtors if the Required DIP Term Lenders consent to any such Foreign Reserve Account Withdrawal, which consent shall not be unreasonably withheld.

11. Pursuant to sections 503(b)(1) and 364(b) of the Bankruptcy Code, all valid postpetition payments on account of a Postpetition Intercompany Transaction (a) from a Debtor to another Debtor or (b) from a non-Debtor affiliate to a Debtor, shall in each case be accorded administrative expense status, subject and junior to the claims, including adequate protection claims, granted in connection with the DIP Financing in accordance with any Financing Order, except to the extent such Postpetition Intercompany Transactions are on account of antecedent debts.

12. Unless prohibited by applicable law, transfers made by a Debtor to a non-Debtor affiliate pursuant to a Postpetition Intercompany Transaction (including disbursements from the Foreign Reserve Account) shall be deemed a claim against, and loan to, such non-Debtor affiliate (and not a contribution of capital), except to the extent such Postpetition Intercompany Transactions are on account of antecedent debts.

13. The Debtors shall maintain accurate and detailed records of all transfers, including the Postpetition Intercompany Transactions, in accordance with their prepetition practices, so that all transactions may be ascertained, traced, recorded properly, and distinguished between prepetition and postpetition transactions.

14. Except as otherwise set forth herein, the Debtors and the Cash Management Banks may, without further order of the Court, and to the extent permitted under the terms of any Financing Order, agree and implement changes to the Cash Management System and procedures

in the ordinary course of business. The Debtors are only authorized to close any Bank Accounts after providing seven (7) days prior written notice to the Notice Parties.

15. The Debtors are authorized to open new bank accounts so long as (a) any such new account is with one of the Debtors' existing Cash Management Banks or with a bank that (i) is insured with the FDIC or the Federal Savings and Loan Insurance Corporation and (ii) is designated as an authorized depository by the U.S. Trustee and (b) the Debtors provide seven (7) days prior written notice to the Notice Parties of the opening of such account; *provided* that each account opened by any of the Debtors on or after the Petition Date at any bank shall, for purposes of this Final Order, be deemed a Bank Account as if it had been listed on **Exhibit 1** attached hereto, and the bank at which such new account is maintained shall, for purposes of this Final Order, be deemed a Cash Management Bank.

15. Nothing contained herein shall prevent the Debtors from closing any Bank Accounts as they may deem necessary and appropriate, to the extent consistent with any orders of the Court relating thereto, and any relevant Cash Management Bank is authorized to honor the Debtors' requests to close such Bank Accounts.

16. The Cash Management Banks are authorized to debit the Debtors' accounts in the ordinary course of business and without further order of the Court on account of (a) all checks drawn on the Debtors' accounts that were cashed at the Cash Management Banks' counters or exchanged for cashier's or official checks by the payees thereof prior to the Petition Date; (b) all checks, ACH entries, or other items deposited in, or credited to, one of the Debtors' accounts with such bank prior to the Petition Date which have been dishonored, reversed, or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtors were responsible for such items prior to the Petition Date; and (c) all undisputed prepetition and

postpetition amounts outstanding, if any, owed to the Cash Management Bank as Bank Fees for the maintenance of the Cash Management System and charge back returned items to the Bank Accounts in the ordinary course.

17. Notwithstanding any other provision of this Final Order, should any Cash Management Bank honor a prepetition check or other item drawn on any account that is the subject of this Final Order (a) at the direction of the Debtors to honor such prepetition check or item, (b) in a good faith belief that the Court has authorized such prepetition check or item to be honored, or (c) as the result of an innocent mistake made despite implementation of customary item handling procedures, such Cash Management Bank shall not be deemed to be nor shall be liable to the Debtors, their estates or any other person or entity, or otherwise be in violation of this Final Order. The Cash Management Banks may rely, without a duty of inquiry, upon the failure of the Debtors to issue a stop payment order with respect to any item, whether such item is issued prepetition or postpetition, as a direction by the Debtors that such item be paid.

18. All time periods set forth in this Final Order shall be calculated in accordance with Bankruptcy Rule 9006(a).

19. Notwithstanding the relief granted herein and any actions taken pursuant to such relief, and subject to the administrative status afforded pursuant to Paragraph 10 of this Final Order, nothing in this Final 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 section 365 of the Bankruptcy Code; (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 seek avoidance of all such liens.

20. Notwithstanding anything to the contrary in this Final Order, any payment made or to be made hereunder, and any authorization herein, shall be subject to the requirements (if any) imposed on the Debtors under any Financing Orders, including any documentation with respect to such financing and any budget in connection with such Financing Order. In the event of any conflict between the terms of this Final Order and a Financing Order, the terms of the applicable Financing Order shall control (solely to the extent of such conflict).

21. The contents of this Motion satisfy the requirements of Bankruptcy Rule 6003(b).

22. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Bankruptcy Local Rules are satisfied by such notice.

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

24. The Debtors are authorized to take all actions necessary to effectuate the relief granted in this Final Order.

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

Dated: \_\_\_\_\_, 2023

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UNITED STATES BANKRUPTCY JUDGE

**Exhibit 1**

**Bank and Investment Accounts**

| <b>Entity</b>        | <b>Bank</b> | <b>Country</b> | <b>Currency</b> | <b>Account Number</b> | <b>Account Designation<sup>1</sup></b>     | <b>Account Balance</b> |
|----------------------|-------------|----------------|-----------------|-----------------------|--|------------------------|
| Avaya Inc.           | JPMorgan    | USA            | USD             | Ending 4399           | Main Concentration Account                 | \$0                    |
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