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in Possession other than the Participation
Debtors¹*

Proposed Counsel to the Participation Debtors

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)
) Chapter 11
)
Voyager Aviation Holdings, LLC *et al.*,)
) Case No. 23-11177 (JPM)
)
Debtors.²) (Joint Administration Requested)
)

**DEBTORS’ MOTION FOR ENTRY OF AN ORDER
(I) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICES, (II) APPROVING
THE PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR
FUTURE SERVICES, (III) APPROVING PROCEDURES FOR RESOLVING
ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

By this motion (the “Motion”), Voyager Aviation Holdings, LLC and its proposed jointly administered debtors and debtors in possession (collectively, the “Debtors”) seek entry of

¹ “Participation Debtors” means, collectively, Aetios Aviation Leasing 1 Limited, Aetios Aviation Leasing 2 Limited, Panamera Aviation Leasing XII Designated Activity Company, and Panamera Aviation Leasing XIII Designated Activity Company.

² The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation



an order (the “Order”) (i) prohibiting Utility Companies from altering, refusing, or discontinuing services; (ii) approving the Proposed Adequate Assurance of payment for future utility services under section 366 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”); and (iii) approving the proposed procedures for resolving Additional Assurance Requests. In support of the requested relief, the Debtors rely on the *Declaration of Robert A. Del Genio, Chief Restructuring Officer of Voyager Aviation Holdings, LLC, in Support of Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”), which is being filed contemporaneously herewith and is incorporated herein by reference, and respectfully state as follows.³

Background

1. On the date hereof (the “Petition Date”), each Debtor commenced a case under chapter 11 of the Bankruptcy Code by filing a voluntary petition for relief in this Court (the “Chapter 11 Cases”). The Debtors have requested the joint administration of their Chapter 11 Cases.

2. The Debtors are authorized to continue 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 cases, and no committees have yet been appointed or designated.

3. The Debtors, together with their non-Debtor affiliates (collectively, the “Company”), are a privately owned aviation investor and full-service global aircraft leasing platform operating in the highly competitive multinational aircraft leasing industry. The

Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

³ Capitalized terms used but not defined in this Motion have the meanings ascribed to them in the First Day Declaration.

Company's main leasing operations are led out of Dublin, Ireland, and the Company has corporate offices in Stamford, CT. It currently has a small team of 13 full-time employees split between Europe and the U.S. As of the Petition Date, the Company owned 18 aircraft, most of which are widebody aircraft and 16 of which are currently on lease to 7 airline customers.

4. As further described in the First Day Declaration, the Debtors have commenced these chapter 11 cases to consummate a sale of substantially all of the Company's assets (the "Azorra Transaction") to Azorra Explorer Holdings Limited (the "Purchaser"). The Azorra Transaction is the culmination of months of strategic planning and negotiations, including evaluating various alternatives, extensively marketing the Company's assets, and heavily negotiating transaction terms. The Debtors have entered into a restructuring support agreement with respect to a prearranged chapter 11 plan (the "Plan") supported by the Company's largest stakeholder, to implement the Azorra Transaction.

5. After years of managing difficult headwinds, the Azorra Transaction and the Plan together provide the best opportunity for the Company to maximize value for creditors across its capital structure.

6. Further information regarding the Debtors' business, capital structure, the circumstances leading to the commencement of the Chapter 11 Cases, and the facts and circumstances supporting the relief requested in this Motion is set forth in the First Day Declaration.

Relief Requested

7. The Debtors seek entry of an order (a) prohibiting Utility Companies from altering, refusing, or discontinuing services; (b) approving the Proposed Adequate Assurance of payment for future utility services; (c) approving the proposed procedures for resolving Additional

Assurance Requests; and (d) granting certain related relief. A proposed form of Order is attached to this Motion as **Exhibit A**.

8. The statutory bases for the relief requested herein are sections 366 and 105(a) of the Bankruptcy Code, rules 2002, 6003 and 6004 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 9013-1(a) of the Local Bankruptcy Rules for the Southern District of New York (the “Local Bankruptcy Rules”).

Jurisdiction and Venue

9. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Amended Standing Order of Reference from the United States District Court for the Southern District of New York*, dated January 31, 2012. The Debtors confirm their consent, pursuant to Bankruptcy Rule 7008, to the entry of a final order by this Court in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

10. Venue in this Court is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

The Utility Services and Proposed Adequate Assurance

I. The Debtors’ Utility Services

11. In the ordinary course of their business, the Debtors obtain electricity, natural gas, water, and other utility services provided by or in connection with the leasing of their office space in the United States and Ireland (the “Pass-Through Utility Services”). In addition, the Debtors obtain telephone, cable, and internet service directly from certain utility providers (the “Direct Utility Services”, and together with the Pass-Through Utility Services, the “Utility Services”). The Utility Services are provided by a number of utility companies (each, a “Utility Company”) located

throughout the United States and Ireland. A list of the Utility Companies that the Debtors make direct payments to is annexed to this Motion as **Exhibit B** (the “Utility Companies List”).⁴ Because the Debtors do not make direct payments to the Utility Companies on account of the Pass-Through Utility Services, the Debtors do not have a list of such Utility Companies and do not believe such Utility Companies would be entitled to terminate services under section 366 of the Bankruptcy Code, but the Debtors request, out of an abundance of caution, that such Utility Companies nevertheless be covered by the relief sought in this Motion and subject to the Order.

12. Uninterrupted Utility Services are essential to the Debtors’ business operations and the success of these Chapter 11 Cases. The Utility Services are essential. The Debtors’ corporate offices in the United States and Ireland require electricity, telecommunications, internet and other Utility Services to operate. Should any Utility Company refuse or discontinue service, even for a brief period, the Debtors’ business operations would be severely disrupted.

13. Over the past year, the Debtors have paid, on average, approximately \$4,966.00 per month directly to Utility Companies for their services. To the best of the Debtors’ knowledge, there are generally no material defaults or arrearages with respect to undisputed invoices for Utility Services. No Utility Company holds a prepetition deposit.

II. The Proposed Adequate Assurance

14. In general, the Debtors have a consistent history of paying the Utility Companies on time, and the Debtors intend to continue timely paying postpetition obligations owed to the Utility Companies. Cash held by the Debtors on the Petition Date and generated postpetition in the ordinary course of business, coupled with the anticipated access to cash collateral, will provide

⁴ The inclusion of any entity on the Utility Companies List is not an admission that such entity is a utility within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve the right to contest any such characterization.

sufficient liquidity to enable the Debtors to pay the Utility Companies consistent with prepetition practice.

15. Nevertheless, to provide the Utility Companies additional assurance of payment, the Debtors propose to deposit \$2,483.00 (the “Adequate Assurance Deposit”) into an existing and segregated Debtor account (the “Adequate Assurance Account”) to be maintained for the duration of these cases. The Adequate Assurance Deposit represents an amount sufficient to cover one half of the Debtors’ postpetition monthly cost for the Utility Services. Each Utility Company will be allocated funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Companies List.⁵

16. The Utility Companies will be the sole beneficiaries of the Adequate Assurance Account; other creditors will have no interest in the Adequate Assurance Account or the Adequate Assurance Deposit until funds, if any, from the Adequate Assurance Account are returned to the Debtors pursuant to the terms set forth in the proposed order granting the relief sought by this Motion.

17. If the Debtors determine to terminate any Utility Services, they will give the applicable Utility Company five days’ written notice of such termination (the “Termination Notice”). Thereafter, the Debtors may withdraw the portion of the Adequate Assurance Deposit maintained for the benefit of such Utility Company.

18. The Debtors submit that their ability to timely pay for Utility Services in accordance with prepetition practice, together with the funding of the Adequate Assurance Deposit

⁵ As the Debtors do not pay Utility Companies directly on account of the Pass-Through Utility Services, the proposed Adequate Assurance Deposit does not apply to these Utility Companies (and, subject to the procedures set forth in the Order, no amount will be deposited in the Adequate Assurance Account for the Utility Companies that provide solely Pass-Through Utility Services).

(collectively, the “Proposed Adequate Assurance”), constitutes “adequate assurance of payment” for the Utility Companies sufficient to satisfy the requirement of section 366(b) of the Bankruptcy Code.

III. The Adequate Assurance Procedures

19. Nevertheless, the Debtors recognize that some Utility Companies may believe that additional adequate assurance is required. Any Utility Company that is not satisfied with the Proposed Adequate Assurance may make a request for adequate assurance of future payment (each, an “Adequate Assurance Request”), pursuant to the following procedures (the “Adequate Assurance Procedures”):

- a. The Debtors will commence service of a copy of the Motion and the Order granting the relief requested herein on each Utility Company within five (5) business days after entry of the Order.
- b. Subject to paragraphs (c)-(l) herein, and to the extent not already deposited, the Debtors will deposit the Adequate Assurance Deposit in the aggregate amount of \$2,483.00 in the Adequate Assurance Account.
- c. Each Utility Company shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Companies List.
- d. If an amount relating to the Utility Services provided postpetition by a Utility Company is unpaid, and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by giving notice to (collectively, the “Adequate Assurance Notice Parties”):
 - i. the Debtors, Voyager Aviation Holdings, LLC, 301 Tresser Boulevard, Suite 602, Stamford, CT 06901, Attn: Elisabeth McCarthy, Michael Sean Ewing, and Christian Ginez;
 - ii. proposed counsel to the Debtors, Milbank LLP, 55 Hudson Yards, New York, New York 10001, Attn: Samuel A. Khalil, Esq., Lauren C. Doyle, Esq. and Edward R. Linden, Esq.;
 - iii. the Office of the United States Trustee for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green,

Suite 534, New York, NY 10004, Attn: Annie Wells, Esq., Daniel Rudewicz, Esq., Brian Masumoto, Esq.; and

- iv. counsel to the official committee of unsecured creditors (if any) appointed in these cases.

The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Bankruptcy Court. To the extent a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- e. The portion of the Adequate Assurance Deposit attributable to each Utility Company will be returned to the Debtors on the earlier of (i) reconciliation and payment by the Debtors of the Utility Company's final invoice in accordance with applicable non-bankruptcy law following the Debtors' termination of the Utility Services from such Utility Company and (ii) the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases.
- f. Any Utility Company desiring additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for such additional assurance (an "Additional Assurance Request") on the Adequate Assurance Notice Parties.
- g. Any Additional Assurance Request must: (i) be made in writing; (ii) identify the location for which Utility Services are provided; (iii) include information regarding any security deposits paid by the Debtors; (iv) provide evidence that the Debtors have a direct obligation to the Utility Company; and (v) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- h. An Additional Assurance Request may be made at any time. If a Utility Company fails to file and serve an Additional Assurance Request, the Utility Company shall be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- i. Upon the Debtors' receipt of an Adequate Assurance Request, the Debtors shall have twenty-one days from the receipt of the Adequate Assurance Request (the "Resolution Period") to negotiate with the Utility Company to resolve the Utility Company's Adequate Assurance Request.

- j. Without further order of the Bankruptcy Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company serving an Additional Assurance Request if the Debtors determine that the Additional Assurance Request is reasonable.
- k. If the Debtors determine, in their sole discretion, that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Company, the Debtors or the Utility Company, during or immediately after the Resolution Period, may request a hearing (a "Determination Hearing") before the Bankruptcy Court to determine the adequacy of assurance of payment with respect to that Utility Company pursuant to section 366(c)(3) of the Bankruptcy Code.
- l. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Company will be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.

20. The Adequate Assurance Procedures provide a streamlined process for Utility Companies to address potential concerns with respect to the Proposed Adequate Assurance, while allowing the Debtors to administer their chapter 11 estates with as little interruption as possible. The Debtors request that the Utility Companies be forbidden from altering, refusing, or discontinuing service or requiring additional assurance of payment other than the Proposed Adequate Assurance except in compliance with the Adequate Assurance Procedures.

IV. Modifications to the Utility Companies List

21. To the extent that new or additional Utility Companies are identified, services from any existing Utility Companies are discontinued, or a Utility Company has been inadvertently omitted from the Utility Companies List, the Debtors request authority to add Utility Companies to, or remove them from, the Utility Companies List. The Debtors will serve any Utility Company that is subsequently added to the Utility Companies List with a copy of the order granting this Motion. The Debtors request that the terms of the order granting the relief requested in the Motion and the Adequate Assurance Procedures apply to all Utility Companies, including any Utility

Companies subsequently added to the Utility Companies List. The Debtors will deposit in the Adequate Assurance Account for the benefit of each subsequently added Utility Company one-half of the Debtors' average monthly cost of Utility Services provided by the subsequently added Utility Company.

Basis for Relief

I. The Proposed Assurance Is Sufficient to Guarantee Payment for Postpetition Utility Services.

22. Congress enacted section 366 of the Bankruptcy Code to protect a debtor from immediate termination of utility services after a bankruptcy filing, while also providing utilities with adequate assurance that they will be paid for the services they provide to a debtor in possession. *See* H.R. Rep. No. 95-595, at 350 (1978), *as reprinted in* 1978 U.S.C.C.A.N. 5963, 6306. Accordingly, section 366 prohibits utilities from altering, refusing or discontinuing service to a debtor “solely on the basis of the commencement of a case or that a debt owed by the debtor to such utility for service rendered before the order for relief was not paid when due.” 11 U.S.C. § 366(a).

23. Section 366 requires only that a debtor's assurance of payment be “adequate.” 11 U.S.C. § 366(c). Adequacy does not require an absolute guarantee of payment, and a bankruptcy court has broad discretion to determine what assurance is “adequate.” *See, e.g., In re Adelpia Bus. Sols., Inc.*, 280 B.R. 63, 81 (Bankr. S.D.N.Y. 2002) (stating that bankruptcy courts “must be afforded reasonable discretion in determining what constitutes adequate assurance of payment” with respect to continuing utility services) (citing *Va. Elec. & Power Co. v. Caldor, Inc.-NY*, 117 F.3d 646, 650-51 (2d Cir. 1997)).

24. In determining the necessary means of assurance, courts have “focus[ed] ‘upon the need of the utility for assurance, and [have] require[d] that the debtor supply no more than that,

since the debtor almost perforce has a conflicting need to conserve scarce financial resources.”
Va. Elec. & Power Co., 117 F.3d at 650 (quoting *In re Penn J. Corp.*, 72 B.R. 981, 985 (Bankr. E.D. Pa. 1987)); *see also In re Penn Cent. Transp. Co.*, 467 F.2d 100, 103-104 (3d Cir. 1972) (affirming bankruptcy court’s ruling that utility deposits were not required where it would “jeopardize the continuing operation of the [debtor] merely to give further security to suppliers who already are reasonably protected”). Similarly, even though section 366(c)(2) of the Bankruptcy Code permits utilities to take action if the debtor fails to provide “satisfactory” adequate assurance of payment, the Bankruptcy Court remains the ultimate arbiter of what constitutes “satisfactory assurance” after taking into consideration factors such as the relationship between the debtor and the utility. Specifically, section 366(c)(3)(A) states that “[o]n request of a party in interest and after notice and a hearing, the court may order modification of the amount of an assurance of payment.” 11 U.S.C. § 366(c)(3)(A); *see, e.g., In re Great Atl. & Pac. Tea Co.*, No. 11–CV–1338, 2011 WL 5546954, at *5-6 (S.D.N.Y. Nov. 14, 2011) (affirming bankruptcy court decision holding that no additional adequate assurance deposit was necessary where such deposit would impose an unreasonable burden on reorganizing debtors).

25. Here, the Utility Companies are adequately protected against any risk of nonpayment for future services. The Adequate Assurance Account and the Debtors’ proven ability to meet obligations as they come due in the ordinary course provide adequate assurance that the Debtors will pay their postpetition obligations to the Utility Companies.

26. Courts in this district have consistently found that a dedicated deposit of approximately 50% of a debtor’s estimated monthly cost for utility services satisfies the requirement of section 366(b) of the Bankruptcy Code. *See, e.g., In re Times Square JV LLC*, Case No. 22-11715 (JPM) (Bankr. S.D.N.Y. Jan. 19, 2023) [ECF No. 120] (approving as adequate

assurance for utility providers a deposit into a segregated interest bearing account equal to 50% of estimated monthly cost of the debtor's utility services); *In re Endo Int'l plc*, Case No. 22-22549 (JLG) (Bankr. S.D.N.Y. Oct. 12, 2022) [ECF No. 369] (approving as adequate assurance for utility providers a deposit into a segregated interest bearing account equal to two weeks of the estimated monthly cost of the debtor's utility services); *In re Celsius Network LLC*, Case No. 22-10964 (MG) (Bankr. S.D.N.Y. Aug. 17, 2022) [ECF No. 527] (approving adequate assurance deposit equal to 50% estimated monthly cost of the debtor's utility services); *In re SAS AB*, Case No. 22-10925 (MEW) (Bankr. S.D.N.Y. Aug. 4, 2022) [ECF No. 167] (same); *In re GTT Commc'ns, Inc.*, Case No. 21-11880 (MEW) (Bankr. S.D.N.Y. Nov. 30, 2021) [ECF No. 147] (approving adequate assurance deposit equal to 50% estimated monthly cost of the debtor's utility services).

27. Further, the Court possesses the power, under section 105(a) of the Bankruptcy Code, to "issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title." 11 U.S.C. § 105(a). The Adequate Assurance Procedures and the Proposed Adequate Assurance are necessary and appropriate to carry out the provisions of the Bankruptcy Code, particularly section 366. Accordingly, the Court should exercise its powers under sections 366 and 105(a) of the Bankruptcy Code and approve the Proposed Adequate Assurance.

II. The Adequate Assurance Procedures Are Reasonable.

28. Furthermore, the Debtors expect that channeling any requests for additional assurance through the Adequate Assurance Procedures will permit them to resolve most disputes consensually, without requiring the Court's attention or unduly consuming estate resources. The Adequate Assurance Procedures also protect the estates from a sudden interruption of the Utility Services, while allowing Utility Companies to seek additional assurance if the consensual process does not resolve its concerns.

29. Courts in this District have frequently approved similar procedures. *See, e.g., In re Vice Grp. Holding Inc.*, Case No. 23-10738 (JPM) (Bankr. S.D.N.Y. June 15, 2023) [ECF No. 153] (requiring utility providers to comply with proposed adequate assurance procedures for additional assurances); *In re Times Square JV LLC*, Case No. 22-11715 (JPM) (Bankr. S.D.N.Y. Jan. 19, 2023) [ECF No. 120] (same); *In re Endo Int'l plc*, Case No. 22-22549 (JLG) (Bankr. S.D.N.Y. Oct. 12, 2022) [ECF No. 369] (same); *In re Celsius Network LLC*, Case No. 22-10964 (MG) (Bankr. S.D.N.Y. Aug. 17, 2022) [ECF No. 527] (same); *In re SAS AB*, Case No. 22-10925 (MEW) (Bankr. S.D.N.Y. Aug. 4, 2022) [ECF No. 167] (same); *In re GTT Commc'ns, Inc.*, Case No. 21-11880 (MEW) (Bankr. S.D.N.Y. Nov. 30, 2021) [ECF No. 147] (same).

Reservation of Rights

30. Nothing contained herein is or should be construed as: (a) an implication or admission as to the validity of any claim against the Debtors or a waiver of the obligation of any claimant to file a proof of claim, (b) a promise to pay any claim or a waiver of the Debtors' or any other party in interest's rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action, (d) a concession by the Debtors that any lien (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved), or (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code or as affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease.

Motion Practice

31. This Motion includes citations to the applicable rules and statutory authorities upon which the relief requested herein is predicated and a discussion of their application to this Motion. Accordingly, the Debtors submit that this Motion satisfies Local Bankruptcy Rule 9013-1(a).

The Debtors Have Satisfied Bankruptcy Rule 6003(B)

32. Bankruptcy Rule 6003 provides that the relief requested in this Motion may be granted if the “relief is necessary to avoid immediate and irreparable harm.” Fed. R. Bankr. P. 6003; *see also In re First NLC Fin. Servs., LLC*, 382 B.R. 547, 549-50 (Bankr. S.D. Fla. 2008) (holding that Bankruptcy Rule 6003 permits entry of retention orders on an interim basis to avoid irreparable harm). The Second Circuit has interpreted the language “immediate and irreparable harm” in the context of preliminary injunctions. In that context, the Second Circuit has instructed that irreparable harm “‘is a continuing harm which cannot be adequately redressed by final relief on the merits’ and for which ‘money damages cannot provide adequate compensation.’” *Kamerling v. Massanari*, 295 F.3d 206, 214 (2d Cir. 2002) (quoting *N.Y. Pathological & X-Ray Labs., Inc. v. INS*, 523 F.2d 79, 81 (2d Cir. 1975)). Furthermore, the “harm must be shown to be actual and imminent, not remote or speculative.” *Id.*; *see also Rodriguez v. DeBuono*, 175 F.3d 227, 234 (2d Cir. 1998). The Debtors submit that, for the reasons set forth herein, the relief requested in this Motion is necessary to avoid immediate and irreparable harm.

Waiver of Stay Under Bankruptcy Rule 6004(H)

33. The Debtors also request that the Court waive the stay imposed by Bankruptcy Rule 6004(h), which provides that “[a]n order authorizing the use, sale, or lease of property other than cash collateral is stayed until the expiration of 14 days after entry of the order, unless the court orders otherwise.” Fed. R. Bankr. P. 6004(h). As described above, the relief that the Debtors seek in this Motion is necessary for the Debtors to operate without interruption and to preserve the value

for their estates. Accordingly, the Debtors respectfully request that the Court waive the 14-day stay imposed by Bankruptcy Rule 6004(h), to the extent applicable, as the exigent nature of the relief sought herein justifies immediate relief.

Notice

34. The Debtors will provide notice of this Motion to (a) the Office of the United States Trustee for the Southern District of New York; (b) the holders of the 30 largest unsecured claims against the Debtors (on a consolidated basis); (c) counsel to the Required Consenting Noteholders, Clifford Chance US LLP; (d) counsel to the Aircraft Facility Lenders; (e) counsel to the Indenture Trustee of the Secured Notes; (f) counsel to the Purchaser, Paul, Weiss, Rifkind, Wharton & Garrison LLP and Pillsbury Winthrop Shaw Pittman LLP; (g) the Utility Companies identified on **Exhibit B** attached hereto; (h) the Securities and Exchange Commission; (i) the Internal Revenue Service; (j) the Office of Foreign Assets Control of the United States Department of Treasury; (k) the United States Attorney's Office for the Southern District of New York; (l) the office of the attorneys general for the states in which the Debtors operate; and (m) any party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "Notice Parties"). The Debtors respectfully submit that, in view of the facts and circumstances, such notice is sufficient, and no other or further notice need be provided.

No Previous Request

35. No prior request for the relief sought in this Motion has been made to this or any other court.

WHEREFORE, the Debtors respectfully request that the Court (i) enter the Order, substantially in the form attached hereto as **Exhibit A**, and (ii) grant such other relief as is just and proper.

Dated: July 27, 2023
New York, New York

/s/ Lauren C. Doyle

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Proposed Counsel to the Participation Debtors

Exhibit A

Proposed Order

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK**

In re:)	
)	Chapter 11
Voyager Aviation Holdings, LLC <i>et al.</i> ,)	
)	Case No. 23-11177 (JPM)
)	
Debtors. ¹)	(Joint Administration Pending)

**ORDER (I) PROHIBITING UTILITY COMPANIES FROM ALTERING,
REFUSING, OR DISCONTINUING SERVICES, (II) APPROVING
THE PROPOSED ADEQUATE ASSURANCE OF PAYMENT FOR
FUTURE SERVICES, (III) APPROVING PROCEDURES FOR RESOLVING
ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

Upon the motion (the “Motion”)² of the debtors and debtors in possession (collectively, the “Debtors”) in the above-captioned cases for entry of an order (i) approving the Proposed Adequate Assurance of payment for postpetition Utility Services, (ii) prohibiting Utility Companies from altering, refusing, or discontinuing services, (iii) approving the Adequate Assurance Procedures and (iv) granting certain related relief, all as more fully set forth in the Motion; and the Court having reviewed the Motion and the First Day Declaration and having heard the statements of counsel regarding the relief requested in the Motion at a hearing before the Court, if any (the “Hearing”); and the Court having found that (a) the Court has jurisdiction over this

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor’s tax identification number, are: Voyager Aviation Holdings, LLC (8601); A330 MSN 1432 Limited (N/A); A330 MSN 1579 Limited (N/A); Aetios Aviation Leasing 1 Limited (N/A); Aetios Aviation Leasing 2 Limited (N/A); Cayenne Aviation LLC (9861); Cayenne Aviation MSN 1123 Limited (N/A); Cayenne Aviation MSN 1135 Limited (N/A); DPM Investment LLC (5087); Intrepid Aviation Leasing, LLC (N/A); N116NT Trust (N/A); Panamera Aviation Leasing IV Limited (N/A); Panamera Aviation Leasing VI Limited (N/A); Panamera Aviation Leasing XI Limited (N/A); Panamera Aviation Leasing XII Designated Activity Company (N/A); Panamera Aviation Leasing XIII Designated Activity Company (N/A); Voyager Aircraft Leasing, LLC (2925); Voyager Aviation Aircraft Leasing, LLC (3865); Voyager Aviation Management Ireland Designated Activity Company (N/A); and Voyager Finance Co. (9652). The service address for each of the Debtors in these cases is 301 Tresser Boulevard, Suite 602, Stamford, CT 06901.

² Capitalized terms used but not defined in this Order shall have the meanings given to such terms in the Motion or in the First Day Declaration, as applicable.

matter pursuant to 28 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference M-431, dated January 31, 2012 (Preska, C.J.); (b) this is a core proceeding pursuant to 28 U.S.C. §§ 157(a)-(b) and 1334(b); (c) venue is proper before the Court pursuant to 28 U.S.C. §§ 1408 and 1409; and (d) due and proper notice of the Motion and the Hearing was sufficient under the circumstances; and the Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates and is in the best interests of the Debtors, their estates, creditors, and other parties-in-interest after taking into account the priority scheme of the Bankruptcy Code; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor;

IT IS HEREBY ORDERED THAT:

1. The Motion is granted as set forth herein.
2. The Debtors are authorized to (i) fund the Adequate Assurance Account with the Adequate Assurance Deposit, and (ii) maintain it during the pendency of these Chapter 11 Cases on the terms set forth in this Order.
3. The Adequate Assurance Deposit, together with the Debtors' ability to pay for Utility Services in the ordinary course of business, shall, subject to the Adequate Assurance Procedures, constitute adequate assurance of future payment as required by section 366(b) of the Bankruptcy Code.
4. The following Adequate Assurance Procedures are hereby approved:
 - a. The Debtors will commence service of a copy of the Motion and the Order granting the relief requested herein on each Utility Company within five (5) business days after entry of the Order.
 - b. Subject to paragraphs (c)-(l) herein, and to the extent not already deposited, the Debtors shall deposit the Adequate Assurance Deposit in the aggregate amount of \$2,483.00 in the Adequate Assurance Account.

- c. Each Utility Company shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Company in the column labeled “Proposed Adequate Assurance” on the Utility Companies List.
- d. If an amount relating to the Utility Services provided postpetition by a Utility Company is unpaid, and remains unpaid beyond any applicable grace period, such Utility Company may request a disbursement from the Adequate Assurance Account by giving notice to (collectively, the “Adequate Assurance Notice Parties”):
 - i. the Debtors, Voyager Aviation Holdings, LLC, 301 Tresser Boulevard, Suite 602, Stamford, CT 06901, Attn: Elisabeth McCarthy, Michael Sean Ewing, and Christian Ginez;
 - ii. proposed counsel to the Debtors, Milbank LLP, 55 Hudson Yards, New York, New York 10001, Attn: Samuel A. Khalil, Esq., Lauren C. Doyle, Esq. and Edward R. Linden, Esq.;
 - iii. the Office of the United States Trustee for the Southern District of New York, Alexander Hamilton Custom House, One Bowling Green, Suite 534, New York, NY 10004, Attn: Annie Wells, Esq., Daniel Rudewicz, Esq., Brian Masumoto, Esq.; and
 - iv. counsel to the official committee of unsecured creditors (if any) appointed in these cases.

The Debtors shall honor such request within five (5) business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Company to resolve any dispute regarding such request without further order of the Bankruptcy Court. To the extent a Utility Company receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- e. The portion of the Adequate Assurance Deposit attributable to each Utility Company will be returned to the Debtors on the earlier of (i) reconciliation and payment by the Debtors of the Utility Company’s final invoice in accordance with applicable non-bankruptcy law following the Debtors’ termination of the Utility Services from such Utility Company and (ii) the effective date of any chapter 11 plan confirmed in these Chapter 11 Cases.
- f. Any Utility Company desiring additional assurance of payment in the form of deposits, prepayments, or otherwise must serve a request for such additional assurance (an “Additional Assurance Request”) on the Adequate Assurance Notice Parties.

- g. Any Additional Assurance Request must: (i) be made in writing; (ii) identify the location for which Utility Services are provided; (iii) include information regarding any security deposits paid by the Debtors; (iv) provide evidence that the Debtors have a direct obligation to the Utility Company; and (v) explain why the Utility Company believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.
- h. An Additional Assurance Request may be made at any time. If a Utility Company fails to file and serve an Additional Assurance Request, the Utility Company shall be (i) deemed to have received “satisfactory” adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- i. Upon the Debtors’ receipt of an Adequate Assurance Request, the Debtors shall have twenty-one days from the receipt of the Adequate Assurance Request (the “Resolution Period”) to negotiate with the Utility Company to resolve the Utility Company’s Adequate Assurance Request.
- j. Without further order of the Bankruptcy Court, the Debtors may enter into agreements granting additional adequate assurance to a Utility Company serving an Additional Assurance Request if the Debtors determine that the Additional Assurance Request is reasonable.
- k. If the Debtors determine, in their sole discretion, that the Additional Assurance Request is not reasonable and the Debtors are unable to reach an alternative resolution with the Utility Company, the Debtors or the Utility Company, during or immediately after the Resolution Period, may request a hearing (a “Determination Hearing”) before the Bankruptcy Court to determine the adequacy of assurance of payment with respect to that Utility Company pursuant to section 366(c)(3) of the Bankruptcy Code.
- l. Pending resolution of such dispute at a Determination Hearing, the relevant Utility Company will be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.

5. The Utility Companies are prohibited from altering, refusing, or discontinuing service or requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

6. The relief granted in this Order is binding on all Utility Companies providing Utility Services to the Debtors and is not limited to those entities listed on the Utility Companies List. For the avoidance of doubt, the terms of this Order and the Adequate Assurance Procedures shall apply to any Utility Company subsequently added to the Utility Companies List.

7. The Debtors' inclusion of any entity on the Utility Companies List shall not constitute an admission or concession that such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

8. The Debtors are authorized to add or remove parties from the Utility Companies List; *provided, however,* that the Debtors shall provide notice of any such addition or removal to the Adequate Assurance Notice Parties; *provided, further,* that if a Utility Company is removed from the Utility Companies List, the Debtors shall provide such Utility Company with five days' notice of such removal and the opportunity to respond; *provided, further,* that if any Utility Company is subsequently added to the Utility Companies List, the Debtors shall provide such Utility Company two weeks' notice to object to its inclusion on the Utility Companies List.

9. To the extent there is any dispute as to the postpetition amounts owed to a Utility Company, such Utility Company shall not be removed from the Utility Companies List, and no funds shall be removed from the Adequate Assurance Deposit, until such dispute has been resolved.

10. Any landlord that pays for Utility Services for the benefit of the Debtors pursuant to a lease shall not be permitted to discontinue paying for such Utility Services in the ordinary course of business, and may not cease, reduce, delay, or otherwise interfere with the payment or delivery of such Utility Services, regardless of any nonpayment, deferral, or waiver of rent, or any defaults under the applicable lease; *provided* that a landlord may cease payments on account of

Utility Services following the effective date of any rejection of the applicable lease pursuant to section 365 of the Bankruptcy Code.

11. The Debtors shall serve any Utility Company that is subsequently added to the Utility Companies List with a copy of this Order within three (3) business days and shall deposit one-half of the Debtors' average monthly utility expense in the Adequate Assurance Account for the benefit of such Utility Company.

12. Upon the Debtors' determination to terminate the Utility Services of any Utility Company, the Debtors may, in their discretion and without further order of this Court, reduce the Adequate Assurance Deposit by an amount not exceeding the lesser of (i) the estimated two-week expense for such Utility Services or (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Company. Upon the effective date of a plan of reorganization in these Chapter 11 Cases, the Adequate Assurance Deposit shall be returned to the Debtors, less any amount owed on account of unpaid postpetition Utility Services, by no later than five (5) business days following the date upon which the plan of reorganization becomes effective.

13. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved in this Order are authorized and directed to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Order without any duty of further inquiry and without liability for following the Debtors' instructions.

14. The Debtors are authorized, but not directed, to issue postpetition checks, and to issue postpetition fund transfer requests in replacement of any checks or fund transfer requests that

are dishonored as a consequence of the filing of these cases with respect to prepetition amounts owed in connection with the relief granted in this Order.

15. Notwithstanding anything to the contrary contained herein, any payment to be made hereunder, and any authorization contained herein, shall be subject to and in accordance with any interim and final orders, as applicable, approving the use of cash collateral (the “Cash Collateral Order”) and any budget in connection with any such use of cash collateral. To the extent there is any inconsistency between the terms of the Cash Collateral Order and any action taken or proposed to be taken hereunder, the terms of the Cash Collateral Order shall control.

16. Nothing contained in the Motion or this Order, nor any payment made pursuant to the authority granted by this Order, shall constitute or be construed as (a) an implication or admission as to the validity of any claim against the Debtors or a waiver of the obligation of any claimant to file a proof of claim, (b) a promise to pay any claim or a waiver of the Debtors’ or any other party in interest’s rights to dispute the amount of, basis for, or validity of any claim against the Debtors, (c) a waiver of any claims or causes of action, (d) a concession by the Debtors that any lien (contractual, common law, statutory, or otherwise) satisfied pursuant to the Motion is valid (and all rights to contest the extent, validity, or perfection or seek avoidance of all such liens are expressly reserved), or (e) an approval, assumption, adoption, or rejection of any agreement, contract, program, policy, or lease under section 365 of the Bankruptcy Code or as affecting the Debtors’ rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease.

17. All time periods set forth in this Order or in compliance with the Case Management Procedures shall be calculated in accordance with Bankruptcy Rule 9006(a).

18. The Court finds and determines that the requirements of Bankruptcy Rule 6003 are satisfied and that the relief requested is necessary to avoid immediate and irreparable harm.

19. Under the circumstances of the Chapter 11 Cases, notice of the Motion is adequate under Bankruptcy Rule 6004(a).

20. Notwithstanding Bankruptcy Rule 6004(h), this Order shall be effective and enforceable immediately upon entry.

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

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

New York, New York

Dated: _____, 2023

HONORABLE JOHN P. MASTANDO III
UNITED STATES BANKRUPTCY JUDGE

Exhibit B

Utility Companies List

Utility Company Name	Types of Services Provided	Mailing Address	Account Number	Average Monthly Spend ¹	Adequate Assurance Deposit
Avaya	Telephone	20 Davis Dr. Belmont, CA 94002	692625032	\$1,068.00	\$534.00
AT&T	Telephone	AT&T MOBILITY PO Box 6463 Carol Stream, IL 60197-6463	287298937489	\$854.00	\$427.00
Crown Castle	Internet	Crown Castle Fiber LLC PO Box 28730 New York, NY 10087-8730	B32676	\$600.00	\$300.00
Optimum	Cable	Optimum PO Box 70340 Philadelphia, PA 19176-0340	07808-647306-01-0	\$185.00	\$92.50
Three Ireland (Hutchison) Limited	Internet	Three Ireland (Hutchison) Limited PO Box 333 Dublin 2 083 333 3333	403327336	\$99.00	\$49.50
Viatel	Internet	Viatel Ireland Limited Unit 1 College Business & Technology Park, Blanchardstown Dublin 15 D15PEC4	3800005916	\$663.00	\$331.50
Virgin Media	Internet	Virgin Media Ireland Limited Macken House, 39/40 Mayor Street Upper, Dublin 1, D01 C9W8	84643238	\$104.00	\$52.00
Vodafone	Telephone	Vodafone Ireland Ltd., Mountainview, Leopardstown Dublin 18 D18 XN97	1001834747	\$1,061.00	\$530.50
Voice & Data Solutions	Telephone	Unit 4 Plato Business Park Damastown D15 HR80, Ireland	N/A	\$332.00	\$166.00

¹ Amounts for Vodafone, Viatel, Virgin Media, Voice & Data Solutions, and Three Ireland (Hutchison) Limited converted from Euro to USD.