



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

### **Relief Requested**

1. The Debtors seek entry of an order, substantially in the form attached hereto (the “Order”): (a) authorizing the Debtors to file under seal the Fee Letters, of which the Debtors are seeking approval pursuant to the DIP Motion<sup>3</sup> filed contemporaneously herewith, (b) directing that the Fee Letters shall remain under seal and confidential and not be made available to anyone, without the prior written consent of both the Debtors and the Administrative Agent, except to (i) the Court, (ii) the U.S. Trustee, (iii) the counsel and financial advisors to any statutory committee that may be appointed in these cases (on a confidential and professional eyes only basis), and (iv) any other party as may be ordered by the Court or agreed to by the Debtors and the Administrative Agent, in each case under appropriate confidentiality agreements reasonably satisfactory to the Debtors and the Administrative Agent that preserve the confidentiality of the Fee Letters (and any information derived therefrom), and (c) granting related relief.

### **Jurisdiction**

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

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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.

<sup>3</sup> Capitalized terms used but not defined in this Sealing Motion shall have the meanings set forth in the First Day Declaration or *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 Superpriority 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”), as applicable.

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.

4. The bases for the relief requested herein are sections 105(a) and 107(b) of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), Bankruptcy Rules 9018, and rules 9013-1(i) and 9037-1 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.

7. By the DIP Motion, the Debtors seek, among other things, authorization to enter into that certain DIP-to-Exit ABL Facility Commitment Letter, dated as of February 13, 2023 (the “Commitment Letter” and, the senior secured superpriority debtor-in-possession asset-based revolving credit facility contemplated thereby, the “DIP-to-Exit ABL Facility”). In connection therewith, the Debtors seek authorization to file under seal those certain fee letters (the “Fee Letters”) dated on or about February 13, 2023, and delivered in connection with the Commitment Letter.

8. The Fee Letters contain sensitive and confidential commercial information regarding the structure and amount of the fees relating to the DIP-to-Exit ABL Facility. Because

the disclosure of this information could harm the Debtors, the Administrative Agent, and the Commitment Parties (each as defined in the Commitment Letter), the Debtors seek authority to file the Fee Letters under seal and to provide for the limited disclosure of the Fee Letters as provided herein.

**Basis for Relief**

9. Section 105(a) of the Bankruptcy Code codifies the inherent equitable powers of the bankruptcy court and empowers the bankruptcy court to “issue any order, process, or judgment that is necessary or appropriate to carry out the provisions of this title.” Section 107(b) of the Bankruptcy Code provides bankruptcy courts with the power to issue orders that will protect entities from potential harm that may result from the disclosure of certain confidential information. *See In re Gen. Homes Corp.*, 181 B.R. 898, 903 (Bankr. S.D. Tex. 1995). This section provides, in relevant part that, “[o]n request of a party in interest, the bankruptcy court shall, and on the bankruptcy court’s own motion, the bankruptcy court may—protect an entity with respect to a trade secret or confidential research, development, or commercial information.” 11 U.S.C. § 107(b)(1).

10. Bankruptcy Rule 9018 defines the procedures by which a party may move for relief under section 107(b) of the Bankruptcy Code. Bankruptcy Rule 9018 provides, in relevant part, that on motion “the court may make any order which justice requires . . . to protect the estate or any entity in respect of a trade secret or other confidential research, development, or commercial information.” Additionally, Bankruptcy Local Rule 9037-1 provides, in relevant part, that “[a] motion, reply, or other document may initially be filed under seal if the filing party simultaneously files a motion requesting that the document be maintained under seal.”

11. Commercial information is information which would result in “an unfair advantage to competitors by providing them information as to the commercial operations of the debtor.”

*In re Alterra Healthcare Corp.*, 353 B.R. 66, 75 (Bankr. D. Del. 2006) (citing *Video Software Dealers Ass'n v. Orion Pictures Corp. (In re Orion Pictures Corp.)*, 21 F.3d 24, 27 (2d Cir. 1994)). Commercial information need not rise to the level of a “trade secret” to be protected under section 107(b) of the Bankruptcy Code. *In re Orion Pictures Corp.*, 21 F.3d at 28; *see also In re Faucett*, 438 B.R. 564, 567 (Bankr. W.D. Tex. 2010) (citing *In re Northstar Energy, Inc.*, 315 B.R. 425, 429 (Bankr. E.D.Tex. 2004) (“A bankruptcy court is *required* to seal ‘documentary information filed in court that does not rise to the level of a trade secret but that is so critical to the operations of the entity seeking the protective order that its disclosure will unfairly benefit that entity’s competitors.’”) (emphasis added)). Rather, section 107(b)’s protections extend to commercial information that, if disclosed to the public, could be used by various parties for an unfair advantage. *In re Orion Pictures Corp.*, 21 F.3d at 27–28. Once a court determines that a party in interest is seeking to protect “commercial information,” the court “is required to protect a requesting interested party and has no discretion to deny the application.” *Id.* at 27.

12. The terms of the Fee Letters are the product of good-faith negotiations. The disclosure of the terms of the Fee Letters would likely cause substantial harm to the Debtors and the Administrative Agent, create an unfair advantage for competitors, and violate the Debtors’ agreement with the Commitment Parties to keep the terms of the Fee Letters confidential. The Fee Letters reflect detailed proprietary information describing fees to be paid in connection with the DIP-to-Exit ABL Facility, which information is customarily considered by the Administrative Agent, in particular, as well as the finance lending industry, in general, to be highly sensitive and confidential information not typically disclosed to the public. Given the highly competitive nature of the investment banking and lending industries, it is of the utmost importance that the details of

the fee structures set forth in the Fee Letters be kept confidential so that competitors cannot use the information contained therein to gain a strategic advantage in the marketplace.

13. Good cause exists to authorize the Debtors to file the Fee Letters under seal because of the harm that would ensue if the sensitive and confidential commercial information contained in the Fee Letters became public information.

### **Emergency Consideration**

14. The Debtors request emergency consideration of this Sealing 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.” In light of the time-sensitive nature of the DIP Motion and the confidential information contained in the Fee Letters, 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 Sealing Motion on an emergency basis.

### **Notice**

15. The Debtors have provided notice of this Sealing Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the Southern District of Texas (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 proposed 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; and (r) 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 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*

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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*

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Matthew D. Cavanaugh

**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: 100px;">Debtors.</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>
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**ORDER AUTHORIZING THE DEBTORS  
TO FILE THE FEE LETTERS UNDER SEAL**

Upon the motion (the “Sealing Motion”)<sup>2</sup> of the above-captioned debtors and debtors in possession (collectively, the “Debtors”) for entry of an order (this “Order”), (a) authorizing the Debtors to file the Fee Letters under seal, (b) directing that the Fee Letters shall remain under seal and confidential and not be made available to anyone, without the prior written consent both the Debtors and the Administrative Agent, except to (i) the Court, (ii) the U.S. Trustee, (iii) the counsel and financial advisors to any statutory committee that may be appointed in these cases (on a confidential and professional eyes only basis), and (iv) any other party as may be ordered by the Court or agreed to by the Debtors, in each case under appropriate confidentiality agreements reasonably satisfactory to the Debtors that preserve the confidentiality of the Fee Letters (and any information derived therefrom), and (c) granting related relief; and this Court having jurisdiction over this matter pursuant to 28 U.S.C. § 1334; and this Court having found that this is a core proceeding pursuant to 28 U.S.C. § 157(b)(2), and that this Court may enter a final

<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 given to them in the Sealing Motion.

order consistent with Article III of the United States Constitution; and this Court having found that venue of this proceeding and the Sealing 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 Sealing 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 Sealing Motion and opportunity for a hearing on the Sealing Motion were appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Sealing Motion and having heard the statements in support of the relief requested therein; and this Court having determined that the legal and factual bases set forth in support of the Sealing 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 Debtors are authorized to file under seal the Fee Letters. Each of the Fee Letters shall remain confidential, and shall not be made available to anyone, other than as provided in paragraph 2 of this Order, without the prior written consent of the Debtors and each of the Administrative Agent and the Commitment Parties party thereto or further order of the Court.

2. The Debtors are authorized to cause each of the Fee Letters to be served on and made available, on a confidential basis, to: (i) the Court; (ii) the U.S. Trustee; (iii) counsel and financial advisors to any statutory committee that may be appointed in these cases (on a confidential and professionals' eyes only basis); and (iv) any other party as may be ordered by the Court or agreed to by the Debtors and each of the Administrative Agent and the Commitment Parties party thereto, in each case under appropriate confidentiality agreements reasonably satisfactory to the Debtors, the Administrative Agent and such Commitment Party that preserve the confidentiality of the applicable Fee Letter (and any information derived therefrom).

3. The Debtors and any party authorized to receive any of the Fee Letters shall be authorized and directed, subject to Bankruptcy Local Rule 9037-1, to redact specific references to the information set forth therein from pleadings filed on the public docket maintained in these Chapter 11 Cases.

4. The terms and conditions of this Order are immediately effective and enforceable upon its entry.

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

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

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

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UNITED STATES BANKRUPTCY JUDGE