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Counsel to the Foreign Representative

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

_____)
In re:) Chapter 15
)
SANDVINE CORPORATION, *et al.*,¹) Case No. 24-33617 (SGJ)
)
Debtors in a Foreign Proceeding.) (Joint Administration Requested)
_____)

**DEBTORS' EMERGENCY MOTION FOR
PROVISIONAL RELIEF UNDER SECTION 1519 OF THE BANKRUPTCY CODE**

EMERGENCY RELIEF HAS BEEN REQUESTED. RELIEF IS REQUESTED NOT LATER THAN 4:30 P.M. (PREVAILING CENTRAL TIME) ON NOVEMBER 7, 2024.

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 NOVEMBER 7, 2024, AT 4:30 P.M. (PREVAILING CENTRAL TIME) IN EARLE CABELL FEDERAL BUILDING, 1100 COMMERCE STREET, 14TH FLOOR, COURTROOM 1, DALLAS, TEXAS, 75242.

¹ The Debtors in these chapter 15 cases, along with the Debtors' unique identifiers, are: Sandvine Corporation (Business No.: 885025916), New Procera GP Company (Company Registration No.: WC-7044), Sandvine Holdings UK Limited (Company No.: 10533653), Sandvine OP (UK) Ltd. (Company No.: 10791762), Procera Networks, Inc. (EIN: 33-0974674), and Procera Holding, Inc. (EIN: 47-4070338). The location of the Debtors' service address for purposes of these chapter 15 cases is: 410 Albert St Suite 201, Waterloo, ON N2L 3V3, Canada. Copies of materials filed with the applicable court in the CCAA proceedings and these chapter 15 cases are available on the website of the CCAA monitor: <https://www.ksvadvisory.com/experience/case/sandvine>.

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 1.650.479.3207. VIDEO COMMUNICATION WILL BE BY USE OF THE CISCO WEBEX PLATFORM. CONNECT VIA THE CISCO WEBEX APPLICATION OR CLICK THE LINK ON JUDGE JERNIGAN'S HOME PAGE. THE MEETING CODE IS 2304 154 2638. 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 ELECTRONIC HEARINGS. TO MAKE YOUR APPEARANCE, CLICK THE "ELECTRONIC APPEARANCE" LINK ON JUDGE JERNIGAN'S HOME PAGE. SELECT THE CASE NAME, COMPLETE THE REQUIRED FIELDS, AND CLICK "SUBMIT" TO COMPLETE YOUR APPEARANCE.

Sandvine Corporation (the "Foreign Representative"), in its capacity as the duly appointed representative of the above-captioned debtors (collectively, the "Debtors" and together with their non-debtor affiliates and subsidiaries, the "Company" or "Sandvine"), each of which is the subject of proceedings (the "CCAA Proceedings") commenced under the Companies' Creditors Arrangement Act, R.S.C. 1985, c. C-36 (as amended, the "CCAA") currently pending before the Ontario Superior Court of Justice (Commercial List) (the "Canadian Court"), respectfully requests entry of an order, substantially in the form attached hereto as **Exhibit A** (the "Order"), granting provisional relief under title 11 of the United States Code (the "Bankruptcy Code") to protect the Company and its property within the territorial jurisdiction of the United States pending recognition of the CCAA Proceedings. In support of this motion (the "Motion"), the Foreign Representative relies upon the (a) *Declaration of Jeffrey A. Kupp in Support of the (I) Verified Petition For Entry of an Order (A) Recognizing Foreign Main Proceedings, or in the Alternative, Foreign Nonmain Proceedings, (B) Recognizing the Foreign Representative, and (C) Granting Related Relief, and (II) Debtors' Emergency Motion For Provisional Relief Under Section 1519 of the Bankruptcy Code* (the "Kupp Declaration") and (b) *Verified Petition for Entry of an Order (I) Recognizing Foreign Main Proceedings, or in the Alternative, Foreign Nonmain Proceedings,*

(B) Recognizing the Foreign Representative, and (C) Granting Related Relief (the “Verified Petition”), and respectfully states as follows.

Preliminary Statement²

1. As set forth in the Kupp Declaration filed contemporaneously herewith, Sandvine is an application and network optimization company headquartered in Waterloo, Ontario. Sandvine provides quality of experience analysis and performance optimization software applications to its customers, the majority of whom are telecommunication service providers located across the world. Sandvine’s technology generates metadata (*i.e.*, information about data) for its customers, including information about the applications, application categories, and content categories with which its end users engage, without decrypting user content. Sandvine’s customers use that metadata to classify network traffic, enhance network connectivity, counter threats to network security, and optimize the quality of a user’s application experience. Sandvine’s technology facilitates internet access for hundreds of millions of people around the world.

2. As discussed in greater detail in the Kupp Declaration, Sandvine experienced significant headwinds impacting its liquidity and operations, including business disruptions caused by the misuse of its products by certain authoritarian government customers which led to the Department of Commerce designating Sandvine on its “Entity List” on February 27, 2024. To address the Company’s liquidity issues and overburdened capital structure, on October 2, 2024, the Company entered into a restructuring support agreement (the “RSA”) with lenders holding 97% of the loans incurred to date under the Company’s secured funded debt facility (the “Consenting Stakeholders”). The RSA contemplated the implementation of restructuring transactions (the “Restructuring Transactions”) that would significantly deleverage and right-size

² Capitalized terms used but not defined herein have the meanings ascribed to them in the Kupp Declaration.

the Company's balance sheet and provide a foundation for the Company's long-term continuation as a market leader in the global telecommunications industry.

3. Pursuant to and in accordance with the RSA, after thoroughly evaluating all available options, the Debtors commenced the CCAA Proceedings, and shortly thereafter, these chapter 15 cases (the "Chapter 15 Cases"), to implement the Restructuring Transactions, maintain the stability and integrity of their market-leading business, protect the hundreds of millions of users across over 50 countries that rely on their services, and maximize the overall value of the Company for the benefit of all stakeholders.³ On the morning of November 7, 2024, the CCAA Court granted vital interim relief (as may be further amended or amended and restated, the "Initial Order")⁴ to maintain Sandvine as a going concern, which relief included, but was not limited to:

- a. a stay of proceedings against the Debtors that would otherwise undermine their ability to restructure their business and meaningfully engage with their stakeholders with respect to the Restructuring Transactions;
- b. an extension of the stay of proceedings and certain other protections to Procera II LP and Sandvine Sweden AB (both of which are loan parties under Sandvine's debt documents) (together with the Debtors, the "Stay Parties") and certain other non-Debtor Company entities;
- c. approval of the First DDTL Amendment (and the corresponding DIP Credit Agreement) and a grant of the related DIP Charge (each as defined below);
- d. the appointment of Sandvine Corporation as the Debtors' Foreign Representative; and
- e. the appointment of KSV Restructuring Inc., a financial advisory firm, as the independent officer responsible for monitoring the Debtors' restructuring during the pendency of the CCAA Proceedings (in such capacity, the "Monitor").

³ The resolutions of each applicable Debtor's board of directors authorizing the commencement of the CCAA Proceedings and these Chapter 15 Cases are attached to the Form 401 petition of each applicable Debtor as Exhibit 4.

⁴ A copy of the entered Initial Order is attached to as Exhibit 5 to each applicable Debtor's Form 401 petition. The Debtors will file a certified copy of the order as soon as practicable.

4. Notably, the Monitor, an independent court officer responsible for overseeing the Debtors' business and financial affairs, in consultation with its independent counsel, submitted a detailed pre-filing report to the CCAA Court supporting the relief the Debtors requested in the CCAA Proceedings and are requesting in these Chapter 15 Cases, which is attached to the *Declaration of Karin Sachar as Canadian Counsel in Support of Verified Petition for Entry of an Order (I) Recognizing Foreign Main Proceedings, or in the Alternative, Foreign Nonmain Proceedings, (II) Recognizing the Foreign Representative, and (III) Granting Related Relief*, filed contemporaneously herewith, as Exhibit A.

5. Although the Initial Order grants a broad stay against the Debtors and their assets in Canada, the Debtors' operations and assets in the United States remain vulnerable to, among other things, disruptive creditor and contract counterparty action. Until this court (the "Court") enters an order either recognizing the CCAA Proceedings as foreign main, or in the alternative, foreign nonmain, proceedings (the "Recognition Order"), the Stay Parties will not have the benefit of the protections of the Bankruptcy Code, including its automatic stay provisions. Accordingly, emergency relief is necessary, for the interim period between the commencement of these cases and the hearing on the Debtors' Verified Petition (the "Recognition Hearing"), to prevent parties in interest from taking action against the Stay Parties (including but not limited to unilaterally terminating contracts with the Stay Parties on the basis of "*ipso facto*" clause violations) or against their assets in the United States (such as commencing enforcement actions against the Stay Parties' property), each of which could prejudice or disrupt the pursuit and implementation of the Restructuring Transactions in the CCAA Proceedings.

6. To provide the Company with the breathing room and stability necessary to administer the CCAA Proceedings, the Foreign Representative seeks a stay of creditor actions

against the Debtors and their property and an extension of the CCAA Court’s injunction as granted in the Initial Order to enjoin actions against the non-Debtor Stay Parties and their property, in each case, within the territorial jurisdiction of the United States and solely to the extent provided for in the Initial Order, pending the Recognition Hearing. As described in greater detail in the Kupp Declaration, the Company has significant assets in the United States. Accordingly, the Stay Parties require provisional relief to, among other things, avoid having (a) creditors “race to the courthouse” to obtain and enforce judgments against the Stay Parties’ assets within the territorial jurisdiction of the United States and (b) counterparties to the Stay Parties’ valuable contracts terminate or rescind those contracts. A temporary stay of such actions will, in turn, facilitate the success of the CCAA Proceedings by, among other things, allowing the Company’s management to continue focusing their attention and efforts on the value-maximizing restructuring process and providing the Stay Parties with the stability necessary to continue their operations.

7. The Foreign Representative also seeks interim relief in respect of the Debtors’ postpetition financing facility (the “DIP Facility”) and the agreement memorializing the terms of such financing (the “DIP Credit Agreement”), on the same terms and subject to the same conditions provided by in the Initial Order (as may be amended). Specifically, the Foreign Representative requests that this Court provisionally (a) approve the Company’s entry into Amendment No. 1 to Super Senior Credit Agreement, dated as of November 6, 2024 (the “First DDTL Amendment,” and the as-amended agreement, the “DIP Credit Agreement,” and the lenders providing the postpetition commitments thereunder, the “DIP Lenders,” together with the agents under the DIP Credit Agreement, the “DIP Secured Parties”), by and among Sandvine Canada and Procera Networks, Inc., as borrowers (the “Borrowers”), and the lenders party thereto and (b) grant a superpriority charge over the assets of the Debtors and Procera II LP in the territorial jurisdiction

of the United States in favor of the DIP Secured Parties (the “DIP Charge”) as security for any amounts drawn under the DIP Facility from the commencement of the CCAA Proceedings until the Recognition Hearing.

8. As set forth in the Kupp Declaration, the Company needs access to the DIP Facility to ensure it has sufficient funding available to operate its business and administer the CCAA Proceedings and these Chapter 15 Cases. Although the Initial Order does not authorize the Debtors to draw from the DIP Facility, the Debtors are expected to receive such authority at the “come-back” hearing in the CCAA Proceedings scheduled on November 15, 2024, pursuant to an amended and restated Initial Order (the “A&R Initial Order”) the CCAA Court is expected to enter. The DIP Credit Agreement conditions the Borrowers’ ability to draw on the DIP Facility on (a) the entry of the A&R Initial Order and (b) there being no outstanding default under the DIP Credit Agreement. As one covenant under the DIP Credit Agreement specifically requires the Debtors to seek this Court’s recognition of the DIP Charge granted in the Initial Order promptly following the commencement of these Chapter 15 Cases and the Debtors’ noncompliance of such covenant will cause a default, this Court’s recognition of the DIP Charge is effectively a condition precedent for the Borrowers to draw on the DIP Facility. Consequently, absent the grant of a DIP Charge secured by the assets of the Debtors and Procera II LP in the United States, if the Debtors need to draw from the DIP Facility after the entry of the A&R Initial Order but before the Recognition Hearing, the Debtors will be unable to do so. As a result, the Debtors may encounter a severe liquidity crisis that would render them unable to fund and maintain their operations, which could result in the wind-down of their business and the near total loss of asset value. However, this Court’s recognition and approval of the DIP Credit Agreement and the DIP Charge will facilitate the Debtors’ access to postpetition financing immediately after they receive the permission to draw

from the CCAA Court and provide them with the stability necessary to implement the Restructuring Transactions.

9. The requested provisional relief is necessary to advance key objectives of chapter 15: to protect and maximize the value of the Debtors' assets and to ensure the equal treatment of similarly situated creditors. Without the requested provisional relief, there is a risk that: (a) the Stay Parties' creditors could seek to invoke self-help remedies or commence enforcement actions against the Stay Parties' assets in the United States in an attempt to gain an unfair advantage at the expense of the Stay Parties' other creditors; (b) the Stay Parties' contract counterparties do not perform their obligations or may seek to exercise contractual remedies prejudicial to the Stay Parties; and (c) the Debtors will be unable to find an alternative source of postpetition financing to fund and maintain their operations, which could result in the cessation and liquidation of their business. The CCAA Court has requested this Court's assistance in aid of the Canadian Proceedings, and protecting the Stay Parties and their assets within the territorial jurisdiction of the United States from the aforementioned risks will fulfill that request, which is exactly the type of cooperation that Chapter 15 is meant to foster.

Jurisdiction and Venue

10. The United States Bankruptcy Court for the Northern District of Texas has jurisdiction over this matter pursuant to 28 U.S.C. §1334, and this is a core matter pursuant to 28 U.S.C. § 157(b)(2)(P).

11. These Chapter 15 Cases have been properly commenced pursuant to section 1504 of the Bankruptcy Code, by the filing of petitions for recognition of the CCAA Proceedings under section 1515 of the Bankruptcy Code.

12. Venue is proper pursuant to 28 U.S.C. § 1410.

13. The statutory bases for the relief requested herein are sections 105(a), 362, 364, 365, 1507, 1517, 1519, 1520 and 1521 of the Bankruptcy Code.

Relief Requested

14. Pursuant to sections 105(a), 1519, and 1521 of the Bankruptcy Code, the Foreign Representative respectfully requests that the Court enter the Order, substantially in the form attached hereto as **Exhibit A**, granting the following provisional relief pending recognition of the CCAA Proceedings:

- a. recognizing and enforcing the Initial Order on a provisional basis with respect to the Stay Parties and their property located in the territorial jurisdiction of the United States.
- b. (i) applying section 362 of the Bankruptcy Code to the Debtors and their property within the territorial jurisdiction of the United States and (ii) extending the CCAA Court's injunction as granted in the Initial Order to enjoin actions against the non-Debtor Stay Parties and their property within the territorial jurisdiction of the United States solely to the extent provided for in the Initial Order. For the avoidance of doubt and without limiting the generality of the foregoing, the Order shall impose a stay prohibiting all persons and entities, other than the Foreign Representative and his representatives and agents, from:
 - i. commencing or continuing any suit, action, or proceeding inconsistent with the CCAA Proceedings, including, without limitation, any judicial, quasi-judicial, regulatory, administrative, or other action or proceeding involving or against the Stay Parties, their assets, or the proceeds thereof;
 - ii. seizing, attaching, enforcing, or executing any judgment, assessment, order, lien or arbitration award against the Stay Parties' assets in the United States (if any) or the proceeds thereof; and
 - iii. transferring, encumbering, or otherwise disposing of or interfering with the Stay Parties' assets or agreements in the United States (if any) without the express consent of the Foreign Representative or as permitted by the Initial Order in connection with the DIP Credit Agreement;
- c. applying section 364 of the Bankruptcy Code to each of the Debtors and Procera II LP and the property of each of the Debtors and Procera II LP that is within the territorial jurisdiction of the United States. For the avoidance

of doubt and without limiting the generality of the foregoing, the Order shall:

- i. grant liens and security interests in the property of the Debtors and Procera II LP located within the territorial jurisdiction of the United States in respect of the DIP Charge (subject to the priorities, terms, and conditions of the Initial Order) to secured future amounts outstanding under the DIP Facility; and
 - ii. find that any loans made by the DIP Lenders in accordance with the DIP Credit Agreement prior to the entry of the Recognition Order shall be extended in “good faith” as contemplated by section 364(e) of the Bankruptcy Code, such that the validity of the loans incurred under the DIP Facility, and the priority of the DIP Charge in respect of the property of the Debtors and Procera II LP located within the territorial jurisdiction of the United States shall not be affected by any reversal or modification of the Order on appeal or the entry of an order denying the Debtors’ request for entry of the Recognition Order;
- d. finding section 365(e) of the Bankruptcy Code applicable to the Stay Parties’ executory contracts and unexpired leases governed by the law of the United States such that, notwithstanding any provision in any such contract or lease or under applicable law, no executory contract or unexpired lease with any of the Stay Parties may be terminated, cancelled, or modified (and any rights or obligations in such leases or contracts cannot be terminated or modified) solely because of a provision in any contract or lease of the kind described in sections 365(e)(1)(A), (B), or (C) of the Bankruptcy Code, and all contract and lease counterparties located within the United States shall be prohibited from taking any steps to terminate, modify, or cancel any contracts or leases with the Stay Parties arising from or relating in any way to any so-called “*ipso facto*” or similar clauses; *provided that* the Order does not impair or affect the rights of any person under sections 559 through 561 of the Bankruptcy Code, subject to the terms of the Initial Order;
- e. recognizing the Foreign Representative as the representative of the Debtors within these Chapter 15 Cases;
- f. authorizing the Foreign Representative to comply with the terms and conditions of the DIP Credit Agreement, including but not limited to, the payment of associated fees and expenses as they come due without further notice or order of this Court;
- g. granting the Foreign Representative the rights and protections to which the Foreign Representative is entitled under chapter 15 of the Bankruptcy Code, including, but not limited to, the protections limiting the jurisdiction of

United States Courts over the Foreign Representative in accordance with section 1510 of the Bankruptcy Code and the granting of additional relief in accordance with sections 1519(a)(3) and 1521 of the Bankruptcy Code;

- h. providing that notwithstanding any provision in the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”) to the contrary, (i) the Order shall be effective immediately and enforceable upon entry, (ii) the Foreign Representative is not subject to any stay in the implementation, enforcement, or realization of the relief granted in the Order, and (iii) the Foreign Representative is authorized and empowered, and may, in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of the Order;
- i. authorizing, in accordance with the Initial Order, the Foreign Representative to pay or remit (a) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) the nonpayment of which by any Sandvine entity could result in a responsible person associated with that Sandvine entity being held personally liable for such nonpayment and (b) taxes related to income or operations incurred or collected by a Sandvine entity in the ordinary course of business; and
- j. granting such other and further relief as this Court deems just and proper.

Basis for Relief

I. Sections 105 and 1519(a) of the Bankruptcy Code Authorize the Requested Provisional Relief

15. The Foreign Representative filed these Chapter 15 Cases seeking recognition of the CCAA Proceedings as foreign main proceedings or, alternatively, as foreign non-main proceedings under section 1517 of the Bankruptcy Code. Section 1519 of the Bankruptcy Code permits the Court “from the time of filing a petition for recognition until [it] rules on the petition” to grant broad provisional relief pending recognition of the foreign proceeding where such relief is “urgently needed to protect the assets of the debtor or the interests of the creditors.” 11 U.S.C. § 1519(a). Section 1519(a) of the Bankruptcy Code describes the scope of available provisional relief, which includes, without limitation:

- a. staying execution of the Debtors’ assets,

- b. entrusting the administration or realization of all or part of the Debtors' assets located in the United States to the foreign representative or another person authorized by the court, including an examiner, in order to protect and preserve the value of assets that, by their nature or because of other circumstances, are perishable, susceptible to devaluation or otherwise in jeopardy, and
- c. any relief referred to in Bankruptcy Code subsections 1521(a)(3), (4), or (7).

16. The Foreign Representative seeks provisional relief under sections 105(a) and 1519(a) of the Bankruptcy Code. Among other things, it seeks the imposition of sections 361, 362, 364, and 365(e) of the Bankruptcy Code for the purpose of maintaining the *status quo* until the Recognition Hearing. The Foreign Representative also seeks provisional relief under sections 105(a), 1519 and 1521(a)(7) of the Bankruptcy Code, which authorize this Court to extend the protections of section 362 of the Bankruptcy Code to the Debtors, and also extend the CCAA Court's injunction as granted in the Initial Order to enjoin actions against non-Debtor Procera II LP and Sandvine Sweden AB, which are guarantors of the Company's funded debt-obligations, and their property within the territorial jurisdiction of the United States solely to the extent provided for in the Initial Order. Indeed, bankruptcy courts have extended and applied the automatic stay to non-debtor entities in chapter 15 cases. *Sec. Investor Prot. Corp. v. Bernard L. Madoff Inv. Sec. LLC*, 443 B.R. 295, 316–17 (Bankr.S.D.N.Y.2011) (extending stay to third-party actions against non-debtor entities); *In re W.C. Wood Corp., Ltd.*, No. 09-11893 (Bankr. D. Del. June 1, 2009) [Docket No. 16] (extending stay protection to officers and directors); *In re Fraser Papers Inc.*, No 09-12123 (Bankr. D. Del. June 19, 2009) [Docket No. 18] (same); *See also, CT Inv. Management Co., LLC v. Carbonell*, No. 10 Civ. 6872, 2012 WL 92539 (S.D.N.Y. Jan. 11, 2012) (extending a stay against a non-debtor guarantor and holding that extension of comity to the foreign Proceeding would not be “manifestly contrary to the public policy of the United States”); *see also Queenie, Ltd. v. Nygard*, 321 F.3d 282, 288 (2d Cir. 2003) (“The automatic stay can apply

to non-debtors, but normally does so only when a claim against the non-debtor will have an immediate adverse economic consequence for the debtor's estate.”). As non-Debtor Procera II LP and Sandvine Sweden AB are guarantors of the Debtors’ secured funded debt obligations, the Foreign Representative submits that the extension of the stay to these parties is necessary to protect the assets of these entities located in the United States.

17. The Foreign Representative intends to seek, among other things, the continuation of the automatic stay pursuant to section 1521(a)(1) of the Bankruptcy Code upon entry of the Recognition Order.

18. The provisional relief sought implements the policies underlying chapter 15 of the Bankruptcy Code, including by (a) promoting cooperation between courts of the United States and courts of foreign jurisdictions involved in cross-border insolvencies and restructurings, (b) ensuring the “fair and efficient administration of cross border [cases] that protect the interest of all creditors, and other interested entities,” including the Debtors, and (c) protecting and maximizing the value of the Debtors’ assets. 11 U.S.C. § 1501(a)(3) and (4).

19. The provisional relief requested is of a type regularly granted in chapter 15 cases. Bankruptcy courts have imposed the section 362 stay or ordered similar relief to maintain the *status quo* pending a hearing on recognition of the foreign proceedings, including in respect of recognition proceedings that relate to restructurings of corporations in Canadian courts. Bankruptcy courts have also approved the terms of the debtors’ postpetition financing agreements and granted super senior charges to secure such financing on a provisional basis. *See, e.g., In re Just Energy Group Inc., et al.*, No. 21-30823 (MI) (Bankr. S.D. Tex. Mar. 9, 2021) [Docket No. 23] (granting provisional relief under section 362 and 365 of the Bankruptcy Code, authorizing the debtors to comply with the terms and conditions of the applicable postpetition financing

agreement, and recognizing and granting a superpriority charge against the debtors' assets in the United States to secure current and future amounts outstanding on account of such agreement); *In re NextPoint Financial Inc., et al.*, No. 23-10983 (TMH) (Bankr. D. Del. Jul. 27, 2023) [Docket No. 39] (granting provisional relief recognizing and enforcing the CCAA initial order in the United States and applying the DIP charges to the debtors' property in the United States); *In re Acerus Pharms. Corp.*, No. 23-10111 (Bankr. D. Del. Jan. 31, 2023) [Docket No. 25] (granting provisional relief under section 362 of the Bankruptcy Code); *In re CalfracWell Services Corp.*, No. 20-33529 (Bankr. S.D. Tex. July 14, 2020) [Docket No. 23] (granting provisional relief under section 362 of the Bankruptcy Code).

II. Provisional Relief Is Necessary to Protect the Debtors' Assets and Restructuring Efforts

20. A foreign representative is not, by virtue of filing a petition to commence a chapter 15 case, entitled to the application of those Bankruptcy Code provisions that automatically provide a debtor with expansive relief. Rather, it is only upon the recognition of a foreign proceeding that the Bankruptcy Code's automatic relief applies to a chapter 15 case. Although a "petition for recognition of a foreign proceeding shall be decided upon at the earliest possible time," there is necessarily a gap between the time such petition for recognition is filed and the time the court makes a decision on whether a proceeding should be recognized. 11 U.S.C. § 1517(c). During this interim period, provisional relief may be available to protect a debtor, its assets, and the interests of all stakeholders. *See* 11 U.S.C. § 1519(a). Indeed, provisional relief should be granted "where relief is urgently needed to protect the assets of the debtor or the interests of the creditors." 11 U.S.C. § 1519(a).

III. Provisional Relief Is Needed in These Chapter 15 Cases

21. Absent provisional relief, individual actions brought by creditors or other parties in interest could interfere with the orderly proceedings underway in the CCAA Court and may place at risk the Debtors' ability to successfully reorganize. *See, e.g., In re Garcia Avila*, 296 B.R. 95, 114 (Bankr. S.D.N.Y. 2003) (former section 304 case finding that irreparable harm would exist by "permitting the [creditors] to execute their judgments against the bond proceeds, [which would] diminish the recovery available to other creditors and possibly wreck the reorganization efforts"). As described in greater detail in the Kupp Declaration, the Company has significant assets in the United States, including, among others, over \$500,000 in inventory located in Texas, bank accounts, located in the United States, into which (a) approximately one-third of the Company's customer receipts are swept into and (b) intercompany cash transfers are transferred, intellectual property (*i.e.*, trademarks and patents registered in the United States), and valuable customer and vendor contracts with counterparties based in the United States (approximately one third of the Company's contracts are with Procera Networks, Inc., a Company entity incorporated in Delaware). Although the Consenting Stakeholders have agreed to forbear from exercising their rights under the Company's prepetition secured debt agreements, there remains both secured and unsecured creditors who, upon commencement of the CCAA Proceedings, will become aware of the Debtors' now-public circumstances and who may take immediate action to obtain and enforce a judgment against these and other valuable assets of the Stay Parties located in the United States. Such creditor action would circumvent the effective administration of the CCAA Proceedings to the detriment of the restructuring process, the Stay Parties, and all other creditors and parties in interest.

22. Provisional relief approving the Company's entry into the First DDTL Amendment and the corresponding DIP Credit Agreement and granting the DIP Charge is also appropriate in

these Chapter 15 Cases as the Debtors are in need of immediate relief applicable in the United States following the issuance of the Initial Order. As discussed above, a grant of the DIP Charge to the extent provided for in the Initial Order is a condition precedent to the Debtors' ability to draw from the DIP Facility once the A&R Initial Order is entered. Additionally, entry of an order of this Court recognizing and enforcing the Initial Order in the United States and applying the DIP Charge to the Debtors' property located in the territorial jurisdiction of the United States, is necessary to give effect to the Initial Order as it relates to the Debtors and their property in the United States prior to the Recognition Hearing. This provisional relief will provide essential protection of the Stay Parties and their property located within the territorial jurisdiction of the United States (if any) and enable them to access the critical liquidity if a need emerges prior to the Recognition Hearing and ensure the Debtors can maintain their ongoing operations and work constructively with their stakeholders regarding the implementation of the Restructuring Transactions.

IV. The Requested Relief Meets the Standards for a Preliminary Injunction

23. Provisional relief under chapter 15 of the Bankruptcy Code is conditioned on a foreign representative demonstrating that a debtor meets the standards applicable to an injunction. See 11 U.S.C. § 1519(e) (“[t]he standards, procedures, and limitations applicable to an injunction shall apply to relief under this section.”). In the Fifth Circuit, the general standards for injunctive relief requires a showing of the following elements: (1) a substantial likelihood of success on the merits; (2) a substantial threat that the movant will suffer irreparable injury if the injunction is not issued; (3) that the threatened injury to the movant outweighs any damage the injunction might cause the opponent; and (4) that the injunction will not disserve the public interest. *See Palmer ex rel. Palmer v. Waxahachie Indep. Sch. Dist.*, 579 F.3d 502, 506 (5th Cir. 2009) (quoting *Byrum v.*

Landreth, 566 F.3d 442, 445 (5th Cir. 2009)); *Blue Bell Bio-Medical v. Cin-Bad, Inc.*, 864 F.2d 1253, 1256 (5th Cir. 1989).

24. In evaluating these four factors, courts take a “flexible approach and no one factor is determinative.” *In re Calpine Corp.*, 365 B.R. 401, 409 (S.D.N.Y. 2007) (internal citations omitted) (citing *Haw. Structural Ironworkers Pension Trust Fund v. Calpine Corp.*, Case No. 06-5358, 2006 WL 3755175, at *4 (S.D.N.Y. Dec. 20, 2006)). These four factors are met here.

A. The Foreign Representative Has a Substantial Likelihood of Success on the Merits

25. The Foreign Representative has a substantial likelihood to succeed on the merits and obtain recognition of the CCAA Proceedings under chapter 15 of the Bankruptcy Code. For the reasons stated in the Verified Petition, the Foreign Representative has demonstrated that the CCAA Proceedings are foreign main proceedings as defined in section 1502(4) of the Bankruptcy Code, and that the Foreign Representative is the proper foreign representative, as defined in section 101(24) of the Bankruptcy Code. CCAA proceedings, as well as similar proceedings in other jurisdictions with insolvency laws that derive from Canadian law, have been recognized as foreign proceedings by courts nationwide within the meaning of the Bankruptcy Code. Thus, the likelihood of success on the underlying merits here is high. *See, e.g., In re Dynamic Technologies Group Inc. et al.*, No. 23-41416-15 (Bankr. N.D. Tex. Jun. 14, 2023) [Docket No. 43] (recognizing Canadian proceeding commenced under CCAA as a foreign main proceeding); *In re Just Energy Group Inc., et al.*, No. 21-30823 (Bankr. S.D. Tex. Apr. 2, 2021) [Docket No. 82] (same); *In re Acerus Pharmaceuticals Corporation, et al.*, No. 23-10111 (Bankr. D. Del. Feb. 27, 2023) [Docket No. 42] (same); *In re Imperial Tobacco Canada Limited*, No. 19-10771 (Bankr. S.D.N.Y. Apr. 17, 2019) [Docket No. 40] (same); *In re MtGox Co., Ltd. (a/k/a MtGox KK)*, No. 14-31229 (Bankr.

N.D. Tex. Jun. 19, 2014) [Docket No. 151] (recognizing Japanese insolvency proceedings as foreign proceedings).

26. Specifically,

- a. these Chapter 15 Cases were duly and properly commenced by filing the Verified Petition and the Form 401 petitions accompanied by all fees, documents, and information required by the Bankruptcy Code and the Bankruptcy Rules including: (a) a corporate ownership statement containing the information described in Bankruptcy Rule 7007.1; (b) a list containing (i) the names and addresses of all persons or bodies authorized to administer foreign proceedings of the Debtors, (ii) all parties to litigation pending in the United States in which the Debtors are a party at the time of the filing of the Verified Petition, and (iii) all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code; (c) a statement identifying all foreign proceedings with respect to the Debtors that are known to the Foreign Representative; and (d) a copy of the as-entered Initial Order;
- b. each of the Debtors is a proper Debtor in the CCAA Proceedings;
- c. the Foreign Representative is the proper foreign representative, as defined in section 101(24) of the Bankruptcy Code because it is a “person or body,” as defined under section 101(41) of the Bankruptcy Code, which has also been authorized in the CCAA Proceedings to act as the Debtors’ foreign representative; and
- d. the CCAA Proceedings are “foreign main proceedings” as defined in section 101(23) of the Bankruptcy Code as there is a compelling case for recognition of the CCAA Proceedings as foreign main proceedings given that (a) Debtor Sandvine Corporation’s registered office is located in Ontario, Canada, and in the absence of evidence to the contrary, a debtor’s center of main interest, for purposes of determining whether a foreign proceeding is a “foreign main proceeding” is the location of its registered office and (b) the remainder of the Debtor entities, which have registered offices outside of Canada, have operations that are integrated with and are functionally dependent on Sandvine Corporation. In the alternative, the Kupp Declaration establishes that the Debtors have ongoing operations in Canada which create an “establishment” in Canada, permitting this Court to recognize the CCAA Proceedings as foreign non-main proceedings.

27. Upon recognition of the CCAA Proceedings as foreign main proceedings, section 1520(a) of the Bankruptcy Code entitles the Debtors to certain automatic relief, including the application of the automatic stay provided by section 362 of the Bankruptcy Code. 11 U.S.C.

§ 1520(a). In addition, upon recognition of a foreign proceeding (whether main or non-main), section 1521(a) of the Bankruptcy Code authorizes the Court to grant “any appropriate relief” at the request of the recognized foreign representative “where necessary to effectuate the purpose of [chapter 15] and to protect the assets of the debtor or the interests of the creditors[.]” including:

- a. staying the commencement or continuation of an individual action or proceeding concerning the debtor’s assets, rights, obligations or liabilities to the extent they have not been stayed under section 1520(a) of the Bankruptcy Code;
- b. staying execution against the debtor’s assets to the extent it has not been stayed under section 1520(a) of the Bankruptcy Code;
- c. suspending the right to transfer, encumber or otherwise dispose of any assets of the debtor to the extent this right has not been suspended under section 1520(a) of the Bankruptcy Code; and
- d. granting any additional relief that may be available to a trustee, except for relief available under sections 522, 544, 545, 547, 548, 550, and 724(a) of the Bankruptcy Code.

11 U.S.C. § 1521(a).

28. The Court may grant relief under section 1521 of the Bankruptcy Code if the interests of “the creditors and other interested entities, including the debtor, are sufficiently protected.” 11 U.S.C. § 1522(a). Additionally, section 105(a) of the Bankruptcy Code provides that the “court may 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). In the Verified Petition, the Debtors request that the Court exercise its discretion to grant relief similar to the provisional relief on a final basis. The granting of additional relief is consistent with the goals of international cooperation and assistance to foreign courts embodied in chapter 15 of the Bankruptcy Code, and is necessary to administer the CCAA Proceedings.

29. The requested relief is authorized by this Court’s discretionary authority under section 1519 of the Bankruptcy Code and reflects the application of the principles of comity as it

is consistent with the relief provided by the Initial Order. Comity is a central tenet of Chapter 15. *Firefighters' Retirement Sys. v. Citco Grp. Ltd.*, 796 F.3d 520, 525 (5th Cir. 2015); *Ad Hoc Group of Vitro Noteholders v. Vitro SAB de CV (In re Vitro SAB de CV)*, 701 F.3d 1031, 1053 (5th Cir. 2012). The United States Supreme Court defines comity as “the recognition which one nation allows within its territory to the legislative, executive, or judicial acts of another nation, having due regard both to international duty and convenience, and to the rights of its own citizens, or of other persons who are under the protection of its laws.” *Hilton v. Guyot*, 159 U.S. 113, 143 (1895).

30. The extension of comity to orders issued by Canadian courts in proceedings commenced under the CCAA is common in courts in this circuit and across the country. *See In re Just Energy Group Inc., et al.*, Case No. 21-30823 (Bankr. S.D. Tex. Apr. 2, 2021) [Docket No. 82]; *In re NextPoint Financial Inc., et al.*, No. 23-10983 (Bankr. D. Del. Aug. 16, 2023) [Docket No. 54]. In fact, exceptions to comity are construed particularly narrowly when the foreign jurisdiction is one such as Canada, a fellow common law jurisdiction with statutory procedures akin to those set forth in chapter 11 of the Bankruptcy Code insofar as they both provide a “breathing spell” from creditors’ collection efforts, a centralized process to assert and resolve claims against the debtor’s estate, a fair and equitable process for distribution to creditors in order of priority, and for the reorganization of a debtor through the implementation of a court-supervised process that a debtor’s creditors and other parties in interests may participate in. *See Metcalfe & Mansfield Alternative Investments*, 421 B.R. 685, 698 (Bankr. S.D.N.Y. 2010) (“The U.S. and Canada share the same common law traditions and fundamental principles of law. Canadian courts afford creditors a full and fair opportunity to be heard in a manner consistent with standards of U.S. due process. U.S. federal courts have repeatedly granted comity to Canadian proceedings.”)

31. There is a substantial likelihood that relief under section 1521(a)(1) of the Bankruptcy Code will be granted, thereby resulting in the application of relief similar to the provisional relief the Motion requests on a final basis. Courts within the Fifth Circuit have granted provisional and final relief similar to the provisional relief sought by this Motion.

B. There Is a Substantial Threat of Irreparable Harm if the Provisional Relief Is Not Granted

32. In the reorganization context, courts generally have found irreparable harm to exist when failing to enjoin conduct would interfere with the reorganization process of a foreign debtor. *See In re Calpine Corp.*, 354 B.R. 45, 48–50 (Bankr. S.D.N.Y. 2006) (finding debtor would suffer irreparable harm to its reorganization if litigation was not stayed); *Garcia Avila*, 296 B.R. at 114 (finding debtors would suffer irreparable harm if local creditors sought to interfere with the reorganization process).

33. If the Foreign Representative’s authority is not honored in the U.S., or if creditors or parties in interest take collection actions, the ordinary course operations of the Debtors and the Foreign Representative’s ability to conduct and effectuate the reorganization could be jeopardized. *See, e.g., In re Netia Holdings S.A.*, 278 B.R. 344, 352 (Bankr. S.D.N.Y. 2002) (“It is well established . . . that the dissipation of the finite resources of an insolvent estate constitutes irreparable injury.”); *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.”).

34. Without recognition and enforcement of the Initial Order:

- a. the Foreign Representative could be frustrated from performing its duties. For example, if a litigation action is commenced against the Debtors, the attention of the Debtors’ management team and the Debtors’ limited financial resources will have to be redirected to addressing such proceeding. Courts have previously recognized that absent a stay prohibiting the commencement or continuation of proceedings, irreparable harm could

result. *See In re Calpine Corp.*, 354 B.R. 45, 48–50 (Bankr. S.D.N.Y. 2006) (finding debtor would suffer irreparable harm to its reorganization if litigation was not stayed);

- b. irreparable harm could result from creditors or other parties in interest taking unilaterally collection or enforcement actions against the assets of the Debtors in the United States (and thereby gaining an unfair advantage over similarly situated creditors). *In re MMG, LLC*, 256 B.R. 544, 555 (Bankr. S.D.N.Y. 2000) (“[I]rreparable harm exists whenever local creditors of the foreign debtor seek to collect their claims or obtain preferred positions to the detriment of other creditors.”); *In re Energy Coal S.P.A.* 582 B.R. 619, 626–27 (Bankr. D. Del. 2018) (stating that harm to an estate exists where orderly determination of claims and fair distribution of assets are disrupted); *In re Banco Nacional de Obras y Servicios Publicos, S.N.C.*, 91 B.R. 661, 664 (Bankr. S.D.N.Y. 1988) (stating that injunctive relief is necessary “to prevent individual American creditors from arrogating to themselves property belonging to the creditors as a group”);
- c. there is a material risk that the Stay Parties’ contract counterparties in the United States may attempt to exercise certain remedies, including terminating contracts or accelerating obligations, with respect to the Stay Parties that will severely impair the Debtors’ restructuring efforts and result in irreparable damage to the Debtors’ business and the value of Debtors’ assets, and substantial harm to Debtors’ creditors and other parties in interest; and
- d. the Debtors’ will be unable to draw on the DIP Facility provided by the DIP Lenders as the DIP Credit Agreement contains a covenant that requires the Debtors to obtain this Court’s recognition of the DIP Charge promptly following the commencement of these Chapter 15 Cases. If the Debtors are in breach of such covenant, they will be in default of the DIP Credit Agreement, which, in turn, precludes them from being able to draw from the DIP Facility. Put simply, the Debtors’ ability to draw on the DIP Facility is conditioned on the Court’s grant of a secured, priority charge in all of the assets of the Debtors and Procera II LP, including those assets in the United States, in favor of the DIP Secured Parties, to the same extent such charge was granted in the Initial Order. In the absence of access to the DIP Facility, the Debtors’ operations may cease if a draw is necessary to maintain requisite liquidity level - an outcome that would be irreparable.

C. The Threatened Injury to the Debtors Outweighs Any Damage the Provisional Relief Would Cause a Creditor

35. The substantial threat of harm and injury to the Debtors outweighs any damage the Orders might cause to parties in interest. The Orders seek to maintain the *status quo* with respect

to the Debtors' assets and operations, so that the Debtors' can ensure there is a fair and equitable restructuring that provides for an orderly distribution of assets. *See, e.g., In re Basis Yield Alpha Fund (Master)*, No. 07-12762 (Bankr. S.D.N.Y. 2007) [Docket No. 5] (stating that failing to issue a restraining order against creditors could "undermine the Foreign Representative's efforts to achieve an equitable result for the benefit of all of the Foreign Debtor's creditors."). Ultimately, these actions benefit the Debtors' stakeholders as a whole. *See Innua Canada Ltd.*, 2009 WL 1025088, at *4 (finding that temporarily maintaining the status quo pending recognition of the foreign proceedings would benefit creditors "by allowing for an orderly administration of the debtors' financial affairs under the Canadian proceeding.").

36. The approval of the First DDTL Amendment and the corresponding DIP Credit Agreement and the grant of the DIP Charge will not harm the Debtors' creditors. The DIP Facility is funded by the Debtors' Consenting Stakeholders, who collectively held 97% of the Debtors first lien debt at the time of executing the RSA, when they committed to provide the postpetition financing as part of the DDTL Facility. Put simply, the Debtors entry into the DIP Credit Agreement is almost fully consensual. The unsecured creditors are not harmed by the grant of a DIP Charge, as such charge should have no impact on their recovery. Further, with the injection of liquidity from the DIP Facility (if a draw is needed prior to the Recognition Hearing), the Debtors will be able to continue to finance the CCAA Proceedings, the Chapter 15 Cases, the implementation of a restructuring, and their ongoing business, for the benefit of the Debtors and their stakeholders.

37. Any harm caused to any particular party in interest by the relief requested in the Orders is minimal, temporary in nature, subject to the right of such party in interest to appear before this Court to request relief from the Orders and may be addressed through the party in

interest's participation in the CCAA Proceedings. The balance of harms is tipped in favor of the Foreign Representative as the harm to the Debtors and their assets that would occur absent entry of the Orders is far greater than any potential prejudice to stakeholders that might wish to pursue individual remedies in the United States, in contravention of the Initial Order.

D. The Provisional Relief Will Not Disserve the Public Interest

38. The provisional relief will not disserve the public interest. To the contrary, granting the relief serves the public interest because it facilitates a cross-border restructuring that will provide a benefit to the Debtors creditors, employees, and other stakeholders. *See, Rehabworks, Inc. v. Lee (In re Integrated Health Servs., Inc.)*, 281 B.R. 231, 239 (Bankr. D. Del. 2002) (“In the context of a bankruptcy case, promoting a successful reorganization is one of the most important public interests.”); *In re Lazarus Burman Assocs.*, 161 B.R. 891, 901 (Bankr. E.D.N.Y. 1993) (“The public interest, in the context of a bankruptcy proceeding, is in promoting a successful reorganization.”). Moreover, granting the provisional relief is in the public interest because it promotes cooperation between jurisdictions in cross-border insolvencies, which is an express purpose of chapter 15 of the Bankruptcy Code. 11 U.S.C. § 1501(a); *see also In re ABC Learning Centers Ltd.*, 728 F.3d 301, 306 (2013) (emphasizing that chapter 15 serves the “universalism” approach to transnational bankruptcy, preferring that courts in the United States act in aid of foreign proceedings).

39. The grant of the DIP Charge, by satisfying a covenant of the Debtors under the DIP Credit Agreement, will facilitate the Debtors' access to that liquidity necessary to fund the CCAA Proceedings and these Chapter 15 Cases if a draw is needed prior to the Recognition Hearing and ensure the continuing operation of the Debtors, which ultimately serves the public interest. Moreover, the injection of liquidity will serve the public interest as it will provide the Debtors with the capital necessary to continue paying their obligations as they come due, which will bolster the

confidence of the Debtors' vendors and suppliers of goods and services to continue their services, and reassure the Debtors' customers and employees that they will be able to continue their business on a going-concern basis. Moreover, maintaining the ongoing operations of the Debtors is in the "public" interest for the hundreds of millions of internet users that rely on the Debtors products and services to avoid any risk to continuous and uninterrupted internet access.

40. The provisional relief sought would cause little harm, if any, to creditors and other parties in interest as it would be temporary, pending the Recognition Hearing, and would not hamper the ability of parties in interest to assert their rights in the CCAA Proceedings. Even so, that certain creditors "may be denied an advantage over the Debtors' other . . . creditors is not a valid reason to deny relief to the foreign representative." *In re Atlas Shipping A/S*, 404 B.R. 726, 742 (Bankr. S.D.N.Y. 2009). The harm to the Debtors and their assets that would occur absent granting the provisional relief would be far greater than any potential prejudice to stakeholders that might wish to pursue their individual remedies in the United States in disregard of the CCAA Proceedings.

V. Additional Relief Is Appropriate

41. The Foreign Representative has requested that the Court authorize additional relief under section 1519 of the Bankruptcy Code including application of:

- a. section 365(e), which renders inoperative *ipso facto* clauses contained in the executory contracts and unexpired leases to which any Debtor is a party;
- b. section 364, which authorizes a trustee to incur debt with a priority charge (*i.e.*, obtain access to a postpetition credit facility that is granted priority liens);
- c. sections 327 and 330, which authorize the employment and compensation/reimbursement of professionals to represent or assist the trustee in its duties; and

- d. section 503, which provides for the allowance, as an administrative expense, of claims for compensation and reimbursement made by professionals employed under section 330(a) of the Bankruptcy Code.

42. Section 1519(a) of the Bankruptcy Code allows for the granting of provisional relief, including pursuant to 11 U.S.C. § 1521(a)(7). Section 1521(a)(7) in turn provides that, with certain exceptions, the Court may grant any additional relief that may be available to a trustee. 11 U.S.C. § 1521(a)(7). This provision does not require the application of injunction standards. 11 U.S.C. § 1521(e).

43. The Stay Parties require provisional relief to preserve and maintain the vendor and customer contracts that are essential to maintaining their ongoing operations. The Stay Parties have significant business operations in the United States and are party to numerous executory contracts, many of which comprise some of the Stay Parties' most valuable assets. Many of these contracts contain bankruptcy or insolvency "*ipso facto*" clauses. If counterparties to these agreements can unilaterally terminate or modify those agreements, the Debtors' ability to continue operating its business and ultimately consummate the Restructuring Transactions could be severely jeopardized. Furthermore, if certain software vendors with products that are embedded into the Stay Parties' own products, or the Stay Parties' customer networks, seek to terminate their agreements with the Stay Parties, the Stay Parties' products may no longer function properly and the Stay Parties may not be able to service their customers. This would undermine the Stay Parties' business, the CCAA Proceedings and these Chapter 15 Cases, thereby frustrating the Debtors' restructuring efforts and Congress' intent to provide a debtor with a "fresh start."

44. As a result, pursuant to section 1521(a)(7), the Foreign Representative requests that this Court order that subsection 365(e) of the Bankruptcy Code immediately apply with respect to the termination or modification of any executory contracts or unexpired leases of the Debtor. The

requested relief is necessary to effectuate the purpose of chapter 15 and to protect the assets of the Stay Parties or the interests of the creditors. *See* 11 U.S.C. § 1521(a).

VI. The Requirements of Bankruptcy Rule 1007(a)(4)(B) Should Be Waived

45. Bankruptcy Rule 1007(a)(4)(B) requires a list of all entities against whom provisional relief is being sought under section 1519 of the Bankruptcy Code, unless the court orders otherwise. The relief sought herein could affect other parties to the extent such parties could seek to commence litigation against the Stay Parties or commence enforcement actions against their property. In other words, it is possible that unknown parties may be affected by the relief sought herein. *See In re Andrade Gutierrez Engenharia S.A.*, 645 B.R. 175, 184 (Bankr. S.D.N.Y. 2022) (holding that the foreign representative cannot be expected to anticipate every potential party that could seek to bring claims against them in the United States).

46. The Foreign Representative has filed such a list with respect to each Debtor in each Debtors' Form 401 petition. Out of an abundance of caution, and given that other, unknown parties may be affected, the Foreign Representative requests that the Court waive any further requirement under Rule 1007(a)(4)(B) with respect to the temporary restraining order and provisional relief sought by this Motion.

Basis for Emergency Relief

47. Pursuant to Bankruptcy Rule 6003, the Foreign Representative requests emergency consideration of this motion. The Foreign Representative seeks emergency provisional relief under sections 105(a) and 1519 of the Bankruptcy Code, staying execution against the Stay Parties' assets until the Court's consideration of the Foreign Representative's chapter 15 petition filed contemporaneously with this motion. Prior to entry of a recognition order, the Debtor does not automatically have the protections of the Bankruptcy Code, including the automatic stay provisions. Emergency provisional relief is necessary to prevent creditors and other parties from

commencing or continuing litigation or taking action against the Stay Parties' assets in the U.S. that could prejudice and disrupt the CCAA Proceedings, thereby interfering with the Foreign Representative's ability to conduct operations and the reorganization of the Debtor. Emergency provisional relief is also necessary to ensure the Debtors maintain access to the DIP Facility prior to the Recognition Hearing.

Waiver of Federal Rule of Civil Procedure 65(c)

48. Bankruptcy Rule 7065 expressly provides that "a temporary restraining order or preliminary injunction may be issued on application of a debtor, trustee, or debtor in possession without compliance with Rule 65(c)." To the extent Rule 65 of the Federal Rules of Civil Procedure applies, the Foreign Representative believes that the security requirements imposed by Rule 65(c) are unwarranted under the circumstances and requests a waiver of such requirements pursuant to Bankruptcy Rule 7065.

Notice

49. The Foreign Representative will provide notice of this Motion to the following parties or their counsel: (a) all persons or bodies authorized to administer the CCAA Proceedings; (b) the Office of the United States Trustee for the Northern District of Texas; (c) the Office of the United States Attorney; (d) the Internal Revenue Service; (e) the Office of the United States Attorney General for the State of Texas; (f) all other applicable government agencies to the extent required by the Bankruptcy Rules or Local Rules; (g) the administrative agents to the prepetition secured credit agreements and counsel thereto; (h) the parties to the Debtors' Restructuring Support Agreement; (i) the creditors who have the 20 largest unsecured claims against the Debtors on a consolidated basis; (j) all other parties who the Foreign Representative believes to be affected substantively by the relief requested; and (k) any party that has requested notice pursuant to

Bankruptcy Rule 2002. In light of the nature of the relief requested, the Foreign Representative submits that no further notice is required.

50. The Foreign Representative proposes that once a Hearing Date has been set by the Court, the Foreign Representative will provide notice of this Motion consistent with Bankruptcy Rule 2002(q), as further set forth in the *Debtors' Emergency Motion Pursuant to Federal Rules of Bankruptcy Procedure 2002 and 9007 Requesting Entry of an Order (I) Scheduling a Recognition Hearing, (II) Specifying Form and Manner of Service of Notice, and (III) Granting Related Relief*, filed contemporaneously with this Motion. In light of the nature of the relief requested, the Foreign Representative submits that no further notice is required.

[Remainder of page intentionally left blank]

WHEREFORE, the Foreign Representative requests the Court enter the proposed Order, substantially in the form attached hereto, granting the relief requested herein and such other and further relief as may be just and proper.

Respectfully submitted this 7th day of November, 2024.

GRAY REED

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Counsel to the Foreign Representative

Certificate of Service

I certify that on November 7, 2024, 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 Northern District of Texas.

/s/ Jason S. Brookner
Jason S. Brookner

Exhibit A

Proposed Order

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION**

In re:)	
)	Chapter 15
SANDVINE CORPORATION, <i>et al.</i> , ¹)	Case No. 24-33617 (SGJ)
)	
Debtors in a Foreign Proceeding.)	(Joint Administration Requested)
)	

**ORDER GRANTING PROVISIONAL RELIEF
PURSUANT TO SECTION 1519 OF THE BANKRUPTCY CODE**

Upon the motion (the “Motion”)² filed by the foreign representative (the “Foreign Representative”) of the above-captioned debtors (collectively, the “Debtors”) seeking entry of an order granting provisional relief under section 1519 of the Bankruptcy Code to protect the Stay Parties and their property within the territorial jurisdiction of the United States pending recognition of the CCAA Proceedings; and upon this Court’s review and consideration of the Motion, the Verified Petition, and the Kupp Declaration; it appearing that the relief requested in the Motion is necessary to avoid immediate and irreparable harm to the Stay Parties; and no objections or other responses having been filed that have not been overruled, withdrawn or otherwise resolved; and after due deliberation and sufficient cause appearing therefor, the Court hereby

¹ The Debtors in these chapter 15 cases, along with the Debtors’ unique identifiers, are: Sandvine Corporation (Business No.: 885025916), New Procera GP Company (Company Registration No.: WC-7044), Sandvine Holdings UK Limited (Company No.: 10533653), Sandvine OP (UK) Ltd. (Company No.: 10791762), Procera Networks, Inc. (EIN: 33-0974674), and Procera Holding, Inc. (EIN: 47-4070338). The location of the Debtors’ service address for purposes of these chapter 15 cases is: 5800 Granite Pkwy, Suite 170, Plano, Texas 75024, USA. Copies of materials filed with the applicable court in the CCAA proceedings and these chapter 15 cases are available on the website of the CCAA monitor: <https://www.ksvadvisory.com/experience/case/sandvine>

² Capitalized terms used by not otherwise defined herein shall have the meanings ascribed to them in the Motion.

FINDS, DETERMINES, AND CONCLUDES AS FOLLOWS:

A. Findings and Conclusions. The findings and conclusions set forth herein constitute this Court’s findings of fact and conclusions of law pursuant to Bankruptcy Rule 7052. To the extent any of the following findings of fact constitute conclusions of law, they are adopted as such. To the extent any of the following conclusions of law constitute findings of fact, they are adopted as such.

B. Jurisdiction, Venue, Core Proceeding. This Court has jurisdiction over this Motion and the relief requested therein under 28 U.S.C. §§ 157, 1334, 109 and 1501. This is a core proceeding under 28 U.S.C. § 157(b)(2)(P). Venue is proper in this District under 28 U.S.C. §1410. This Court may enter a final order consistent with Article III of the United States Constitution.

C. Notice. Good, sufficient, appropriate, and timely notice of the filing of, and the hearing on (to the extent necessary), the Motion was given, which notice was deemed adequate for all purposes, and no further notice need be given under the circumstances.

PROVISIONAL RELIEF FINDINGS

D. There is a substantial likelihood that the Foreign Representative will successfully demonstrate that the CCAA Proceedings constitute a “foreign main proceeding” or, in the alternative, “foreign non-main proceedings” as defined in subsection 1502(4) and (5) of the Bankruptcy Code.

E. The commencement or continuation of any action or proceeding in the United States against the Stay Parties should be enjoined pursuant to sections 105(a) and 1519 of the Bankruptcy Code to permit the expeditious and economical administration of the CCAA Proceedings, and such relief will either (a) not cause an undue hardship to other parties in interest or (b) any hardship to parties is outweighed by the benefits of the relief requested.

F. Consistent with the Canadian Court's findings and the resulting relief provided in the Initial Order, unless a preliminary injunction is issued with respect to the Stay Parties, and to the same extent provided in the Initial Order, there is a material risk that the Stay Parties' creditors or other parties in interest in the United States could use the CCAA Proceedings and these Chapter 15 Cases as a pretext to exercise certain remedies with respect to the Stay Parties.

G. Such acts could (a) interfere with the jurisdictional mandate of this Court under chapter 15 of the Bankruptcy Code, (b) interfere with and cause harm to the Debtors' efforts to administer the CCAA Proceedings, (c) interfere with the Debtors' operations, and (d) undermine the Debtors' efforts to achieve an equitable result for the benefit of all of the Debtors' creditors. Accordingly, there is a material risk that the Debtors may suffer immediate and irreparable injury, and it is therefore necessary that the Court enter this Order.

H. The Initial Order provides for, among other things, the DIP Charge.

I. Entry of an order of this Court recognizing and enforcing the Initial Order in the United States and applying the DIP Charge to property of the Debtors and Procera II LP located in the territorial jurisdiction of the United States, is necessary to give effect to the Initial Order as it relates to the Debtors and Procera II LP and their property in the United States and is required by the DIP Credit Agreement.

J. The Foreign Representative has demonstrated that the incurrence of the indebtedness under the DIP Facility and the granting of liens and charges negotiated in connection with the DIP Facility, as authorized by the Initial Order, is necessary to prevent irreparable harm to the Debtors. Without such financing, the Debtors will be unable to continue operations and fund their restructuring proceedings, which will significantly impair the value of the Debtors and their assets.

K. The Foreign Representative has demonstrated that the terms of the DIP Facility, as approved by the Initial Order are fair and reasonable and were entered into in good faith by the Debtors and the DIP Lenders and that the DIP Lenders would not have extended financing without the protections provided by section 364 of the Bankruptcy Code, made applicable by section 1519(a)(3) of the Bankruptcy Code. The Foreign Representative has demonstrated that the terms of the First DDTL Amendment and the corresponding DIP Credit Agreement are reasonable under the circumstances.

L. The Foreign Representative has demonstrated that, in the interest of comity, the purpose of chapter 15 is carried out by granting recognition and giving effect to the Initial Order.

M. The interest of the public will be served by the Court's entry of this Order.

N. The Foreign Representatives and the Debtors are entitled to the full protections and rights available pursuant to section 1519(a)(1)-(3) of the Bankruptcy Code.

ACCORDINGLY, IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:

1. Pending entry of the Recognition Order and notwithstanding anything to the contrary contained in this Order:

- i. The Initial Order (as entered by the Canadian Court), attached hereto as **Exhibit 1**, is hereby given full force and effect on a provisional basis with respect to the Stay Parties and their property located in the territorial jurisdiction of the United States.
- ii. Section 362 of the Bankruptcy Code shall apply to the Debtors and their property within the territorial jurisdiction of the United States. The CCAA Court's injunction as granted in the Initial Order shall be extended to enjoin actions against the non-Debtor Stay Parties and their property within the territorial jurisdiction of the United States solely to the extent provided for in the Initial Order. For the avoidance of doubt and without limiting the generality of the foregoing, this Order shall impose a stay within the territorial jurisdiction of the United States of:
 - a. the execution against any of the Stay Parties' assets (if any);
 - b. commencing or continuing any suit, action, or proceeding inconsistent with the CCAA Proceedings, including, without

- limitation, any judicial, quasi-judicial, regulatory, administrative, or other action or proceeding involving or against the Stay Parties, their assets, or the proceeds thereof;
- c. except as permitted in the Initial Order, the creation, perfection, seizure, attachment, enforcement, or execution of liens or judgments against the Stay Parties' property in the United States (if any) or from transferring, encumbering, or otherwise disposing of or interfering with the Stay Parties' assets or agreements in the United States without the express written consent of the Foreign Representative;
 - d. any act to collect, assess, or recover a claim against the Stay Parties that arose before the commencement of the Debtors' Chapter 15 Cases; and
 - e. the setoff of any debt owing to any of the Stay Parties that arose before the commencement of the Debtors' Chapter 15 Cases against any claim against the Stay Parties.
- iii. Section 364 of the Bankruptcy Code is applicable with respect to each of the Debtors and Procera II LP and the property of each of the Debtors and Procera II LP that is within the territorial jurisdiction of the United States. For the avoidance of doubt and without limiting the generality of the foregoing, this Order, without limitation:
- a. shall grant liens and security interests in the property of the Debtors and Procera II LP located within the territorial jurisdiction of the United States pursuant to section 364(d)(1) of the Bankruptcy Code in respect of the DIP Charge (subject to the priorities, terms, and conditions of the Initial Order) to secured future amounts outstanding under the DIP Facility;
 - b. finds any loans made by the DIP Lenders in accordance with the DIP Credit Agreement prior to the entry of the Recognition Order are extended in "good faith" as contemplated by 364(e) of the Bankruptcy Code, such that the validity of DIP Loans, and the priority of the DIP Charge in respect of the property of the Debtors and Procera II LP located within the territorial jurisdiction of the United States shall not be affected by any reversal or modification of this Order on appeal or the entry of an order denying the Debtors' request for entry of the Recognition Order; and
 - c. be sufficient and conclusive notice and evidence of the grant, validity, perfection, and priority of the liens granted in the CCAA Proceedings as they apply to the Debtors and Procera II LP and their property located in the territorial jurisdiction of the United States in respect of the Administration Charge, the Directors' Charge, and the

DIP Charge without the necessity of filing or recording this Order or any financing statement, mortgage, or other instrument or document which may otherwise be required under the law of any jurisdiction; *provided that* the Foreign Representative is authorized to execute, and the DIP Lenders may file or record, any financing statements, mortgages, other instruments to further evidence the validity, perfection, and priority of the liens granted in the CCAA Proceedings as they apply to the Debtors and Procera II LP and their property located in the territorial jurisdiction of the United States.

- iv. no action, inaction, or acquiescence by the DIP Lenders, including, without limitation, funding the Debtors' ongoing operations under this Order, shall be deemed to be or shall be considered as evidence of any alleged consent by the DIP Lenders to a charge against the collateral pursuant to sections 506(c), 552(b), or 105(a) of the Bankruptcy Code. The DIP Lenders shall not be subject in any way whatsoever to the equitable doctrine of "marshaling" or any similar doctrine with respect to the collateral.
- v. effective on a provisional basis upon entry of this Order, to the extent precluded by or provided for under the Initial Order, no person or entity shall be entitled, directly or indirectly, whether by operation of sections 506(c), 552(b), or 105 of the Bankruptcy Code or otherwise, to direct the exercise of remedies or seek (whether by order of this Court or otherwise) to marshal or otherwise control the disposition of any collateral or property after a breach under the DIP Facility, the DIP Credit Agreement, the Initial Order, or this Order.
- vi. section 365(e) of the Bankruptcy Code shall apply to the Stay Parties' executory contracts and unexpired leases governed by the law of the United States such that, notwithstanding any provision in any such contract or lease or under applicable law, no executory contract or unexpired lease with any of the Stay Parties may be terminated, cancelled, or modified (and any rights or obligations in such leases or contracts cannot be terminated or modified) solely because of a provision in any contract or lease of the kind described in sections 365(e)(1)(A), (B), or (C) of the Bankruptcy Code, and all contract and lease counterparties located within the United States shall be prohibited from taking any steps to terminate, modify, or cancel any contracts or leases with the Stay Parties arising from or relating in any way to any so-called "*ipso facto*" or similar clauses; *provided that* the Order does not impair or affect the rights of any person under sections 559 through 561 of the Bankruptcy Code, subject to the terms of the Initial Order.
- vii. the Foreign Representative:
 - a. shall be the representative of the Debtors with full authority to administer the Debtors' assets and affairs in the United States;

- b. shall have the rights and protections to which the Foreign Representative is entitled under chapter 15 of the Bankruptcy Code, including, but not limited to, the protections limiting the jurisdiction of United States Courts over the Foreign Representative in accordance with section 1510 of the Bankruptcy Code and the granting of additional relief in accordance with sections 1519(a) and 1521 of the Bankruptcy Code; and
 - c. is authorized to comply with the terms and conditions of the DIP Credit Agreement, including but not limited to, the payment of associated fees and expenses as they come due without further notice or order of this Court.
- viii. notwithstanding any provision in the Bankruptcy Rules to the contrary, (i) this Order shall be effective immediately and enforceable upon entry, (ii) the Foreign Representative shall not be subject to any stay in the implementation, enforcement, or realization of the relief granted in this Order, and (iii) the Foreign Representative is authorized and empowered, and may, in its discretion and without further delay, take any action and perform any act necessary to implement and effectuate the terms of this Order.

2. Pursuant to Bankruptcy Rule 7065, the security provisions of Rule 65(c) of the Federal Rules of Civil Procedure are waived.

3. Notice of this Order will be provided to: (a) the United States Trustee for the Northern District of Texas; (b) the Office of the Attorney General for the states in which the Debtors conduct business; (c) the administrative agents to the prepetition secured credit agreements; (d) the Consenting Stakeholders; (e) all persons or bodies authorized to administer the CCAA Proceedings; (f) all other applicable government agencies to the extent required by the Bankruptcy Rules or Local Rules; (g) all other parties who the Foreign Representative believes to be affected substantively by the relief requested; (i) any party that has requested notice pursuant to Bankruptcy Rule 2002(q); and (j) any other entities as this court may direct. In light of the nature of the relief requested, no other or further notice is required.

4. Service in accordance with this Order shall be deemed good and sufficient service and adequate notice for all purposes. The Foreign Representative, the Debtors, and their respective agents are authorized to serve or provide any notices required under the Local Rules.

5. The requirements set forth in Bankruptcy Rule 1007(a)(4)(B) are waived with respect to the relief sought in the Motion, to the extent such requirements have not already been satisfied by the Form 401 petitions.

6. This Court shall retain jurisdiction with respect to the enforcement, amendment or modification of this Order, any requests for additional relief or any adversary proceeding brought in and through these Chapter 15 Cases, and any request by an entity for relief from the provisions of this Order, for cause shown, that is properly commenced and within the jurisdiction of this Court.

7. The Foreign Representative is authorized to take all actions necessary to effectuate the relief granted pursuant to this Order.

END OF ORDER

Submitted by:

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Lydia R. Webb (TX Bar No. 24083758)
Sean R. Burns (TX Bar No. 24139177)

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Counsel to the Foreign Representative

Exhibit 1

Initial Order

Click or tap here to enter text.

Court File No. CV-24-00730836-00CL

ONTARIO
SUPERIOR COURT OF JUSTICE
(COMMERCIAL LIST)

THE HONOURABLE) THURSDAY, THE 7TH
)
JUSTICE OSBORNE) DAY OF NOVEMBER 2024

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

AND IN THE MATTER OF A PLAN OF COMPROMISE OR
ARRANGEMENT OF SANDVINE CORPORATION,
SANDVINE HOLDINGS UK LIMITED, PROCERA
NETWORKS, INC., PROCERA HOLDING, INC., NEW
PROCERA GP COMPANY AND SANDVINE OP (UK) LTD
(collectively, the "**Applicants**")

INITIAL ORDER

THIS APPLICATION, made by the Applicants for an initial order (this "**Order**") pursuant to the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the "**CCAA**"), was heard this day by videoconference at 330 University Avenue, Toronto, Ontario.

ON READING the affidavit of Jeffrey A. Kupp sworn November 6, 2024 and the Exhibits thereto (the "**Kupp Affidavit**"), the pre-filing report of the proposed monitor, KSV Restructuring Inc. ("**KSV**"), dated November 6, 2024, and on hearing the submissions of counsel for the Applicants and Procera II LP (collectively, the "**Sandvine Entities**"), counsel for KSV as proposed monitor and such other counsel that were present, and on reading the consent of KSV to act as the monitor (in such capacity, the "**Monitor**"),

SERVICE

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

DEFINED TERMS

2. **THIS COURT ORDERS** that unless otherwise defined herein, capitalized terms that are used in this Order shall have the meaning given to them in the Kupp Affidavit.

APPLICATION

3. **THIS COURT ORDERS AND DECLARES** that the Applicants are companies to which the CCAA applies. Although not an Applicant, Procera II LP shall enjoy the benefits of the protections and authorizations provided by this Order.

POSSESSION OF PROPERTY AND OPERATIONS

4. **THIS COURT ORDERS** that the Sandvine Entities shall remain in possession and control of their respective current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate including all proceeds thereof (the “**Property**”). Subject to further Order of this Court, the Sandvine Entities shall continue to carry on business in a manner consistent with the preservation of their business (the “**Business**”) and the Property. The Sandvine Entities are each authorized and empowered to continue to retain and employ the employees, contractors, consultants, agents, experts, accountants, advisors, counsel and such other persons (collectively “**Assistants**”) currently retained or employed by them, with liberty to retain such

further Assistants as they deem reasonably necessary or desirable in the ordinary course of business or for the carrying out of the terms of this Order.

5. **THIS COURT ORDERS** that the Sandvine Entities shall be entitled to continue to utilize the central cash management system currently in place as described in the Kupp Affidavit or replace it with another substantially similar central cash management system with the consent of the Monitor (the “**Cash Management System**”) and that any present or future bank providing the Cash Management System shall not be under any obligation whatsoever to inquire into the propriety, validity or legality of any transfer, payment, collection or other action taken under the Cash Management System, or as to the use or application by the Sandvine Entities of funds transferred, paid, collected or otherwise dealt with in the Cash Management System, shall be entitled to provide the Cash Management System without any liability in respect thereof to any Person (as hereinafter defined) other than the Sandvine Entities, pursuant to the terms of the documentation applicable to the Cash Management System, and shall be, in its capacity as provider of the Cash Management System, an unaffected creditor under any plan of compromise or arrangement (a “**Plan**”) with regard to any claims or expenses it may suffer or incur in connection with the provision of the Cash Management System.

6. **THIS COURT ORDERS** that the Sandvine Entities shall be entitled but not required to pay the following amounts whether incurred prior to, on, or after the date of this Order:

- (a) all outstanding and future wages, salaries, commissions, retention payments, employee benefits (including, without limitation, employee medical, dental and similar benefit plans or arrangements), amounts owing under corporate credit cards issued to management and employees of the Sandvine Entities, any director fees

and expenses, termination and severance pay (or other analogous amounts), vacation pay and expenses payable on or after the date of this Order, in each case incurred in the ordinary course of business and consistent with existing practices, compensation policies and arrangements, and all other payroll processing and servicing expenses;

- (b) all outstanding and future amounts owing to or in respect of other workers and independent contractors providing services in connection with the Business and payable on or after the date of this Order, incurred in the ordinary course of business and consistent with existing practices and arrangements;
- (c) the fees and disbursements of any Assistants retained or employed by the Sandvine Entities or the Agent (as hereinafter defined) in respect of these proceedings, at their standard rates and charges;
- (d) with the consent of the Monitor, amounts owing for goods or services actually provided to the Sandvine Entities prior to the date of this Order by:
 - (i) vendors providing hardware or software or similar products and services to the Sandvine Entities that are essential to the products and services sold and distributed by the Sandvine Entities to their customers;
 - (ii) distributors and resellers of the Sandvine Entities' products and services; and
 - (iii) other third parties up to a maximum amount of USD\$250,000, if, in the opinion of the Sandvine Entities, such third party is critical to the Business and ongoing operations of the Sandvine Entities;
- (e) any taxes (including, without limitation, sales, use, withholding, unemployment, and excise) not covered by paragraph 8 of this Order, and whereby the nonpayment

of which by any of the Sandvine Entities could result in a responsible person associated with any of the Sandvine Entities being held personally liable for such nonpayment; and

- (f) taxes related to revenue, State income or operations incurred or collected by any Sandvine Entities in the ordinary course of business.

7. **THIS COURT ORDERS** that, except as otherwise provided to the contrary herein, the Sandvine Entities shall be entitled but not required to pay all reasonable expenses incurred by the Sandvine Entities in carrying on the Business in the ordinary course after the date of this Order, and in carrying out the provisions of this Order, which expenses shall include, without limitation:

- (a) all expenses and capital expenditures reasonably necessary for the preservation of the Property or the Business including, without limitation, payments on account of insurance (including directors' and officers' insurance and any tail insurance coverage), maintenance and security services; and
- (b) payment for goods or services actually supplied to the Sandvine Entities following the date of this Order.

8. **THIS COURT ORDERS** that the Sandvine Entities shall remit, in accordance with legal requirements, or pay:

- (a) any statutory deemed trust amounts in favour of the Crown in right of Canada or of any Province thereof or any other taxation authority which are required to be deducted from the Sandvine Entities' employees' wages, including, without limitation, amounts in respect of (i) employment insurance; (ii) Canada Pension

Plan; (iii) income taxes; (iv) statutory deductions in the United States; and (v) 401(k) contributions in respect of employees domiciled in the United States;

- (b) all goods and services or other applicable sales taxes (collectively, “**Sales Taxes**”) required to be remitted by the Sandvine Entities in connection with the sale of goods and services by the Sandvine Entities, but only where such Sales Taxes are accrued or collected after the date of this Order, or where such Sales Taxes were accrued or collected prior to the date of this Order but not required to be remitted until on or after the date of this Order; and
- (c) any amount payable to the Crown in right of Canada or of any Province thereof or any political subdivision thereof or any other taxation authority in respect of municipal realty, municipal business or other taxes, assessments or levies of any nature or kind which are entitled at law to be paid in priority to claims of secured creditors and which are attributable to or in respect of the carrying on of the Business by the Sandvine Entities.

9. **THIS COURT ORDERS** that, except as specifically permitted herein, the Sandvine Entities are hereby directed, until further Order of this Court: (a) to make no payments of principal, interest thereon or otherwise on account of amounts owing by the Sandvine Entities to any of their creditors as of this date; (b) to grant no security interests, trust, liens, charges or encumbrances upon or in respect of any of the Property; and (c) to not grant credit or incur liabilities except in the ordinary course of the Sandvine Entities’ Business.

NO PROCEEDINGS AGAINST THE SANDVINE ENTITIES, THE NON-APPLICANT STAY PARTIES OR THE PROPERTY

10. **THIS COURT ORDERS** that until and including November 17, 2024 or such later date as this Court may order (the “**Stay Period**”), no proceeding or enforcement process in any court or tribunal (each, a “**Proceeding**”) shall be commenced or continued against or in respect of any of the Sandvine Entities or the Monitor or their respective employees, advisors or representatives acting in such capacities, or affecting the Business or the Property, except with the prior written consent of the Sandvine Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of any Sandvine Entity or their employees, advisors and representatives acting in such capacities or affecting the Business or the Property are hereby stayed and suspended pending further Order of this Court.

11. **THIS COURT ORDERS** that during the Stay Period, no Proceeding shall be commenced or continuing against or in respect of Sandvine Sweden AB, Sandvine Technologies Malaysia Sdn Bhd, Sandvine Australia Pty Ltd., Sandvine Singapore Pte. Ltd., Sandvine Japan K.K. and Sandvine Technologies (India) Private Limited (collectively, the “**Non-Applicant Stay Parties**”), or their respective directors, managers, officers, advisors or representatives acting in such capacities, or against or in respect of any of the Non-Applicant Stay Parties’ current and future assets, undertakings and properties of every nature and kind whatsoever, and wherever situate, and including all proceeds thereof (collectively, the “**Non-Applicant Stay Parties’ Property**”) except with the written consent of the Sandvine Entities and the Monitor, or with leave of this Court, and any and all Proceedings currently under way against or in respect of the Non-Applicant Stay Parties or affecting the Non-Applicant Stay Parties’ Property or the Non-Applicant Stay Parties’ business

are hereby stayed and suspended pending further Order of this Court or the written consent of the Sandvine Entities and the Monitor.

NO EXERCISE OF RIGHTS OR REMEDIES

12. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any individual, firm, corporation, governmental, body or agency, or any other entities (all of the foregoing, collectively being “**Persons**” and each being a “**Person**”) against or in respect of any of the Sandvine Entities or the Monitor, or their respective employees, advisors and representatives acting in such capacities, or affecting the Business (including any leasehold or equity interests) or the Property, are hereby stayed and suspended except with the prior written consent of the Sandvine Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower any of the Sandvine Entities to carry on any business which they are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by a regulatory body as are permitted by Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

13. **THIS COURT ORDERS** that during the Stay Period, all rights and remedies of any Person against or in respect of the Non-Applicant Stay Parties, or their respective directors, managers, officers, employees, advisors and representatives acting in such capacities, or affecting the Non-Applicant Stay Parties’ Property and the Non-Applicant Stay Parties’ business, are hereby stayed and suspended except with the prior written consent of the Sandvine Entities and the Monitor, or leave of this Court, provided that nothing in this Order shall: (i) empower the Non-Applicant Stay Parties to carry on any business which they are not lawfully entitled to carry on; (ii) affect such investigations, actions, suits or proceedings by regulatory body are permitted by

Section 11.1 of the CCAA; (iii) prevent the filing of any registration to preserve or perfect a security interest; or (iv) prevent the registration of a claim for lien.

NO INTERFERENCE WITH RIGHTS

14. **THIS COURT ORDERS** that during the Stay Period, no Person shall accelerate, suspend, discontinue, fail to honour, alter, interfere with, repudiate, rescind, terminate or cease to perform any right, renewal right, contract, agreement, lease, sublease, licence, authorization or permit in favour of or held by any of the Sandvine Entities or the Non-Applicant Stay Parties except with the written consent of the Sandvine Entities and the Monitor, or leave of this Court.

CONTINUATION OF SERVICES

15. **THIS COURT ORDERS** that during the Stay Period, all Persons having oral or written agreements with any of the Sandvine Entities or statutory or regulatory mandates for the supply of goods and/or services, including without limitation all computer software, hardware and support services, communication and other data services, centralized banking services, payroll services, insurance, transportation services, utility or other services to any of the Sandvine Entities or the Business, are hereby restrained until further order of this Court from discontinuing, altering, interfering with or terminating the supply of such goods or services as may be required by any of the Sandvine Entities, and that the Sandvine Entities shall be entitled to the continued use of their current premises, telephone numbers, facsimile numbers, internet addresses and domain names, provided in each case that the normal prices or charges for all such goods or services received after the date of this Order are paid by the Sandvine Entities in accordance with normal payment practices of the Sandvine Entities or such other practices as may be agreed upon by the supplier or

service provider and the applicable Sandvine Entity and the Monitor, or as may be ordered by this Court.

NON-DEROGATION OF RIGHTS

16. **THIS COURT ORDERS** that, notwithstanding anything else in this Order, no Person shall be prohibited from requiring immediate payment for goods, services, use of leased or licensed property or other valuable consideration provided on or after the date of this Order, nor shall any Person be under any obligation on or after the date of this Order to advance or re-advance any monies or otherwise extend any credit to any of the Sandvine Entities. Nothing in this Order shall derogate from the rights conferred and obligations imposed by the CCAA.

NO PROCEEDINGS AGAINST DIRECTORS AND OFFICERS

17. **THIS COURT ORDERS** that during the Stay Period, and except as permitted by subsection 11.03(2) of the CCAA, no Proceeding may be commenced or continued against any of the former, current or future directors, managers or officers of any of the Sandvine Entities with respect to any claim against the directors, managers or officers that arose before the date hereof and that relates to any obligations of any of the Sandvine Entities whereby the directors, managers or officers are alleged under any law to be liable in their capacity as directors, managers or officers for the payment or performance of such obligations.

DIRECTORS' AND OFFICERS' INDEMNIFICATION AND CHARGE

18. **THIS COURT ORDERS** that the Sandvine Entities shall indemnify each of their respective directors, managers and officers against obligations and liabilities that they may incur as directors, managers or officers of any of the Sandvine Entities after the commencement of the within proceedings, except to the extent that, with respect to any director, manager or officer, the

obligation or liability was incurred as a result of the director's, manager's or officer's gross negligence or wilful misconduct.

19. **THIS COURT ORDERS** that the directors, managers and officers of the Sandvine Entities shall be entitled to the benefit of and are hereby granted a charge (the "**Directors' Charge**") on the Property, which charge shall not exceed an aggregate amount of USD\$4,440,000, as security for the indemnity provided in paragraph 18 of this Order. The Directors' Charge shall have the priority set out in paragraphs 36-38 herein.

20. **THIS COURT ORDERS** that, notwithstanding any language in any applicable insurance policy to the contrary, (a) no insurer shall be entitled to be subrogated to or claim the benefit of the Directors' Charge, and (b) the Sandvine Entities' directors, managers and officers shall only be entitled to the benefit of the Directors' Charge to the extent that they do not have coverage under any directors', managers' and officers' insurance policy, or to the extent that such coverage is insufficient to pay amounts indemnified in accordance with paragraph 18 of this Order.

APPOINTMENT OF FINANCIAL ADVISOR

21. **THIS COURT ORDERS** that the agreement dated as of June 29, 2024, engaging GLC Advisors & Co., LLC and GLC Securities, LLC (collectively, the "**Financial Advisor**") as independent financial advisor to the Sandvine Entities, in the form attached as Exhibit "X" to the Kupp Affidavit (the "**GLC Engagement Letter**"), and the retention of the Financial Advisor pursuant to the terms thereof, is hereby ratified and approved, *nunc pro tunc*, and the Sandvine Entities are authorized and directed to make the payments contemplated thereunder in accordance with the terms and conditions of the GLC Engagement Letter.

22. **THIS COURT ORDERS** that the Financial Advisor shall incur no liability or obligation as a result of its appointment or the carrying out of the provisions of the GLC Engagement Letter, save and except for any gross negligence or wilful misconduct on its part.

APPOINTMENT OF MONITOR

23. **THIS COURT ORDERS** that KSV is hereby appointed pursuant to the CCAA as the Monitor, an officer of this Court, to monitor the business and financial affairs of the Sandvine Entities with the powers and obligations set out in the CCAA or set forth herein and that the Sandvine Entities and their shareholders, officers, directors, managers, and Assistants shall advise the Monitor of all material steps taken by the Sandvine Entities pursuant to this Order, and shall co-operate fully with the Monitor in the exercise of its powers and discharge of its obligations and provide the Monitor with the assistance that is necessary to enable the Monitor to adequately carry out the Monitor's functions.

24. **THIS COURT ORDERS** that the Monitor, in addition to its prescribed rights and obligations under the CCAA, is hereby directed and empowered to:

- (a) monitor the Sandvine Entities' receipts and disbursements;
- (b) report to this Court at such times and intervals as the Monitor may deem appropriate with respect to matters relating to the Property, the Business, and such other matters as may be relevant to the proceedings herein;
- (c) assist the Sandvine Entities, to the extent required by the Sandvine Entities, in their dissemination to the DIP Secured Parties (as hereinafter defined) of financial and other information in accordance with the Definitive Documents (as defined below),

or as may otherwise be agreed between the Sandvine Entities and the DIP Secured Parties, which may be used in these proceedings including reporting on a basis to be agreed with the DIP Secured Parties;

- (d) advise the Sandvine Entities in their preparation of the Sandvine Entities' cash flow statements and reporting required by the DIP Secured Parties under the Definitive Documents, which information shall be reviewed with the Monitor and delivered to the DIP Secured Parties in accordance with the Definitive Documents;
- (e) have full and complete access to the Property, including the premises, books, records, data, including data in electronic form, and other financial documents of the Sandvine Entities, wherever located and to the extent that is necessary to adequately assess the Sandvine Entities' business and financial affairs or to perform its duties arising under this Order;
- (f) be at liberty to engage independent legal counsel or such other persons as the Monitor deems necessary or advisable respecting the exercise of its powers and performance of its obligations under this Order; and
- (g) perform such other duties as are required by this Order, such other orders of the Court, or as otherwise required by this Court from time to time.

25. **THIS COURT ORDERS** that the Monitor shall not take possession of the Property and shall take no part whatsoever in the management or supervision of the management of the Business and shall not, by fulfilling its obligations hereunder, be deemed to have taken or maintained possession or control of the Business or Property, or any part thereof.

26. **THIS COURT ORDERS** that nothing herein contained shall require the Monitor to occupy or to take control, care, charge, possession or management (separately and/or collectively, “**Possession**”) of any of the Property that might be environmentally contaminated, might be a pollutant or a contaminant, or might cause or contribute to a spill, discharge, release or deposit of a substance contrary to any federal, provincial or other law respecting the protection, conservation, enhancement, remediation or rehabilitation of the environment or relating to the disposal of waste or other contamination including, without limitation, the *Canadian Environmental Protection Act*, the *Ontario Environmental Protection Act*, the *Ontario Water Resources Act*, or the *Ontario Occupational Health and Safety Act* and regulations thereunder (collectively, the “**Environmental Legislation**”), provided however that nothing herein shall exempt the Monitor from any duty to report or make disclosure imposed by applicable Environmental Legislation. The Monitor shall not, as a result of this Order or anything done in pursuance of the Monitor’s duties and powers under this Order, be deemed to be in Possession of any of the Property within the meaning of any Environmental Legislation, unless it is actually in possession.

27. **THIS COURT ORDERS** that the Monitor shall provide any creditor of the Sandvine Entities, including without limitation, the DIP Secured Parties, with information provided by the Sandvine Entities in response to reasonable requests for information made in writing by such creditor addressed to the Monitor. The Monitor shall not have any responsibility or liability with respect to the information disseminated by it pursuant to this paragraph. In the case of information that the Monitor has been advised by the Sandvine Entities is confidential, the Monitor shall not provide such information to creditors unless otherwise directed by this Court or on such terms as the Monitor and the Sandvine Entities may agree.

28. **THIS COURT ORDERS** that, in addition to the rights and protections afforded the Monitor under the CCAA or as an officer of this Court, neither the Monitor nor its respective employees, advisors and representatives acting in such capacities shall incur any liability or obligation as a result of its appointment or the carrying out of the provisions of this Order, save and except for any gross negligence or wilful misconduct on its part. Nothing in this Order shall derogate from the protections afforded the Monitor by the CCAA or any applicable legislation.

29. **THIS COURT ORDERS** that the Monitor, counsel to the Monitor in Canada and the United States (collectively, the “**Monitor Counsel**”), counsel to the Sandvine Entities in Canada and the United States (collectively, the “**Sandvine Counsel**”) and counsel to the Agent in Canada and the United States (collectively, the “**Agent Counsel**”) shall be paid their reasonable fees and disbursements, in each case at their standard rates and charges, whether incurred prior to, on, or after the date of this Order, by the Sandvine Entities as part of the costs of these proceedings. The Sandvine Entities are hereby authorized and directed to pay the accounts of the Monitor, the Monitor Counsel, the Sandvine Counsel and the Agent Counsel on a bi-weekly basis or pursuant to such other arrangements agreed to between the Sandvine Entities and such parties and, in addition, the Sandvine Entities are hereby authorized to pay the Monitor, the Monitor Counsel and Sandvine Counsel’s retainers, *nunc pro tunc*, to be held by them as security for payment of their respective fees and disbursements outstanding from time to time.

30. **THIS COURT ORDERS** that the Monitor and its Canadian legal counsel shall pass their accounts from time to time, and for this purpose the accounts of the Monitor and its Canadian legal counsel are hereby referred to a judge of the Commercial List of the Ontario Superior Court of Justice.

ADMINISTRATION CHARGE

31. **THIS COURT ORDERS** that the Monitor, the Monitor Counsel, the Sandvine Counsel, and the Financial Advisor (solely to the extent of the Financial Advisor’s Monthly Advisory Fees, as defined in the GLC Engagement Letter) shall be entitled to the benefit of and are hereby granted a charge (the “**Administration Charge**”) on the Property, which charge shall not exceed an aggregate amount of USD\$2,500,000, as security for their professional fees and disbursements incurred at their standard rates and charges, both before and after the making of this Order in respect of these proceedings. The Administration Charge shall have the priority set out in paragraphs 36-38 herein.

DIP FINANCING

32. **THIS COURT ORDERS** that the Amendment No. 1 to Super Senior Credit Agreement, dated as of November 6, 2024, by and among Sandvine Corporation and Procera Networks, Inc., as borrowers, and the lenders party thereto (the “**First Amendment**”), which amended the DDTL Credit Agreement and re-titled it as “Super-Senior Debtor-in-Possession Credit Agreement” (as further amended, amended and restated, supplemented, or otherwise modified from time to time, the “**DIP Credit Agreement**”), by and among Sandvine Corporation and Procera Networks, Inc., as borrowers, Procera II LP, as ultimate parent, the Specified Term Lenders (as defined in the DIP Credit Agreement), the Delayed Draw DIP Term Lenders (as defined in the DIP Credit Agreement) (the “**DIP Lenders**”), Seaport Loan Products LLC, as co-administrative agent, and Acquiom Agency Services LLC, as co-administrative agent and collateral agent (collectively, the “**Agent**”, and together and collectively with the DIP Lenders, the “**DIP Secured Parties**”), attached as Exhibits “U” and “V” to the Kupp Affidavit, is hereby approved, in respect of the Delayed Draw DIP Term Loan Obligations (as defined in the DIP Credit Agreement). For the avoidance of doubt,

no draws are permitted under the Delayed Draw DIP Term Facility (as defined in the DIP Credit Agreement) without further Order of the Court.

33. **THIS COURT ORDERS** that the Sandvine Entities are hereby authorized and empowered to execute and deliver such amendments, credit agreements, mortgages, charges, hypothecs and security documents, guarantees and other definitive documents (collectively with the First Amendment and the DIP Credit Agreement, the “**Definitive Documents**”), as are contemplated by the DIP Credit Agreement or as may be reasonably required by the DIP Secured Parties pursuant to the terms thereof, notwithstanding any other provision of this Order.

34. **THIS COURT ORDERS** that the DIP Secured Parties shall be entitled to the benefit of and are hereby granted a charge (the “**DIP Charge**”) on the Property, as security for any and all post-filing obligations of the Sandvine Entities in respect of the Delayed Draw DIP Term Facility and the Definitive Documents (including on account of post-filing principal, interest, fees, expenses and other liabilities) (the aggregate of all such obligations being the “**DIP Obligations**”), which DIP Charge shall be in the aggregate amount of the outstanding DIP Obligations. The DIP Charge shall not secure an obligation that exists before this Order is made. The DIP Charge shall have the priority set out in paragraphs 36-38 hereof.

35. **THIS COURT ORDERS** that, notwithstanding any other provision of this Order, the DIP Secured Parties may take such steps from time to time as they may deem necessary or appropriate to file, register, record or perfect the DIP Charge or any of the Definitive Documents.

VALIDITY AND PRIORITY OF CHARGES CREATED BY THIS ORDER

36. **THIS COURT ORDERS** that the priorities of the Administration Charge, the Directors’ Charge and the DIP Charge (collectively, the “**Charges**”) and the Encumbrances securing the

Specified Term Loan Obligations (as defined in the DIP Credit Agreement) (the “**Specified Term Loan Security**”) as among them, shall be as follows:

- (a) First – Administration Charge (to the maximum amount of USD\$2,500,000);
- (b) Second – Directors’ Charge (to the maximum amount of USD\$4,440,000); and
- (c) Third – DIP Charge (to the maximum amount of the outstanding DIP Obligations) and Specified Term Loan Security (to the maximum amount of the outstanding Specified Term Loan Obligations), on a *pari passu* basis.

37. **THIS COURT ORDERS** that the filing, registration or perfection of the Charges shall not be required, and that the Charges shall be effective as against the Property and shall be valid and enforceable for all purposes, including as against any right, title or interest filed, registered, recorded or perfected subsequent to the Charges coming into existence, notwithstanding any such failure to file, register, record or perfect.

38. **THIS COURT ORDERS** that each of the Charges shall constitute a charge on the Property and such Charges shall, except as otherwise set out in paragraph 36 hereof, rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise (collectively, “**Encumbrances**”) in favour of any Person, other than any Person with a properly perfected purchase money security interest under the *Personal Property Security Act* (Ontario) or such other applicable legislation that has not been served with notice of this Order. The Sandvine Entities and the beneficiaries of the Charges shall be entitled to seek priority of the Charges ahead of such Encumbrances on a subsequent motion on notice to those parties.

39. **THIS COURT ORDERS** that except as otherwise expressly provided for herein, or as may be approved by this Court, the Sandvine Entities shall not grant any Encumbrances over any Property that rank in priority to, or *pari passu* with, any of the Charges unless the Sandvine Entities also obtain the prior written consent of the Monitor and the beneficiaries of the affected Charges, or further order of this Court.

40. **THIS COURT ORDERS** that the Charges and Definitive Documents shall not be rendered invalid or unenforceable and the rights and remedies of the chargees entitled to the benefit of the Charges (collectively, the “**Chargees**”) shall not otherwise be limited or impaired in any way by (a) the pendency of these proceedings and the declarations of insolvency made herein; (b) any application(s) for bankruptcy order(s) issued pursuant to the *Bankruptcy and Insolvency Act* (the “**BIA**”), or any bankruptcy order made pursuant to such applications; (c) the filing of any assignments for the general benefit of creditors made pursuant to the BIA; (d) the provisions of any federal or provincial statutes; or (e) any negative covenants, prohibitions or other similar provisions with respect to borrowings, incurring debt or the creation of Encumbrances, contained in any existing loan document, lease, sublease, offer to lease or other agreement (collectively, an “**Agreement**”) which binds any of the Sandvine Entities and notwithstanding any provision to the contrary in any Agreement:

- (a) neither the creation of the Charges nor the execution, delivery, perfection, registration or performance of the Definitive Documents shall create or be deemed to constitute a breach by any of the Sandvine Entities of any Agreement to which they are a party;

- (b) none of the Chargees shall have any liability to any Person whatsoever as a result of any breach of any Agreement caused by or resulting from the Sandvine Entities entering into the Definitive Documents the creation of the Charges or the execution, delivery or performance of any of the other Definitive Documents; and
- (c) the payments made by the Sandvine Entities pursuant to this Order or the Definitive Documents, and the granting of the Charges, do not and will not constitute preferences, fraudulent conveyances, transfers at undervalue, oppressive conduct, or other challengeable or voidable transactions under any applicable law.

41. **THIS COURT ORDERS** that any Charge created by this Order over leases of real property in Canada shall only be a Charge in the applicable Sandvine Entity's interest in such real property leases.

SERVICE AND NOTICE

42. **THIS COURT ORDERS** that the Monitor shall (i) without delay, publish in *The Globe and Mail* (National Edition) and *The New York Times* a notice containing the information prescribed under the CCAA, (ii) within five days after the date of this Order, (A) make this Order publicly available in the manner prescribed under the CCAA, (B) send, or cause to be sent, in the prescribed manner or by electronic message to the e-mail addresses as last shown on the records of the Sandvine Entities, a notice to every known creditor who has a claim against any of the Sandvine Entities of more than \$1,000, and (C) prepare a list showing the names and addresses of those creditors and the estimated amounts of those claims, and make it publicly available in the prescribed manner, all in accordance with Section 23(1)(a) of the CCAA and the regulations made

thereunder, provided that the Monitor shall not make the claim amounts, names and addresses of any individuals who are creditors publicly available.

43. **THIS COURT ORDERS** that the Monitor shall create, maintain and update as necessary a list of all Persons appearing in person or by counsel in this proceeding (the “**Service List**”). The Monitor shall post the Service List, as may be updated from time to time, on the Monitor’s website as part of the public materials to be recorded thereon in relation to this proceeding. Notwithstanding the foregoing, the Monitor shall have no liability in respect of the accuracy of or the timeliness of making any changes to the Service List.

44. **THIS COURT ORDERS** that the E-Service Protocol of the Commercial List (the “**Protocol**”) is approved and adopted by reference herein and, in this proceeding, the service of documents made in accordance with the Protocol (which can be found on the Commercial List website at <https://www.ontariocourts.ca/scj/practice/regional-practice-directions/eservice-commercial/>) shall be valid and effective service. Subject to Rule 17.05 this Order shall constitute an order for substituted service pursuant to Rule 16.04 of the Rules of Civil Procedure. Subject to Rule 3.01(d) of the Rules of Civil Procedure and paragraph 21 of the Protocol, service of documents in accordance with the Protocol will be effective on transmission. This Court further orders that a case website shall be established in accordance with the Protocol with the following URL: <https://www.ksvadvisory.com/experience/case/sandvine>.

45. **THIS COURT ORDERS** that the Sandvine Entities and the Monitor and their respective counsel are at liberty to serve or distribute this Order, any other materials and orders as may be reasonably required in these proceedings, including any notices, or other correspondence, by forwarding true copies thereof by prepaid ordinary mail, courier, personal delivery, facsimile or

other electronic transmission to the Sandvine Entities' creditors at their address as last shown on the records of the Sandvine Entities or other interested parties and their advisors and that any such service, distribution or notice shall be deemed to be received: (a) if delivered by personal delivery or facsimile or other electronic transmission, on the day so delivered, (b) if sent by courier, on the next business day following the date of forwarding thereof, and (c) if sent by ordinary mail, on the third business day after mailing. Any such distribution or service shall be deemed to be in satisfaction of a legal or judicial obligation, and notice requirements within the meaning of clause 3(c) of the *Electronic Commerce Protection Regulations*, Reg. 81000-2-175 (SOR/DORS).

CHAPTER 15 PROCEEDINGS

46. **THIS COURT ORDERS** that the Applicant, Sandvine Corporation, is hereby authorized and empowered, but not required, to act as the foreign representative (in such capacity, the “**Foreign Representative**”) in respect of the within proceedings for the purpose of having these proceedings recognized and approved in a jurisdiction outside of Canada.

47. **THIS COURT ORDERS** that the Foreign Representative is hereby authorized to apply for recognition of these proceedings, as necessary, in any jurisdiction outside of Canada, including in the United States Bankruptcy Court for the Northern District of Texas (Dallas Division) (the “**Foreign Bankruptcy Court**”) pursuant to chapter 15 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532.

48. **THIS COURT HEREBY REQUESTS** the aid and recognition of any court, tribunal, regulatory or administrative body or agency having jurisdiction in Canada or in the United States, including the Foreign Bankruptcy Court, to give effect to this Order and to assist the Sandvine Entities, the Monitor and their respective agents in carrying out the terms of this Order. All courts,

tribunals, regulatory and administrative bodies and agencies are hereby respectfully requested to make such orders and to provide such assistance to the Foreign Representative, the Sandvine Entities and to the Monitor, as an officer of this Court, as may be necessary or desirable to give effect to this Order, to grant foreign representative status to Sandvine Corporation, in any foreign proceeding, or to assist the Sandvine Entities and the Monitor and their respective agents in carrying out the terms of this Order.

COMEBACK HEARING

49. **THIS COURT ORDERS** that the comeback motion in these proceedings shall be heard on November 15, 2024 (the “**Comeback Hearing**”).

GENERAL

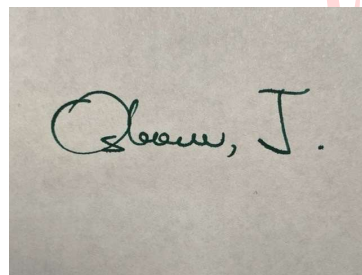
50. **THIS COURT ORDERS** that any interested party (including the Sandvine Entities and the Monitor) may apply to this Court to vary or amend this Order at the Comeback Hearing on not less than five (5) calendar days’ notice to any other party or parties likely to be affected by the order sought or upon such other notice, if any, as this Court may order; provided, however, that the Chargees shall be entitled to rely on this Order as issued and entered and on the Charges and priorities set out in paragraphs 36-38 hereof, including with respect to any fees, expenses and disbursements incurred and in respect of advances made under the Definitive Documents until the date this Order may be amended, varied or stayed.

51. **THIS COURT ORDERS** that the Sandvine Entities or the Monitor may from time to time apply to this Court to amend, vary or supplement this Order or for advice and directions in the discharge of their powers and duties under this Order or in the interpretation or application of this Order.

52. **THIS COURT ORDERS** that nothing in this Order shall prevent the Monitor from acting as an interim receiver, a receiver, a receiver and manager, or a trustee in bankruptcy of any of the Sandvine Entities, the Business or the Property.

53. **THIS COURT ORDERS** that each of the Sandvine Entities and the Monitor be at liberty and are hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body or agency, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order, and that Sandvine Corporation is authorized and empowered to act as a representative in respect of the within proceedings for the purpose of having these proceedings recognized in a jurisdiction outside Canada.

54. **THIS COURT ORDERS** that this Order and all of its provisions are effective as of 12:01 a.m. Eastern Standard/Daylight Time on the date of this Order, and is enforceable without any need for entry and filing.

A rectangular box containing a handwritten signature in black ink that reads "Osborne, J.".

Digitally signed
by Osborne J.

Date:

2024.11.07

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IN THE MATTER OF THE *COMPANIES' CREDITORS ARRANGEMENT ACT*, R.S.C. 1985, c. C-36, AS AMENDED Court File No: [●]

AND IN THE MATTER OF A PLAN OF COMPROMISE OR ARRANGEMENT OF SANDVINE CORPORATION, SANDVINE HOLDINGS UK LIMITED, PROCERA NETWORKS, INC., PROCERA HOLDING, INC., NEW PROCERA GP COMPANY AND SANDVINE OP (UK) LTD

Applicants

**ONTARIO
SUPERIOR COURT OF JUSTICE
COMMERCIAL LIST**

PROCEEDING COMMENCED AT TORONTO

INITIAL ORDER

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