

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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In re	:	Chapter 11
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VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> ,	:	Case No. 22-10943 (MEW)
	:	
Debtors. ¹	:	(Jointly Administered)
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CONFIDENTIALITY AGREEMENT AND STIPULATED PROTECTIVE ORDER

Paul R. Hage, in his capacity as the Plan Administrator (the “**Plan Administrator**”) for the *Third Amended Joint Plan of Voyager Digital Holdings, Inc. and its Debtor Affiliates Pursuant to Chapter 11 of the Bankruptcy Code* [Dkt. No. 1166-1] in the above-captioned proceedings (the “**Chapter 11 Cases**”) and Matthew Barkley (“**Barkley**”, together with the Plan Administrator, each a “**Party**” and collectively the “**Parties**”), by and through their undersigned counsel, hereby stipulate and agree to the following Stipulation and Protective Order (the “**Protective Order**”) with respect to the Discovery Materials (as defined below) produced from Barkley in connection with the Chapter 11 Cases, including without limitation the discovery that Barkley has voluntarily agreed to produce to the Plan Administrator in connection with the *Plan Administrator’s Motion for an Order Pursuant to Bankruptcy Rule 2004 Directing Subpoena for the Production of Documents by, and the Examination of, Matthew Barkley* [Dkt. No. 1655]:

WHEREAS, Barkley has produced and/or may in the future produce information, testimony, documents, electronically stored information and other discovery in connection with

¹ The Wind-Down Debtor in these chapter 11 cases consists of Voyager Digital Holdings, Inc. (7687), Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The Wind-Down Debtor’s service address and principal place of business is 27777 Franklin, Suite 2500, Southfield, MI 48034.

formal or informal discovery requests (the “**Discovery Requests**”), and such information, testimony, documents, electronically stored information and other discovery may contain items or information that Barkley believes to be of a non-public, strategic, confidential, proprietary and/or sensitive nature, including but not limited to commercial, financial and/or business information, including information affecting individual privacy interests, or other confidential information; and

WHEREAS, the Parties desire to protect the confidentiality of such non-public, strategic, confidential, proprietary and/or sensitive material, and seek to ensure that, except as expressly provided for herein, Designated Materials, described below, be kept confidential, used only for the purpose of the Proceedings (as defined below) in accordance with the terms of this Protective Order, and not be disclosed or used in any other way;

NOW, THEREFORE, to facilitate and expedite the production, exchange and treatment of Discovery Material, to facilitate the prompt resolution of disputes over confidentiality, and to protect Discovery Material that Barkley seeks to maintain as confidential,

IT IS HEREBY STIPULATED, AGREED, AND, UPON COURT APPROVAL HEREOF, IT IS ORDERED that the following terms will govern any requests for and production and handling of Discovery Materials from Barkley in connection with Proceedings during the course of the Chapter 11 Cases:

1. The Parties shall submit this Protective Order to the Court for approval. The Parties shall abide by the terms of this Protective Order even if this Protective Order is not entered by the Court for any reason, unless the Court otherwise orders. Unless otherwise agreed by the Parties or ordered by the Court, all deadlines stated herein shall be computed pursuant to Rule 9006 of the Bankruptcy Rules.

2. This Protective Order applies to all information, documents and things produced by Barkley on or after May 8, 2024, to any other Party (each a “**Receiving Party**”), formally or informally in response to or in connection with any Discovery Requests, including, without limitation, deposition testimony (whether based upon oral examination or written questions), interrogatories, answers to interrogatories, requests for admission, responses to requests for admission, documents, information and things produced (including documents, information and things produced to a Receiving Party for inspection and documents, whether in the form of originals or copies) as well as any and all copies, abstracts, digests, notes, summaries, and excerpts thereof (collectively referred to as “**Discovery Materials**”).

3. The procedures and restrictions set forth in this Protective Order shall govern the handling, examination, review, distribution and use of Discovery Materials in (i) these Chapter 11 Cases, (ii) any adversary proceedings commenced in these Chapter 11 Cases, (iii) any appeals taken from any decisions rendered in these Chapter 11 Cases, and (iv) any other actions commenced by the Plan Administrator, any committee, or any other party to or participant in the Chapter 11 Cases (collectively, these “**Proceedings**”). Any person who receives Discovery Materials shall use such Discovery Materials solely in connection with its investigation, prosecution, or settlement of matters in these Proceedings, and except as provided in paragraph 17 herein, such Discovery Materials shall not be used or disclosed in connection with any other proceeding in any other court or for any other purpose or on behalf of any other client, including, but not limited to, in connection with and/or in aid of obtaining discovery or prosecuting litigation in any other forum, in any motion, discovery request, response, objection, deposition or other pleading or filing in any other forum, or for any other business or commercial purpose, absent agreement of Barkley.

4. Designated Materials. Barkley may designate Discovery Materials, or any portion thereof, as “Confidential” or “Highly Confidential” (any such Discovery Material, the “**Designated Material**”) in accordance with the following provisions:

a. *Confidential Discovery Materials*. Barkley may designate Discovery Materials as “Confidential Discovery Materials” if Barkley believes in good faith that (i) such Discovery Material (A) constitutes or contains non-public proprietary or confidential technical, business, financial, or personal information; (B) other information that is of a nature that would be subject to protection under applicable law or as determined by the Court; or (C) is subject by law or contract to a legally protected right of privacy; or (ii) Barkley is under a preexisting obligation to a third party to treat such Discovery Material as confidential.

b. *Highly Confidential Discovery Materials*. Barkley may designate Confidential Discovery Materials as “Highly Confidential Discovery Materials” if Barkley believes in good faith that such Confidential Discovery Material constitutes or includes information that, as applicable, is of such a nature that a risk of competitive injury would be created if the Discovery Materials were disclosed to persons other than those identified in Paragraph 6 of this Order, which may include certain trade secrets or sensitive financial or business information, including such material prepared by industry professionals, advisors, financial advisors, accounting advisors, experts and consultants, or contains sensitive personal data. Nothing in this Protective Order shall prevent Barkley from redacting or withholding portions of produced documents that contain non-responsive information that is commercially sensitive or otherwise would fall within this paragraph 4(b).

5. Disclosure of Confidential Discovery Materials. Confidential Discovery Materials, and any and all information contained therein, shall be given, shown, made available to or communicated only to the following:

a. In the case of the Plan Administrator as Receiving Party, (i) counsel to the Plan Administrator retained with approval of the Bankruptcy Court in these chapter 11 cases; (ii) unless otherwise ordered by the Court, any other professional advisor, expert or consultant retained by the Plan Administrator; and (iii) each of the foregoing entities' respective personnel actually engaged in assisting in the prosecution or defense of these Proceedings, including any paralegal, clerical and other assistant employed by such entities and assigned to this matter (collectively, the "**Plan Administrator Professionals**");

b. The Plan Administrator, and any employee of the Plan Administrator actively engaged in the Plan Administrator's duties as such; and

c. any other persons specified in paragraph 6 below.

6. Disclosure of Highly Confidential Discovery Materials. Highly Confidential Discovery Materials, and any and all information contained therein, shall be given, shown, made available to or communicated only to the following:

a. The Plan Administrator Professionals;

b. The Plan Administrator, and any employee of the Plan Administrator actively engaged in the Plan Administrator's duties as such in connection with Barkley -related discovery or litigation; and

c. any person who is indicated on the face of a document to have been an author, addressee or copy recipient thereof, an actual or intended recipient thereof, or in the case of meeting minutes, an attendee of the meeting;

d. any person who (i) has been noticed for deposition, (ii) has been identified on a witness list to be called to testify at an evidentiary hearing or trial in these Proceedings, or (iii) has been called as a witness to testify at an evidentiary hearing, trial, or deposition in these Proceedings; *provided* that (a) such disclosure may only be made in preparation for and at the hearing, trial or deposition, (b) the disclosure is required for such person's testimony in such evidentiary hearing or trial; (c) the witness is not permitted to retain the Designated Materials after the witness is examined regarding the Designated Materials; and (d) the Receiving Party's counsel advises the witness, in advance of any disclosure, that this Protective Order forbids him or her to use or disclose the Designated Materials except as permitted under this Protective Order, and that he or she is subject to the Court's jurisdiction for the purposes of enforcing this Protective Order;

e. litigation support service vendors and copy services, data entry, and computer support services (and their respective staff) retained by counsel referred to in the preceding clauses (a) or (b) of this paragraph in connection with these Proceedings;

f. court reporters or stenographers engaged to record or transcribe depositions or other testimony conducted in these Proceedings;

g. the Court and its support personnel; and

h. any other person or entity with respect to whom Barkley may consent in writing.

7. Prerequisite to Disclosure of Highly Confidential Discovery Materials.

Prior to any disclosure of any Highly Confidential Discovery Materials to any person referred to in subparagraph 6.c, 6.d and 6.g herein, such person or entity shall be provided with a copy of this Protective Order and shall sign an agreement to be fully bound by this Protective Order in the form of Exhibit A attached hereto (the “**Agreement to be Bound**”). An executed copy of the Agreement to be Bound shall be produced to all Parties to this Protective Order prior to any disclosure of Designated Materials made pursuant to this Paragraph 7.

8. Advice of Counsel. Nothing herein shall prevent or otherwise restrict counsel who are entitled to have access to such Designated Materials from rendering advice to their clients in connection with the Proceedings and, in the course thereof, relying on examination of Discovery Materials; *provided however* that in rendering such advice and otherwise communicating with such clients, counsel shall not disclose the content of any Confidential/Highly Confidential Discovery Materials or any information sufficient to identify any such Confidential/Highly Confidential Discovery Materials.

9. Sealing of Designated Material Filed With or Submitted to Court. The Party that intends to file (“**Filing Party**”) with the Court pleadings, documents or other papers (or attachments thereto) containing Designated Materials shall meet and confer with Barkley in an effort to agree on redacted filings. The Parties will attempt in good faith to minimize the filing of Designated Materials, and shall redact such Designated Materials filed with the Court if such information is not necessary or relevant to the particular point that the Party is attempting to make. If the Filing Party believes that Designated Material is relevant to an issue before the Court, then the Filing Party shall file a motion asking to file such Designated Materials under seal in accordance with the Federal Rules, the Bankruptcy Rules, Rule 9018-1 of the Local Rules

of this Court and applicable chambers rules. Barkley shall have the burden of demonstrating that the information meets the requirements for sealing under the Bankruptcy Code and the applicable Rules.

10. Use of Discovery Material in Open Court. The limitations on disclosure in this Protective Order shall not apply to any Discovery Materials offered or otherwise used by any Receiving Party at trial or any hearing held in open court except as provided in this paragraph. As part of any pretrial conference or any meet and confer regarding the use of exhibits in any evidentiary hearing, at least three days prior to the use of any Designated Material at trial or any hearing to be held in open court (or if such trial or hearing is scheduled on less than three-days' notice, as far in advance of the trial or hearing as possible), counsel for any Receiving Party who desires to offer or use such Designated Materials at trial or any hearing to be held in open court shall meet and confer in good faith with Barkley, together with any other Receiving Parties who have expressed interest in participating in such meet and confer to discuss ways to limit disclosure of the Designated Material (by redaction or otherwise) so that the material may be offered or otherwise used by any other party, in accordance with the provisions of the Bankruptcy Court and Bankruptcy Rules. If the Parties are unable to resolve a dispute related to such Designated Material, then Barkley shall request relief from the Court and, in the absence of such relief, there shall be no limitations on the ability of the Parties to offer or otherwise use such Designated Materials at trial or any hearing held in court.

11. Manner of Designation of Discovery Materials. The designation of Discovery Material as "Confidential Discovery Materials" or "Highly Confidential Discovery Materials" shall be made in the following manner:

a. In the case of documents, data, electronically stored information, exhibits, briefs, correspondence, memoranda, interrogatory responses, responses to requests for admission, or other documentary materials (excluding depositions or other testimony) and tangible things, at the time Barkley produces to the Receiving Party such documents and tangible things, by affixing the legend “**Confidential**” or “**Highly Confidential**,” as applicable, to each thing and to each page containing any applicable Designated Material.

b. To the extent that information is produced in a computerized form rendering it impractical to label (including electronically stored information produced on electronic or magnetic media) (“**Computerized Material**”), Barkley may designate the Computerized Material as “Confidential Discovery Materials” or “Highly Confidential Discovery Materials” by cover letter, file name, or by affixing to the media a label containing an appropriate legend identifying the enclosed information as Designated Materials, as appropriate. Whenever a Receiving Party reduces Computerized Material designated as “Confidential Discovery Materials” or “Highly Confidential Discovery Materials” to hard-copy form, the Receiving Party shall mark the hard-copy form of the Computerized Material with the appropriate legend described in paragraph 11(a), above. Whenever Computerized Material is copied into another form, the Receiving Party shall also mark those forms with the appropriate legend as provided for in paragraph 11(a).

12. Late Designation of Discovery Materials. If at any time prior to the resolution of these Proceedings, Barkley determines that any Discovery Materials that were previously produced without an appropriate confidentiality designation should be designated as Confidential Discovery Materials or Highly Confidential Discovery Materials, that Barkley may

so designate by apprising all Receiving Parties in writing, and such designated portion(s) of the Discovery Material will thereafter be treated as Confidential Discovery Materials or Highly Confidential Discovery Materials, as applicable, under the terms of this Protective Order; *provided however* that if the material that was not designated has been, at the time of the later designation, previously publicly filed, no Receiving Party shall be bound by such later designation except to the extent determined by the Court upon motion of Barkley that failed to make the designation. Notwithstanding the foregoing, no Receiving Party shall be deemed to have violated this Protective Order if, prior to the notification of any later designation, such Designated Material was disclosed or used in any manner consistent with its original designation but inconsistent with its later designation.

13. Manner of Objecting to Designation of Designated Materials. Any Receiving Party who objects to any designation of confidentiality, may at any time prior to the resolution of these Proceedings serve upon counsel for Barkley designating confidentiality a written notice stating the grounds of the objection. If agreement cannot be reached promptly, counsel for the Receiving Parties and all affected persons may seek relief from the Court. Until the Court rules on such an issue, the designation of such Designated Materials shall continue to be treated according to its designation. A Receiving Party shall not be obliged to challenge the propriety of a “Confidential” or “Highly Confidential” designation at the time made, and a failure to do so shall not preclude a subsequent challenge thereto. The failure of any Receiving Party to challenge the designation by Barkley of Discovery Materials as “Confidential” or “Highly Confidential” during the discovery period shall not be a waiver of that Receiving Party’s right to object to such designation at any hearing or trial.

14. Unauthorized Disclosure of Designated Material. No Receiving Party shall disclose Designated Materials except as provided herein. Each person who has access to Discovery Material that has been designated as Designated Material shall take all necessary precautions to prevent the unauthorized or inadvertent disclosure of such material. In the event that Designated Material is disclosed to someone not authorized under the terms of this Protective Order to receive such information, counsel for the Receiving Party shall promptly upon learning of such disclosure give written notice to counsel for Barkley describing the circumstances surrounding the unauthorized disclosure.

15. Deposition Testimony – Manner of Designation. In the case of depositions, if counsel for a Party believes that a portion of the testimony given at a deposition should be Designated Material of such Party or non-Party, such testimony may be designated as appropriate by: (a) stating so orally on the record and requesting that the relevant portion(s) of testimony is so designated, or (b) providing written notice within ten (10) days of the Party's or non-Party's receipt of the final transcript from the court reporter that the relevant portion(s) of such transcript or videotape of a deposition thereof is so designated, except in the event that a hearing on related issues is scheduled to occur within ten (10) days, in which case the foregoing fourteen day period shall be reduced to five (5) days. Such designation and notice shall be made in writing to the court reporter, with copies to all other counsel, identifying the portion(s) of the transcript that is so designated. Until expiration of the aforesaid ten (10) or five (5) day period, as applicable, following receipt of the transcript by the Parties or non-Parties, all deposition transcripts and videotapes shall be considered and treated as Confidential unless otherwise designated by counsel to any Party or non-Party on the record at the deposition. Nothing in this paragraph 15 (i) shall apply to or affect the confidentiality designations on Discovery Material

entered as exhibits at depositions, or (ii) shall preclude the witness from reviewing his or her deposition transcript. No person shall be present during any deposition at which testimony concerning Designated Material is elicited unless such person is authorized under the terms of this Protective Order to receive such Designated Material, or unless Barkley consents in writing to such person being present.

16. Inadvertent Production of Privileged Discovery Material. If Barkley believes that it has inadvertently produced Discovery Material that contains information subject to a claim of attorney-client privilege or attorney work-product or other applicable privilege or protection (“**Inadvertently Disclosed Information**”), Barkley must give written notice to all Receiving Parties of such Inadvertently Disclosed Information. The inadvertent disclosure shall not constitute or be deemed a waiver or forfeiture of any claim of privilege or work-product or other applicable protection with respect to the Inadvertently Disclosed Information and its subject matter. If Barkley gives written notice of a claim of inadvertent disclosure of Inadvertently Disclosed Information, the Receiving Party shall, within five (5) business days, return or destroy all copies of the Inadvertently Disclosed Information, and provide a certification of counsel that all such information has been returned or destroyed and that it has made reasonable efforts to retrieve the Inadvertently Disclosed Material from those to whom it previously had been disclosed. Nevertheless, the Receiving Party may move the Court for an order compelling production of the Inadvertently Disclosed Information, which motion must be filed under seal. Nothing in this Protective Order shall limit the right of any Party to request an *in camera* review of the Inadvertently Disclosed Information.

17. Disclosure of Discovery Materials in Other Proceedings. If a Party is served with a subpoena or other compulsory process that seeks production or disclosure of

Discovery Materials, including that which is Designated Material, then such Party shall promptly notify Barkley and provide it with a copy of the subpoena or other compulsory process so that a sufficient opportunity is provided to Barkley to enable it to have an opportunity to appear and be heard on whether that information should be disclosed. In the absence of a court order compelling disclosure, the Receiving Party shall not be permitted to disclose any portion of the information, and if such an order is entered, the Receiving Party may only disclose that portion of the information that is legally required to be disclosed and shall inform in writing any person to whom such information is so disclosed of the confidential nature of such information.

18. Continuing Applicability of Protective Order. This Protective Order shall survive the termination of the Proceedings. The termination of the Proceedings shall not relieve the parties hereto and those persons listed in Paragraphs 5 and 6 above from the obligation of maintaining the proper treatment of Designated Material pursuant to this Protective Order. Within thirty (30) days of final resolution of the relevant Proceedings, all Receiving Parties shall return to counsel for Barkley, or destroy, all Designated Material, and all copies thereof, except that counsel may retain for its records their work product and a copy of court filings, deposition transcripts, deposition videotapes, deposition exhibits, expert reports, and exhibits introduced at any hearing, and a Receiving Party may retain Discovery Material that is auto-archived or otherwise “backed up” on electronic management and communications systems or servers, or as may be required for regulatory recordkeeping purposes; *provided* that such “backed up” documents shall be accessible only to information technology staff and internal compliance personnel, and will continue to be treated as provided in this Protective Order.

19. Use of Designated Material by Parties. Nothing herein shall be construed to limit or restrict a Party’s use or disclosure of its own Designated Material for any purpose.

20. Use of Non-Designated Material. Nothing contained herein shall impose any restrictions on the use or disclosure by a Receiving Party of documents, materials or information that (a) was already known or received by such Receiving Party by lawful means prior to acquisition from, or disclosure by, Barkley in these Proceedings, (b) was independently developed by such Receiving Party without violating its obligations hereunder, (c) is or becomes publicly known by lawful means and through no fault or act of such Receiving Party, (d) is rightfully received by such Receiving Party from a third party which has authority to provide such Designated Material without restriction as to disclosure, or (e) is not designated as Designated Material; *provided however* that nothing herein shall alter the treatment of any such information that was received pursuant to existing confidentiality arrangements, agreements, protective orders or other court orders.

21. Amendment of Protective Order. Upon good cause shown, and on notice to all Parties, any Party may move to amend the provisions of this Protective Order at any time, or all Parties may agree by written stipulation, subject to further order of the Court if applicable, to amend the provisions of this Protective Order.

22. Notice. When notice is permitted or required by the provisions hereof, such notice shall be in writing, directed to the undersigned counsel of the Party to receive such notice, at the corresponding address or email addresses listed below, or to counsel of any non-Party receiving such notice.

23. Obligations of Parties/Enforcement. Neither any provision of this Protective Order nor agreement hereto by any Party shall be construed as waiving any objections any Party may have to the production of Discovery Materials. This Court shall retain jurisdiction over all persons subject to this Protective Order to the extent necessary to enforce any

obligations arising hereunder or to impose sanctions for any contempt thereof. The Court shall retain jurisdiction to enforce and to modify this Protective Order.

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/s/ Andrew J. Demko

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Counsel to the Plan Administrator

SO ORDERED:

New York, New York

Date: May 24, 2024

s/Michael E. Wiles

THE HONORABLE MICHAEL E. WILES
UNITED STATES BANKRUPTCY JUDGE

Exhibit A

Form Agreement to be Bound

UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF NEW YORK

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	:	Chapter 11
In re	:	
	:	Case No. 22-10943 (MEW)
VOYAGER DIGITAL HOLDINGS, INC., <i>et al.</i> ,	:	
	:	(Jointly Administered)
Debtors. ¹	:	
	:	Re: Docket No. []
-----	X	

**AGREEMENT WITH RESPECT TO CONFIDENTIALITY OF DISCOVERY
MATERIAL AND INADVERTENT DISCLOSURE OF PRIVILEGED MATERIAL**

I, _____, acknowledge that I have read and understand the Protective Order in this action governing the non-disclosure of those portions of Discovery Material that have been designated as Designated Material. I agree that I will not use or disclose such Confidential Discovery Material or Highly Confidential Discovery Materials, as applicable, to anyone other than for purposes of these Proceedings and that at the conclusion of these Proceedings I will return all discovery material to the Party or attorney from whom I received it. By acknowledging these obligations under the Protective Order, I understand that I am submitting myself to the jurisdiction of the United States Bankruptcy Court for the Southern District of New York for the purpose of any issue or dispute arising hereunder and that my willful violation of any term of the Protective Order could subject me to punishment for contempt of Court.

Dated: _____, 2024

¹ The Wind-Down Debtor in these chapter 11 cases consists of Voyager Digital Holdings, Inc. (7687), Voyager Digital, Ltd. (7224); and Voyager Digital, LLC (8013). The Wind-Down Debtor's service address and principal place of business is 27777 Franklin, Suite 2500, Southfield, MI 48034.