

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY**

Caption in Compliance with D.N.J. LBR 9004-1(b)

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Attorneys for Zendesk, Inc.

In Re:

POWIN, LLC, *et al.*

Debtors¹

Chapter 11

Case No. 25-16137-MBK

Judge: Hon. Michael B. Kaplan

**OBJECTION AND RESERVATION OF RIGHTS OF ZENDESK, INC.
TO DEBTORS' SUPPLEMENTAL NOTICE OF POTENTIALLY
ASSUMED EXECUTORY CONTRACTS AND UNEXPIRED LEASES**

Zendesk Inc. ("Zendesk"), by and through its undersigned counsel, submits this objection and reservation of rights (the "Objection") to the Debtors' *Supplemental Notice of Potentially Assumed Executory Contracts and Unexpired Leases* [Docket No. 722] (the "Assumption Notice,")) and respectfully represents as follows:

¹ The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number, are: (i) Powin Project LLC [1583]; (ii) Powin, LLC [0504]; (iii) PEOS Holdings, LLC [5476]; (iv) Powin China Holdings 1, LLC [1422]; (v) Powin China Holdings 2, LLC [9713]; (vi) Charger Holdings, LLC [5241]; (vii) Powin Energy Ontario Storage, LLC [8348]; (viii) Powin Energy Operating Holdings, LLC [2495]; (ix) Powin Energy Operating, LLC [6487]; (x) Powin Energy Storage 2, Inc. [9926]; (xi) Powin Energy Ontario Storage II LP, [5787]; and (xii) Powin Canada B.C. Ltd. [2239]. The Debtors' mailing address is 20550 SW 115th Avenue Tualatin, OR 97062.



25161372508250000000000005

BACKGROUND

1. On June 9, 2025, June 10, 2025, and June 22, 2025 (the “Petition Date”) the above-captioned debtors (“Debtors”) commenced voluntary cases (the “Chapter 11 Cases”) under Chapter 11 of Title 11 of the United States Code (the “Bankruptcy Code”).

2. Upon information and belief, the Debtors remain in possession of their properties and continue to manage their businesses as debtors-in-possession in their jointly administered chapter 11 cases.

3. Prior to the Petition Date, Zendesk and the Debtors entered into a master services agreement (the “Contract”) whereby Zendesk, a customer service platform, provides call center services to the Debtors via its product, Zendesk Talk. This product enables Debtor’s customer support teams to handle voice calls to/from their customers directly within the Zendesk software.

4. On July 17, 2025, the United States Bankruptcy Court for the District of New Jersey (the “Court”) entered the *Order (I) Designating a Stalking Horse Bidder and Approving Stalking Horse Bidder Protections, (II) Approving Bidding Procedures by Which Interested Parties May Bid and an Auction Sale Format in Connection With the Sale of Substantially All of the Debtors’ Assets, (III) Approving Form of Asset Purchase Agreement, (IV) Approving Form of Notice to be Provided to Interested Parties, (V) Authorizing the Assumption and Assignment of Assumed Contracts and Notice Procedures Thereto, (VI) Scheduling a Court Hearing to Consider Approval of the Sale to the Highest and Best Bidder, and (VII) Authorizing the Sale of the Debtors’ Property Free and Clear of All Causes of Action and Claims* [Docket No. 413] (the “Bidding Procedures Order”).

5. On July 30, 2025, the Debtors conducted the Auction in accordance with the Bidding Procedures. Following the Auction, the Debtors filed the *Notice of Winning Bidders*

[Docket No. 591], declaring FlexGen Power Systems, LLC (“FlexGen”) as the Winning Bidder for the Purchased Assets (as defined in the FlexGen Asset Purchase Agreement, attached as Exhibit B to the Notice of Winning Bidders.

6. On August 6, 2025, the Court held a Sale Hearing and approved the sale to FlexGen. The Court subsequently entered the *Order (I) Authorizing the Debtors to Enter into and Perform Under the FlexGen Power Systems, LLC Asset Purchase Agreement, (II) Approving the Sale of Purchased Assets Free and Clear of All Liens, Claims, Encumbrances, and Interests, (III) Authorizing the Assumption and Assignment of the Assumed Contracts to Purchaser and Establishing Cure Amounts Related Thereto in Accordance with the Assumption and Assignment Procedures, and (IV) Granting Related Relief* [Docket No. 751] (the “Sale Order”).

7. On the Assumption Notice, the Debtors identified additional contracts that the Debtors may assume and assign to FlexGen. Zendesk is listed on Exhibit A to the Assumption Notice with a proposed cure amount of \$1,802.

8. As of the date of this Objection, the actual Cure Amount due under the Contract is at least \$5,819.86 (the “Actual Cure Amount”). See Exhibit A attached hereto.

OBJECTION AND RESERVATION RIGHTS

9. Zendesk hereby objects to the assumption of the Contract to the extent that: (i) the Actual Cure Amount is not paid in full in connection with such assumption; or (ii) such assumption fails to otherwise comply with Bankruptcy Code § 365.

10. Section 365 of the Bankruptcy Code allows a debtor-in-possession to assume or reject executory contracts and unexpired leases. 11 U.S.C. § 365(a). Assumption of an executory contract or unexpired lease encumbers the debtor with certain obligations, namely that the counterparty be made whole. *In re National Gypsum Co.*, 208 F.3d 498, 506 (5th Cir. 2000)

(“Section 365 ‘allows a debtor to continue in a beneficial contract provided, however, that the other party is made whole at the time of the debtor’s assumption of said contract.’”); *see also* 11 U.S.C. § 365(b).

11. Section 365(b) of the Bankruptcy Code provides that an unexpired lease cannot be assumed by a debtor unless the debtor cures any default under the contract and provides adequate assurance of present and future performance under the lease. 11 U.S.C. § 365(b)(1). *See In re G-I Holdings, Inc.*, 580 B.R. 388, 420-21 (Bankr. D.N.J. 2018) (“In order to assume such an agreement, the debtor-in-possession must cure defaults and provide assurance of future performance”); *In re Carlisle Homes, Inc.*, 103 B.R. 524, 538 (Bankr. D.N.J. 1988) (noting same). *See also Adventure Resources, Inc. v. Holland*, 137 F.3d 786, 798 (4th Cir. 1998) (“That the obligations of an executory contract be accepted along with its benefits is made plain in the Bankruptcy Code’s requirement that, as conditions of the contract’s assumption, the debtor cure any existing default and compensate all non-debtor parties for actual pecuniary losses that have resulted therefrom.”). The requirement to cure includes both pre- and post-petition defaults. *See In re Burger Boys*, 94 F.3d 755, 763 (2d Cir. 1996).

12. Further, it is well settled that “[w]here the debtor assumes an executory contract or unexpired lease, it must assume the entire agreement, *cum onere* – the debtor accepts both the obligations and the benefits of the executory contract.” *In re National Gypsum Co.*, 208 F.3d 498, 506 (5th Cir. 2000) (citing *National Labor Relations Board v. Bildisco and Bildisco*, 465 U.S. 513, 531, 104 S.Ct. 1188 (1984)). *In re Jamesway Corp.*, 201 B.R. 73, 76 (Bankr. S.D.N.Y. 1996) (“[e]xcept as otherwise provided in the Bankruptcy Code, an executory contract or unexpired lease is assumed *cum onere*.”); *In re Texaco, Inc.*, 254 B.R. 536, 550 (Bankr. S.D.N.Y. 2000) (“The law is clear that a debtor who assumes a lease or other executory contract assumes the contract *cum*

onere, without any diminution in its obligations or impairment of the rights of the lessor in the present or the future.”); *In re Kopel*, 232 B.R. 57, 64 (Bankr. E.D.N.Y. 1999) (“It is axiomatic that an executory contract must be assumed *cum onere*. A debtor cannot simply retain the favorable and excise the burdensome provisions of an agreement.”).

13. As noted above, the Debtors are in monetary default under the Contract in an amount of at least \$5,819.86. *See* 11 U.S.C. § 365(b)(1)(B). Pursuant to § 365(b), the Contract cannot be assumed unless the Actual Cure Amount (and any other amounts then-due but not paid) are promptly paid to Zendesk in connection with such assumption. 11 U.S.C. § 365(b)(1)(A)-(B).

RESERVATION OF RIGHTS

14. Zendesk reserves its rights to assert any additional objections related to the assumption or assignment of the Contract, including amending the Actual Cure Amount, making additional requests related to adequate assurance of future performance under Bankruptcy Code § 365 and to assert that any other amounts that come due under the Contract prior to the time of assignment and assumption must also be cured, or to otherwise amend this Objection for any reason.

RELIEF REQUESTED

15. For the foregoing reasons, Zendesk respectfully requests that the Court (a) sustain the Objection; (b) require that any order authorizing the assignment of the Contract affirmatively require payment of the Actual Cure Amount and all other amounts due under the Contract; and (c) grant Zendesk such other and further relief as the Court deems just and proper.

Dated: August 25, 2025

FOX ROTHSCHILD LLP

By: /s/ Michael R. Herz
Michael R. Herz
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49 Market Street
Morristown, NJ 07960
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mherz@foxrothschild.com
azammiello@foxrothschild.com

Counsel to Zendesk, Inc.

Exhibit “A”



INVOICE

Zendesk, Inc.
181 Fremont St,
17th Floor
San Francisco, CA
94105

(888) 670-4887
ar@zendesk.com

Invoice Date: August 09, 2025
Invoice Number: INV13028253
Purchase Order Number:

Account Number: 2032759
Account Information: Powin
20550 SW 115th Ave, Tualatin

Salen
Oregon
97062
United States

Account Currency: USD
Payment Terms: Net 30
Due Date: September 08, 2025

CHARGE SUMMARY

Product	Quantity	Unit Price	UOM	Subtotal	Tax	Total
Zendesk Suite - Professional Subscription 08/09/2025-09/08/2025 Month powin	39	\$149.00	Per Agent	\$5,811.00	\$0.00	\$5,811.00

INVOICE TOTALS

WIRE INSTRUCTIONS JP Morgan Chase New York, NY 10017 Bank Routing Number: 021000021 Swift Code: CHASUS33 Account Name: Zendesk, Inc. Account Number: 366968821 ACH INSTRUCTIONS Bank Routing Number: 322271627 Account Name: Zendesk, Inc. Account Number: 366968821 MAIL CHECK TO Zendesk, Inc. P.O. Box 734287 Chicago, IL 60673-4287 OVERNIGHT OR COURIER JP Morgan Chase Attn: Zendesk Inc., Box 734287 131 S Dearborn, 6th Floor Chicago, IL 60603 Zendesk W-9 Please include the invoice number(s) in your remittance as a payment reference to ensure accurate and timely posting of funds.	Subtotal:	\$5,811.00
	Tax:	\$0.00
	Total:	\$5,811.00
	Payments Applied:	\$0.00
	Adjustments Applied:	\$0.00
	Invoice Balance: * See Related Transactions below	\$5,811.00

For questions about your invoice, email ar@zendesk.com.

TRANSACTIONS ASSOCIATED TO THIS INVOICE

Transaction Date	Transaction Number	Transaction Type	Applied Amount
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Any reference to a purchase order in this invoice or any associated Service Order is solely for your convenience in record keeping, and no such reference or any delivery of services to you following receipt of any purchase order shall be deemed an acknowledgement of or agreement to any terms or conditions associated with any such purchase order or in any way be deemed to modify, alter, supersede or supplement the Master Subscription Agreement as defined in your Service Order, or, if you are not a party to a Service Order or such term is not therein defined, consisting exclusively of your Service Order(s), if any, and either (i) the Agreement or (ii) if you and Zendesk are parties to a separate agreement governing your access to and use of a Service (as defined in the Agreement) that is evidenced in a written agreement mutually executed and delivered by you and Zendesk, the terms and conditions of such separate agreement). The terms and conditions of the Agreement are the exclusive agreement of the parties with respect to subject matter of the Agreement, and no other terms or conditions shall be binding upon Zendesk or otherwise have any force or effect.

The terms and conditions of the Agreement (as currently in effect) for any Service (as defined in the Agreement) is between you and Zendesk. Any current Service Order (as defined in the Agreement) shall exclusively govern the relationship and agreement between the parties related to your subscription to any Services and supersede any other agreement/purported terms of any type among you and Zendesk, including any purchase order attached hereto or referenced herein. No modification of this invoice by you or any terms or conditions of any purchase order or other similar document shall have any force or effect regardless of any statement to the contrary in such modification, purchase order or other document.

Payments made by credit card or debit card are billed and processed by Zendesk, Inc. if denominated in U.S. dollars and by Zendesk International Ltd (Registration No. 519184) if denominated in a currency other than the U.S. dollar. To the extent that any such entity billing or processing this transaction (the, "Zendesk Payment Agent") is not Zendesk, Inc., the billing entity is acting solely as a billing and processing agent for and on behalf of Zendesk, Inc. for the economic benefit of Zendesk, Inc. in its role as principal and the Zendesk Payment Agent has no interest in the payments. You are contracting with and the Service is provided and delivered by Zendesk, Inc. as identified in the Agreement.



zendesk

INVOICE

Zendesk, Inc.
181 Fremont St,
17th Floor
San Francisco, CA
94105

(888) 670-4887
ar@zendesk.com

Invoice Date: July 28, 2025
Invoice Number: INV12998778
Purchase Order Number:

Account Number: 2032759
Account Information: Powin
20550 SW 115th Ave, Tualatin

Salen
Oregon
97062
United States

Account Currency: USD
Payment Terms: Net 30
Due Date: August 27, 2025

CHARGE SUMMARY

Product	Quantity	Unit Price	UOM	Subtotal	Tax	Total
Talk Usage Subscription 06/30/2025-07/08/2025 Month powin	5,483	\$0.00	Voice	\$5.48	\$0.00	\$5.48
Talk Usage Subscription 07/09/2025-07/27/2025 Month powin	3,376	\$0.00	Voice	\$3.38	\$0.00	\$3.38

INVOICE TOTALS

WIRE INSTRUCTIONS JP Morgan Chase New York, NY 10017 Bank Routing Number: 021000021 Swift Code: CHASUS33 Account Name: Zendesk, Inc. Account Number: 366968821 ACH INSTRUCTIONS Bank Routing Number: 322271627 Account Name: Zendesk, Inc. Account Number: 366968821 MAIL CHECK TO Zendesk, Inc. P.O. Box 734287 Chicago, IL 60673-4287 OVERNIGHT OR COURIER JP Morgan Chase	Subtotal:	\$8.86
	Tax:	\$0.00
	Total:	\$8.86
	Payments Applied:	\$0.00
	Adjustments Applied:	\$0.00
	Invoice Balance: * See Related Transactions below	\$8.86

Attn: Zendesk Inc., Box 734287
131 S Dearborn, 6th Floor
Chicago, IL 60603
[Zendesk W-9](#)
Please include the invoice number(s) in your remittance as a payment
reference to ensure accurate and timely posting of funds.

For questions about your invoice, email ar@zendesk.com.

TRANSACTIONS ASSOCIATED TO THIS INVOICE

Transaction Date	Transaction Number	Transaction Type	Applied Amount
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Any reference to a purchase order in this invoice or any associated Service Order is solely for your convenience in record keeping, and no such reference or any delivery of services to you following receipt of any purchase order shall be deemed an acknowledgement of or agreement to any terms or conditions associated with any such purchase order or in any way be deemed to modify, alter, supersede or supplement the Master Subscription Agreement as defined in your Service Order, or, if you are not a party to a Service Order or such term is not therein defined, consisting exclusively of your Service Order(s), if any, and either (i) the Agreement or (ii) if you and Zendesk are parties to a separate agreement governing your access to and use of a Service (as defined in the Agreement) that is evidenced in a written agreement mutually executed and delivered by you and Zendesk, the terms and conditions of such separate agreement). The terms and conditions of the Agreement are the exclusive agreement of the parties with respect to subject matter of the Agreement, and no other terms or conditions shall be binding upon Zendesk or otherwise have any force or effect.

The terms and conditions of the Agreement (as currently in effect) for any Service (as defined in the Agreement) is between you and Zendesk. Any current Service Order (as defined in the Agreement) shall exclusively govern the relationship and agreement between the parties related to your subscription to any Services and supersede any other agreement/purported terms of any type among you and Zendesk, including any purchase order attached hereto or referenced herein. No modification of this invoice by you or any terms or conditions of any purchase order or other similar document shall have any force or effect regardless of any statement to the contrary in such modification, purchase order or other document.

Payments made by credit card or debit card are billed and processed by Zendesk, Inc. if denominated in U.S. dollars and by Zendesk International Ltd (Registration No. 519184) if denominated in a currency other than the U.S. dollar. To the extent that any such entity billing or processing this transaction (the, "Zendesk Payment Agent") is not Zendesk, Inc., the billing entity is acting solely as a billing and processing agent for and on behalf of Zendesk, Inc. for the economic benefit of Zendesk, Inc. in its role as principal and the Zendesk Payment Agent has no interest in the payments. You are contracting with and the Service is provided and delivered by Zendesk, Inc. as identified in the Agreement.