Case No. 22-00008-LHR

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re Speedcast International Limited, *et al.*,
Reorganized Debtors.

Inmarsat Global Limited, Inmarsat Solutions B.V., Inmarsat Maritime Ventures, Ltd., Inmarsat Inc., and Inmarsat Solutions AS Norway,
Appellants,
v.
Speedcast International Limited,
Appellee.

On Appeal from the U.S. Bankruptcy Court for the Southern District of Texas
Case No. 20-32243 (Isgur, J.)

BRIEF OF APPELLEE

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CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule 8012 of the Federal Rules of Bankruptcy Procedure, Appellee Speedcast International Limited makes the following disclosures:

#	Debtors	Parent Corporation	Publicly Held Corporation Owning 10%
1.	Speedcast International Limited	None	None
2.	CapRock Communications (Australia) Pty Ltd	Speedcast Australia Pty Ltd.	None
3.	CapRock Comunicações do Brasil Ltda.	CapRock Participações do Brasil Ltda	None
4.	CapRock Communications Pte. Ltd.	None	None
5.	CapRock Participações do Brasil Ltda.	Spacelink Systems II, LLC	None
6.	CapRock UK Limited	Speedcast UK Holdings Limited	None
7.	CCI Services Corp.	Speedcast Communications Inc.	None
8.	Cosmos Holdings Acquisition Corp.	N/A	None
9.	DKH Holdings C.V.	Globecomm Network Services Corporation and Globecomm International LLC	None
10.	Evolution Communications Group Limited	DKH Holdings C.V.	None
11.	Globecomm Europe B.V.	Speedcast Netherlands B.V.	None

#	Debtors	Parent Corporation	Publicly Held Corporation Owning 10%
12.	Globecomm International LLC	Globecomm Network Services Corporation	None
13.	Globecomm Network Services Corporation	Speedcast Americas Inc.	None
14.	HCT Acquisition, LLC	None	None
15.	Hermes Datacommunications International Limited	Speedcast UK Holdings Limited	None
16.	Maritime Communication Services, Inc.	Speedcast Americas Inc.	None
17.	NewCom International, Inc.	Speedcast Americas Inc.	None
18.	Oceanic Broadband Solutions Pty Ltd	Speedcast Australia Pty Ltd.	None
19.	Satellite Communications Australia Pty Ltd	Speedcast Australia Pty Ltd.	None
20.	SpaceLink Systems II, LLC	Speedcast Holdings III LLC	None
21.	SpaceLink Systems, LLC	Speedcast Communications Inc.	None
22.	Speedcast Americas Inc.	Speedcast Holdings III LLC	None
23.	Speedcast Australia Pty Ltd	Speedcast Bidco (Australia) Pty Limited	None
24.	Speedcast Bidco (Australia) Pty Limited	Speedcast Holdco (Australia) Pty Limited	None
25.	Speedcast Canada Limited	Speedcast Group Holdings Pty Ltd.	None
26.	Speedcast Communications, Inc.	Speedcast Americas Inc.	None

#	Debtors	Parent Corporation	Publicly Held Corporation Owning 10%
27.	Speedcast Cyprus Limited	Speedcast Holdings III LLC	None
28.	Speedcast France SAS	Speedcast UK Holdings Limited	None
29.	Speedcast Group Holdings Pty Ltd.	Speedcast Bidco (Australia) Pty Limited	None
30.	Speedcast Holdco (Australia) Pty. Limited	Speedcast Holdings III LLC	None
31.	Speedcast Holdings LLC	None	None
32.	Speedcast Holdings II LLC	Speedcast Holdings LLC	None
33.	Speedcast Holdings III LLC	Speedcast Holdings II LLC	None
34.	Speedcast Limited	Speedcast Holdings III LLC	None
35.	Speedcast Managed Services Pty Ltd.	Speedcast Australia Pty Ltd.	None
36.	Speedcast Netherlands B.V.	Speedcast Limited	None
37.	Speedcast Norway AS	Speedcast UK Holdings Limited	None
38.	Speedcast Singapore Pte. Ltd.	Speedcast Holdings III LLC	None
39.	Speedcast UK Holdings Limited	Speedcast Holdings III LLC	None
40.	Telaurus Communications LLC	Maritime Communication Services, Inc.	None

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BEFORE THE HONORABLE UNITED STATES DISTRICT COURT:

Speedcast International Limited ("**Speedcast**" or "**Appellee**") files this Response to Appellants' Brief (Dkt. No. 7)[1] and respectfully states the matters set forth below.

I. NATURE OF PROCEEDINGS AND RESPONSE SUMMARY

On April 23, 2020 (the "**Petition Date**"), Speedcast and each of its debtor affiliates commenced a voluntary case under chapter 11 of the Bankruptcy Code. Appellants Inmarsat Global Limited, Inmarsat Solutions B.V., Inmarsat Maritime Ventures, Ltd., Inmarsat Inc., Inmarsat Solutions (US) Inc., Inmarsat Solutions (Canada) Inc., and Inmarsat Solutions AS Norway (collectively, "**Inmarsat**" or "**Appellants**") are creditors in the underlying chapter 11 proceedings.

On April 9, 2021, Appellants filed an Application for Allowance of Administrative Expense Claim ("**Application**") seeking "Shortfall Amounts" allegedly owed under the parties' Strategic Alliance Agreement ("**SAA**"), which was terminated as of January 1, 2021 in the parties' global commercial transaction and

[1] "Dkt. No." refers to the docket entries in this bankruptcy appeal. "Bankr. Dkt. No." refers to the docket entries in bankruptcy case no. 20-32243. Speedcast and Inmarsat filed certain exhibits under seal in the Bankruptcy Court with respect to the Application. These sealed documents are found at Bankr. Dkt. Nos. 951, 1631, and 1635, which were separately transmitted to this Court per the Court's March 14, 2022 Order (Dkt. No. 9). Because the documents are sealed, they are included in the publicly filed Record on Appeal ("**ROA**") with the designation "Filed Under Seal." *See, e.g.*, ROA at 561–67, 595–608. To assist the Court and avoid confusion when citing sealed documents, Speedcast will include citations to both the ROA and the appropriate Bankr. Dkt. Nos. from which the sealed documents were transmitted.

settlement. Appellants' App. at A0194–A0207, A0208 ¶ 1 (Dkt. No. 7-1). Speedcast filed a Limited Objection (Appellants' App. at A0208–A0216), as supplemented (App.[2] at A-010–019), and the parties stipulated to a majority of the underlying facts and the universe of controlling documents. App. at A-001–009, A-010–019.

As the Bankruptcy Court and both parties acknowledge, this is a narrow, straightforward issue of contract interpretation that applies express, unambiguous contract terms to the parties' stipulated facts. App. at A-001–009, A-010. Specifically, the interpretation of "Released Claims" and "Permitted Claims," each of which are expressly defined in the January 1, 2021 Deed of Termination and Release (the "**Termination Agreement**"), controls this dispute. App. at A-013–015 ¶¶ 8–9, 11.

This Court need only address (and confirm) what the Bankruptcy Court found in its December 21, 2021 memorandum opinion after considering the parties' briefings and oral arguments, i.e., Inmarsat must have delivered services to Speedcast under the SAA for any claim for payment to survive Inmarsat's otherwise broad release of claims. Nevertheless, Inmarsat seeks payment in the form of a contractual penalty for services not delivered, which directly contradicts the narrow "Permitted Claims" exception as expressly defined in the parties' agreement.

[2] All references to "App." refer to Appellee's Appendix.

Inmarsat's belated attempt to retrade the parties' unambiguous written agreement should not disturb the Bankruptcy Court's correct interpretation of "Permitted Claims" in the Termination Agreement.

II. FACTUAL BACKGROUND

The parties' relationship, the governing agreements, and the context surrounding the parties' prior global settlement and asset sale agreement are undisputed. *See* App. at A-001–009.

Prior to the Petition Date and thereafter, Speedcast purchased Inmarsat's satellite services under various master service agreements ("**MSAs**").[3] App. at A-002 ¶ 3. The MSAs set forth the services, the prices for such services, and the parties' respective obligations. *See generally* Hong Kong MSA, ROA at 564, Bankr. Dkt. Nos. 1632-5, 1635; Cyprus MSA, ROA at 565, Bankr. Dkt. Nos. 1632-6, 1635. Speedcast then re-sold those services to its end customers. App. at A-002 ¶ 2.

When Inmarsat launched its FleetXpress services ("**FX Services**") in 2016, the parties entered into the SAA. App. at A-002 ¶ 4. The SAA provided for a 30% discount on pricing for FX Services delivered under the MSAs to align the parties'

[3] The MSAs include, among others, the Master Supply Agreement between Inmarsat Global Limited and Speedcast Limited, effective November 1, 2018 ("**Hong Kong MSA**") (ROA at 564, Bankr. Dkt. Nos. 1632-5, 1635) and the Global Xpress Subscription Services Agreement between Inmarsat Global Limited and SRH Marine Electronics S.A., dated April 16, 2015 ("**Cyprus MSA**") (ROA at 565, Bankr. Dkt. Nos. 1632-6, 1635).

business interests and stimulate growth for Inmarsat's FX Services. App. at A-002–003 ¶ 4. Separately, if Speedcast did not purchase and re-sell the minimum FX Services based on annual targets provided for in the SAA, Speedcast owed certain "Shortfall Amounts" to Inmarsat in the form of a contractual penalty. App. at A-003 ¶ 6.

In June 2020, following Speedcast's continued difficulties in meeting its performance targets and anticipating it could not meet them going forward after the Petition Date, Inmarsat and Speedcast began discussing various options regarding their go-forward relationship. Appellants' App. at A0005–A0006 ¶¶ 10, 12; App. at A-004 ¶ 8, and A-012–013 ¶¶ 4–5. The parties discussed terminating the existing contracts, renegotiating those agreements, or transferring certain Speedcast customers to Inmarsat through a negotiated transaction. App. at A-004–005 ¶¶ 8–9; Appellants' App. at A0006 ¶ 12.

After months of negotiations, the parties entered into an Asset Sale Agreement and other related agreements to effect the sale of certain assets and assignment of related Speedcast customer contracts—including most of Speedcast's FX and other Inmarsat maritime services customers—in exchange for an agreed payment from Inmarsat and a mutual release of claims between the parties ("**Global Settlement**"). App. at A-004–005 ¶ 9.

As part of the Global Settlement, the parties entered into the Termination Agreement, which terminated the vast majority of the parties' then-existing agreements, including the SAA, numerous MSAs, and all corresponding obligations, as of January 1, 2021 ("**Effective Date**"). App. at A-005 ¶ 10; Termination Agreement § 1.1, ROA at 563, Bankr. Dkt. Nos. 1632-4, 1635 (defining "Existing Agreement" to include the SAA, including any amendments thereto). In the Termination Agreement, Inmarsat expressly agreed to:

> ***absolutely, irrevocably and unconditionally forever release*** and discharge each Speedcast Group member from . . . ***any Released Claims ever held*** by that Inmarsat Group Member against the relevant Speedcast Group Member or their respective bankruptcy estate(s) arising out of or relating to the Existing Agreements whether arising prior to, on or after the Effective Time . . . .

Termination Agreement § 2.6 (emphasis added).

"Released Claims" broadly included "all present, past, and future claims, actions, causes of action . . . whether known or unknown . . . disputed or undisputed, based on law or equity . . . existing at any time, whether asserted or unasserted after the Effective Date." Termination Agreement § 1.1.

Because the parties anticipated services to remain ongoing under the Hong Kong MSA—the sole "Surviving Agreement"—and other MSAs after the Effective Date through December 31, 2020, they carved out a narrow exception to the otherwise broadly defined "Released Claims" to capture claims for payments

accrued but not yet paid by Speedcast for those ongoing services.[4] App. at A-015 ¶ 12; Appellants' Br. at 10. The Termination Agreement defines the limited exception for "Permitted Claims" to only include:

> any claims for payment by an Inmarsat Entity ***for services delivered*** by the relevant Inmarsat Entity to a Speedcast Entity after [the Petition Date] ***under*****, and*** ***otherwise on the terms of, any Existing Agreement*** or the Surviving Agreement . . . .

Termination Agreement § 1.1 (emphasis added).

The parties agree, and the Bankruptcy Court found, that no Inmarsat services were ever delivered under the SAA and that Inmarsat's claim for payment of the Shortfall Amounts arises solely under the SAA. App. at A-002–004 ¶¶ 3–7; Appellants' App. at A0246.

III. ISSUE PRESENTED

Whether the Bankruptcy Court correctly held as a matter of law that "Shortfall Amounts" under the SAA do not meet the Termination Agreement's narrow exception for "Permitted Claims" and were, therefore, released as a part of the Global Settlement?[5]

[4] "Permitted Claims" as defined also allowed for claims arising from older invoices for Inmarsat services previously delivered under other Existing Agreements (e.g., the Cyprus MSA) that had been accrued but remained in accounts payable. App. at A-015 ¶ 12, A-024 ¶ 17.

[5] Because the parties agree that this is a narrow, limited issue of contract interpretation (Appellants' Br. at 3), any purported "issues" of what the Bankruptcy

IV. ARGUMENT SUMMARY

As explained in Appellants' Brief, the parties' Global Settlement included the assignment of certain Speedcast customer contracts and other benefits to Inmarsat in exchange for broad, mutual releases and waivers of claims—past, present, and future. App. at A-004–005 ¶¶ 8–9; Appellants' Br. at 8–10. Because Inmarsat continued to deliver certain services to Speedcast through the end of 2020, there was a narrow carveout to allow for payment of certain "Permitted Claims" in the parties' Termination Agreement. This included, solely, "claims for payment by an Inmarsat entity ***for services delivered*** . . . after 23 April 2020 ***under, and otherwise on the terms of***, any Existing Agreement or the Surviving Agreement." Termination Agreement § 1.1 (emphasis added).

The parties agree that Inmarsat's claim for Shortfall Amounts arises only under the SAA—an "Existing Agreement"—and that Inmarsat's services were delivered only under the MSAs. Faced with those facts and in an effort to alter the parties' agreement, Inmarsat would have the Court interpret, or rewrite, the limited definition of "Permitted Claims" to ignore the term "under" as well as the conjunctive nature of the word "and." As explained below, there is no legal support or contractual basis for this approach. Also significant, "Shortfall Amounts" were

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Court failed to consider are irrelevant under the *de novo* standard of review. *Gonzalez v. Denning*, 394 F.3d 388, 392 (5th Cir. 2004).

amounts owed by Speedcast to Inmarsat in the event certain services were not delivered (i.e., if Speedcast failed to meet annual targets on FX Services). For this additional reason, Inmarsat's claim for "Shortfall Amounts" directly conflicts with the Termination Agreement's express terms. Accordingly, Inmarsat cannot recover these "Shortfall Amounts" because they were expressly released in the Termination Agreement as part of the parties' Global Settlement.

Inmarsat's other equity-based arguments likewise fail. As the Bankruptcy Court correctly found, there is no provision in any of the parties' agreements, including the SAA, which allows Inmarsat to claw back the 30% unused discount previously agreed to between the parties but later released. For all of these reasons, this Court should affirm the Bankruptcy Court's ruling that enforced Inmarsat's general release of claims, including claims for payment for services that were not delivered.

V. ARGUMENT

A. Standard of Review

An appeal from the Bankruptcy Court "shall be taken in the same manner as appeals in civil proceedings generally are taken to the courts of appeals from the district courts." 28 U.S.C. § 158(c)(2). "Contract interpretation is a purely legal issue." *Gonzalez*, 394 F.3d at 392. Because the parties agree that the issue on appeal hinges on the Bankruptcy Court's interpretation of the Termination Agreement's "Permitted Claims" definition, a *de novo* standard of review applies. The Court

reviews the Bankruptcy Court's legal conclusions *de novo* but may only disregard a fact finding made by the Bankruptcy Court if it is clearly erroneous.[6] *In re Perry*, 345 F.3d 303, 309 (5th Cir. 2003).

B. Services Must Be Delivered Under And Otherwise On The Terms Of An Existing Agreement To Qualify As A "Permitted Claim"

The parties agree that Inmarsat's FX Services were delivered under the MSAs. Appellants' Br. at 5; App. at A-002–003 ¶¶ 3–4, Appellants' App. at A0244. Nowhere in the record, including in Appellants' Brief, do the parties argue that Inmarsat delivered services under the SAA.[7] As such, Inmarsat's purported claim to "Shortfall Amounts" under the SAA fails.

"Released Claims" was broadly defined in the Termination Agreement to include:

> other than the Permitted Claims, ***any and all claims, actions, causes of action***, choses in action, suits, debts . . . based in law or equity, including under the US Bankruptcy Code, whether direct, indirect,

[6] A factual finding is not clearly erroneous if it plausible in light of the record read as a whole. *In re Ramba, Inc.*, 416 F.3d 394, 402 (5th Cir. 2005). Here, the Bankruptcy Court determined that services were delivered under the various MSAs and that "no services were delivered under the [SAA]." Appellants App. at A0246. Under the clearly erroneously standard, the Court "may [not] weigh the evidence anew" and may only set aside the Bankruptcy Court's findings if it is "left with the definite and firm conviction that a mistake has been committed." *In re Perry*, 345 F.3d at 309 (internal quotations marks and citation omitted).

[7] Appellants are careful to note only that services were "priced" and Speedcast "paid" for such services under the SAA. *See* Appellants' Br. at 7–8.

> derivative, or otherwise, ***existing at any time, whether asserted or unasserted at the Effective Date***.

Termination Agreement § 1.1 at 6 (emphasis added).[8]

The Termination Agreement expressly defines "Permitted Claims" as a narrow exception of "Released Claims" to include only those claims for payment:

> for ***services delivered*** by the relevant Inmarsat Entity to a Speedcast Entity after 23 April 2020 ***under, and otherwise on the terms of, any Existing Agreement*** or the Surviving Agreement . . . .

Termination Agreement § 1.1 at 5 (emphasis added). Accordingly, it is not enough that FX Services be delivered only "on the [price] terms of" an Existing Agreement, as Appellants argue. Instead, the Termination Agreement unambiguously requires that services be delivered under and on the terms of any Existing Agreement. To read the phrase in any other manner would either (a) create an ambiguity in the term "and" that does not otherwise exist or (b) render the words "under, and," or its entire parenthetical clause, meaningless. Basic principles of contract construction prohibit either result.

First, the phrase "under, and otherwise on the terms of" an Existing Agreement is, without question, conjunctive. The contract's use of "and" requires that services be delivered both "under" and "otherwise on the terms of" an Existing Agreement to qualify as a Permitted Claim. *Sasson v. TLG Acquisition LLC*, 127

[8] Speedcast notes that the Termination Agreement is governed by New York law. Termination Agreement § 8.6.

A.D. 3d 480, 481 (1st Dep't 2015) (explaining that "because there is no ambiguity in the word 'and' . . . there is no reason to resort to rules of contract construction based on contractual provisions or context"); *Progressive Ne. Ins. Co. v. State Farm Ins. Co.*, 81 A.D.3d 1376, 1378 (4th Dep't 2011) (emphasis added) (holding that use of the word "and" in a contract is unambiguously conjunctive and interpreting the phrase as disjunctive would be a "strained, unnatural and unreasonable" interpretation contrary to "the plain language of th[e] sentence"); *Maxwell v. State Farm Mut. Auto. Ins. Co.*, 92 A.D.2d 1049, 1050 (3d Dep't 1983) (emphasis added) (holding that use of the word "and" in contract clause required satisfying both conditions because words are "given their ordinary meaning" and "use of the conjunctive 'and'" is "susceptible to but one interpretation"). The Bankruptcy Court, therefore, correctly interpreted "Permitted Claims" by finding no reason to depart from the ordinary definition of "and" as conjunctive. Appellants' App. at A0245.

Inmarsat's argument that "and" should be read as "several" is unpersuasive. Relevant case law, including Inmarsat's cited authority,[9] overwhelmingly shows that

[9] Inmarsat's case law is inapposite because it involves circumstances where interpreting "and" as anything other than disjunctive would lead to an absurd result. *See, e.g.*, *Murphy v. Long Island Oyster Farms, Inc.*, 112 A.D.2d 276, 277 (2d Dep't 1985) and *Philip Servs. Corp. v. City of Seattle*, Case No. CIV.A. H-06-2518, 2007 WL 703713, at *7 (S.D. Tex. Mar. 2, 2007) (involving interpretation of "and" in the context of a listing of categories and holding that "and" is treated separately and individually because any other interpretation would lead to an absurd result).

the word "and" is presumed to be conjunctive unless such interpretation defies common sense. *See In re Velazquez*, 660 F.3d 893, 897 (5th Cir. 2011) ("[T]he word 'and' is often construed as conjunctive."); *Bruce v. First Fed. Sav. and Loan. Ass'n of Conroe, Inc.*, 387 F.2d 712, 715 (5th Cir. 1988) ("The word 'and' is therefore to be accepted for its conjunctive connotation rather than as a word interchangeable with 'or' except where strict grammatical construction will frustrate clear legislative intent."); *Am. Bankers Ins. Grp. v. U.S.*, 408 F.3d 1328, 1332 (11th Cir. 2005) ("[U]nless the context dictates otherwise, the word 'and' is presumed to be used in its ordinary sense, that is, conjunctively."); *Crank v. Fed. Emergency Mgmt. Agency*, Case No. CV 18-410-BAJ-EWD, 2019 WL 9899509, at *3 (M.D. La. Aug. 8, 2019). *Cf. Bd. of Ins. Comm'rs of Tex. v. Guardian Life Ins. Co. of Tex.*, 180 S.W.2d 906, 908 (Tex. 1944) (noting that "and" and "or" are typically not interchangeable, but "and" may be interpreted as "or" where necessary to "effectuate the manifest intention of the user."). Accordingly, and because Inmarsat did not (and cannot) argue that services were provided both under the MSAs and the SAA—where the purported claim for "Shortfall Amounts" arises—such claims were released as part

Greenwich Capital Fin. Products, Inc. v. Negrin, 74 A.D.3d 413, 415 (1st Dep't 2010) is also unpersuasive, as it involves interpreting in tandem a guaranty and loan agreement that defined the two categories of recourse obligations as separate rather than conjunctive conditions.

of the parties' Global Settlement in the Termination Agreement's broad definition of "Released Claims."

Second, Inmarsat interprets "Permitted Claims" as only requiring that services be delivered on the terms of (or "across") an Existing Agreement. Accepting this interpretation would render meaningless the use of the terms "under" and "and" in the definition of Permitted Claims and is, therefore, prohibited by basic contract interpretation principles. *See, e.g.*, *Smith v. City of Buffalo*, 120 A.D.3d 1588, 1589 (4th Dep't 2014) (stating that "a contract must be read as a whole to give effect and meaning to every term" and "should be interpreted in a way [that] reconciles all [of] its provisions" (internal quotation marks and citation omitted) (alterations in original)); *see also SCA Promotions, Inc. v. Yahoo!, Inc.*, 868 F.3d 378, 382 (5th Cir. 2017) (stating that the court must "harmonize and give effect to all of [the contract's] provisions so that none will be rendered meaningless" (internal quotation marks and citation omitted)).

Third, Inmarsat's interpretation directly conflicts with the provision's syntax. The phrase "and otherwise on the terms of" is a parenthetical phrase, which only provides explanatory information without changing the meaning or grammar of the sentence. *U.S. Shale Energy II, LLC v. Laborde Props., L.P.*, 551 S.W.3d 148, 154 (Tex. 2018) (holding that nonrestrictive dependent clause "gives additional description or information that is incidental to the central meaning of the sentence .

. . that could be taken out of the sentence without changing its essential meaning") (quoting Bryan A. Garner, The Redbook: A Manual on Legal Style § 1.6(a), at 6 (3d ed. 2013)). The Bankruptcy Court's interpretation therefore does not ignore, but rather harmonizes, the parenthetical phrase "otherwise on the terms of" according to its plain meaning.

Fourth, and finally, the Bankruptcy Court's interpretation of "Permitted Claims" as a narrow exception to "Released Claims" is consistent with its plain and ordinary meaning in a way that makes sense in the context of the parties' commercial transaction—the Global Settlement. *In re Coudert Bros.*, 487 B.R. 375, 389 (S.D.N.Y. 2013) (noting that a court should accord contractual language its plain meaning giving due consideration to the surrounding circumstances).

For all of the foregoing reasons, any claims for payment of "Shortfall Amounts" do not meet the narrow exception for "Permitted Claims" and, instead, fall into the broad category of "Released Claims," which Appellants correctly characterized as "most [ ] claims and rights—past, present, and future." Appellants' Br. at 10.

C. The 30% Discount Is A Red Herring And Was Not Preserved By Inmarsat In The Parties' Global Settlement

Inmarsat's argument that the Bankruptcy Court ignored how the SAA adjusted the MSA price terms is a red herring. The Bankruptcy Court explicitly acknowledged that the SAA included a pricing discount. Appellants' App. at

A0244. As noted above, that argument is of no consequence if there were no services delivered under the SAA. And, as the Bankruptcy Court held and the parties acknowledge, no services were delivered under the SAA. App. at A-002 ¶ 3; Appellants' App. at A0244–A0246.

The Bankruptcy Court also correctly found that no agreements surviving the Global Settlement and the Termination Agreement's Effective Date permitted Appellants to "claw back" the 30% discounted pricing principle in the SAA. And, unsurprisingly, Inmarsat does not (and cannot) point to any provisions that would allow it to do so. In any event, the pricing discount is wholly unrelated to "Shortfall Amounts," which is the antithesis of a "Permitted Claim." Indeed, "Permitted Claims" were expressly preserved for certain services delivered, as Inmarsat concedes. Appellants' Br. at 10. "Shortfall Amounts," in contrast, were a financial penalty when services were not delivered.[10] SAA, Schedule A, B(4) and C(1), ROA at 561, Bankr. Dkt. Nos. 1632-2, 1635; Appellants' Br. at 19–20. As such, the Termination Agreement's definition of "Permitted Claims" explicitly prohibits recovery of any "Shortfall Amounts."

Finally, the Bankruptcy Court's interpretation would neither result in a windfall for Speedcast nor lead to an absurd result. As Inmarsat acknowledges,

[10] Notably, Inmarsat's own calculation of the "Shortfall Amounts" did not include or even mention the 30% discount. App. at A-006 ¶¶ 14–15, ROA at 542, Bankr. Dkt. Nos. 1629-1, 1631.

Speedcast sold certain assets and assigned customer contracts to Inmarsat in exchange for broad releases. Appellants' Br. at 8–9. Allowing Inmarsat to recover the Shortfall Amounts would, therefore, result in a windfall to Inmarsat, as the valuation of Speedcast's assets and customer contracts transferred and assigned to Inmarsat was based on the releases and waivers Speedcast received in the parties' Global Settlement. App. at A-023 ¶¶ 13–14. Nevertheless, Inmarsat's attempt to inject an irrelevant equitable argument into an issue of contract interpretation should be rejected for what it is—an attempt to renegotiate the contract because Inmarsat is now dissatisfied with the results for which it bargained. *Norhill Energy LLC v. McDaniel*, 517 S.W.3d 910, 919 (Tex. App.—Fort Worth 2017, pet. denied) (stating that "equitable theories should not be permitted to allow a recovery 'inconsistent with the express agreement'") (quoting *Fortune Prod. Co. v. Conoco, Inc.*, 52 S.W.3d 671, 684 (Tex. 2000)); *LeBovici v. Jamaica Sav. Bank*, 81 A.D.2d 150, 152 (2d Dep't 1981), *aff'd*, 56 N.Y.2d 522 (1982) (reasoning that even estoppel theories cannot contradict, alter, or vary the express terms of a contract).

Because none of the controlling agreements allows for recovery of the 30% discount and the "Shortfall Amounts" are contractual penalties that expressly contradict the definition of a "Permitted Claim," neither claim falls under the Termination Agreement's narrow exception and, therefore, each was expressly released as a "Released Claim."

VI. CONCLUSION

Speedcast respectfully requests that the Court affirm the Bankruptcy Court's Order denying Inmarsat's Application for Allowance of Administrative Expense Claim.

Dated: April 11, 2022
Dallas, Texas

Respectfully submitted,

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/s/ Paul R. Genender
Paul R. Genender

Certificate of Service

I hereby certify that on April 11, 2022, a true and correct copy of the foregoing document was served on all parties entitled to receive notice through the Court's CM/ECF system.

/s/ Paul R. Genender
Paul R. Genender

Case No. 22-00008-LHR

IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re Speedcast International Limited, *et al.*,
Reorganized Debtors.

Inmarsat Global Limited, Inmarsat Solutions B.V., Inmarsat Maritime Ventures, Ltd., Inmarsat Inc., and Inmarsat Solutions AS Norway,
Appellants,
v.
Speedcast International Limited,
Appellee.

On Appeal from the U.S. Bankruptcy Court for the Southern District of Texas
Case No. 20-32243 (Isgur, J.)

APPENDIX TO BRIEF OF APPELLEE

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IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
	§	**(Jointly Administered)**
Reorganized Debtors.[1]	§	

STIPULATION OF AGREED FACTS

SpeedCast International Limited ("**Speedcast**") and its debtor affiliates, as reorganized debtors (the "**Debtors**" and as reorganized the "**Reorganized Debtors**"), and Inmarsat Global Limited, Inmarsat Solutions B.V., Inmarsat Maritime Ventures Ltd., Inmarsat Inc., Inmarsat Solutions (US) Inc., Inmarsat Solutions (Canada) Inc., and Inmarsat Solutions as Norway (collectively, "**Inmarsat**," and together with the Reorganized Debtors, the "**Parties**") file this Stipulation of Agreed Facts ("**Stipulation**") in advance of the hearing held in part on June 17, 2021, and continued to June 24, 2021 (the "**Hearing**"), as directed by this Court.

The undisputed facts stipulated below are derived from Inmarsat's *Application for Allowance of Administrative Expense Claim* [ECF No. 1532] ("**Application**"), the Reorganized Debtors' *Limited Objection to Inmarsat's Application for Allowance of Administrative Expense Claim* [ECF No. 1562] ("**Objection**"), the *Declaration of David Ross* [ECF No. 1563] ("**Ross Decl.**"), *Inmarsat's Response to Reorganized Debtors' Limited Objection to Application for*

[1] A complete list of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Reorganized Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

Allowance of Administrative Expense Claim [ECF No. 1629] ("**Reply**"), the *Declaration of Steven Burnett* [ECF No. 1629-1] ("**Burnett Decl.**") and/or other public filings with the Court.

Undisputed Facts

A. Parties' Historical Relationship, Inmarsat Services, and Agreements

1. Inmarsat operates a satellite network that provides near-global communications services to remote locations, including ships at sea, planes in the air, and enterprises on land.[2] Inmarsat sells its satellite services on a wholesale basis to distributors and on a retail basis directly to end-users.[3]

2. For many years, Speedcast was a leading distributor of Inmarsat maritime services.[4] Speedcast provided Inmarsat's satellite services, including FleetBroadband and Fleet Xpress ("**FX**") services (collectively, the "**Services**"), to its end customers both before and after April 23, 2020 (the "**Petition Date**").[5]

3. The Inmarsat Services were provided to Speedcast prior to the Petition Date under various master service agreements ("**MSAs**"), including the Master Supply Agreement between Inmarsat Global Limited and Speedcast Limited, effective November 1, 2018 ("**Hong Kong MSA**"), and the Global Xpress Subscription Services Agreement entered into between Inmarsat Global Limited and SRH Marine Electronics S.A., dated April 16, 2015 (the "**Cyprus MSA**").[6]

4. In connection with Inmarsat's launch of a new maritime service, the FX Services, the Parties entered into a Strategic Alliance Agreement effective June 10, 2016 ("**SAA**").[7] The SAA provided for discounted pricing for the FX Services delivered under the MSAs to align the

[2] Reply ¶ 1; Burnett Decl. ¶ 6.
[3] Burnett Decl. ¶ 6.
[4] Reply ¶ 2.
[5] Application ¶¶ 2-4; Objection ¶¶ 3-4.
[6] Objection ¶ 4; *see also* Application ¶¶ 3-4.
[7] Reply ¶ 2; Objection ¶ 5.

Parties' business interests and stimulate business growth for Inmarsat's FX Services.[8] If the discounted pricing in the SAA had not been applied to FX Services provided under the MSAs, the Reorganized Debtors would have paid 30% more for the Services than was invoiced and paid by the Reorganized Debtors in 2020 and the Reorganized Debtors would have had significant difficulties attracting their customers to the Inmarsat FX network. As a result of the 30% discount from Inmarsat to Speedcast in the SAA, Speedcast was able to provide Inmarsat over 950 new customers in a three-year span.

5. After the Petition Date, the Debtors accepted Inmarsat Services throughout the chapter 11 proceedings and through December 31, 2020.[9]

6. The SAA also required Speedcast to meet certain minimum targets for deploying FX Services at the end of each calendar year (the "**Minimum RGU Commitment**").[10] Speedcast later agreed to increase its annual commitments to install FX on vessels under the SAA, and Inmarsat agreed to forgive $5 million of Speedcast debts.[11] In the event those minimum targets were not met (i.e., Speedcast did not meet the "take" portion of the SAA's take-or-pay provisions at the end of any calendar year), Speedcast was obligated to pay certain "shortfall amounts" to Inmarsat.[12] These obligations in the SAA are referred to by the Parties as the "take-or-pay" obligations.[13]

[8] Objection ¶ 5; *see also* Reply ¶ 6.
[9] Application ¶¶ 4, 7.
[10] Objection ¶ 5.
[11] Burnett Decl. ¶ 8.
[12] *See* Application ¶ 7 (explaining that the "Debtors agreed that in Inmarsat billed for FX [S]ervices delivered to the Debtors at that substantial discount, then the Debtors would meet minimum targets for deploying FX on new vessels by December 31, 2020 or pay a "shortfall amount"); Burnett Decl. ¶ 11 (explaining that under the SAA, "Speedcast was obligated to have FX on at least 1450 vessels by December 31, 2020, or to pay a 'Shortfall Amount'"); *see also* Reply ¶ 3.
[13] *See* Burnett Decl. ¶ 7 ("When Inmarsat was preparing to launch its FX services it entered into take-or-pay agreements with Speedcast and other significant maritime distributors).

7. The SAA included a provision for the invoicing of the Shortfall Amounts,[14] and neither the SAA nor the December 31, 2019 Agreement included any other provision to address the discounted pricing provided for in the SAA.

B. Global Settlement and Asset Sale Agreement

8. Certain disputes arose between the Parties prior to the Petition Date.[15] In June 2020, the Parties began discussing various options regarding their go-forward relationship.[16] Among the options discussed was consideration of a transfer of Speedcast customers to the Inmarsat platform and a full and final release of Speedcast from all take-or-pay obligations to Inmarsat to be documented in any final agreement to be reached by the Parties.[17]

9. After months of negotiations, on November 13, 2020, the Parties entered into an Asset Sale Agreement ("**ASA**") and other Transaction Agreements (as defined by the ASA) to effect the sale of certain assets and assignment of related Speedcast customer contracts, including most of Speedcast's FX and other Inmarsat maritime services customers, from the Debtor sellers to Inmarsat in exchange for an agreed payment from Inmarsat and a mutual release of claims between the parties with the exception of Permitted Claims, as discussed below (the "**Inmarsat Transaction**").[18] Speedcast sought approval of the Inmarsat Transaction in the 9019 Motion, "including the sale by [Speedcast] of the Assets . . . . the assumption by Inmarsat of certain liabilities, including the transfer of certain customers of [Speedcast], the settlement of claims and

[14] Burnett Decl. ¶ 11.
[15] *Motion of Debtors for Entry of an Order (I) Authorizing and Approving Inmarsat Transaction, including (A) Private Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Assumption and Assignment of Certain Contracts, and (C) Settlement and Release of Claims, (II) Approving Form and Manner of Notices of Inmarsat Transaction, and (III) Granting Related Relief* [ECF No. 950] (the "**9019 Motion**") ¶ 12.
[16] *Declaration of Tony Bates in Support of Motion to Approve Inmarsat Transaction, Asset Sale Agreement, and other Transaction Agreements* [ECF No. 953] ("**Bates Decl.**") ¶ 4.
[17] Debtors' Ex. 7 and 9 (Inmarsat's Resp. to RFA No. 19).
[18] Application ¶ 5; Objection ¶ 7; Reply ¶ 7.

granting of mutual releases between Inmarsat and [Speedcast], and other related terms and agreements, all as specified in the Asset Sale Agreement and other Transaction Agreements."[19]

10. As part of the Inmarsat Transaction, the Parties entered into the Deed of Termination and Release ("**Termination Agreement**"), one of the Transaction Documents, which was effective as of January 1, 2021.[20] Through the Termination Agreement, the Parties agreed to terminate the SAA and most of their other distribution agreements – effective on January 1, 2021.[21] The SAA and all of the MSAs covering FX Services save one are defined as "Existing Agreements" under the Termination Agreement.[22] The only "Surviving Agreement" (as defined in the Termination Agreement) was the Hong Kong MSA.[23]

11. Under the express terms of the Termination Agreement, Speedcast was liable to pay for all Services delivered by Inmarsat under any Existing Agreement or the Surviving Agreement through January 1, 2021 ("**Permitted Claims**"), and Inmarsat released most other claims and rights—past, present, or future—under the Existing Agreements as "Released Claims."[24] The Parties agreed to carve out from the definition of "Released Claims" any Permitted Claims for payment by Inmarsat for ongoing Services delivered "under, and otherwise on the terms of, any Existing Agreement or the Surviving Agreement" after the Petition Date through December 31, 2020.

12. The Court approved the Inmarsat Transaction on December 11, 2020, and it became effective January 1, 2021.[25]

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[19] 9019 Motion ¶ 7.
[20] Objection ¶ 9; Reply ¶ 7.
[21] Reply ¶ 7.
[22] *See* Reply ¶ 9.
[23] Objection ¶ 8; Burnett Decl. ¶ 10.
[24] Burnett Decl. ¶ 10; Objection ¶ 7.
[25] Application ¶ 6; Objection ¶ 7; *see also Order (I) Authorizing and Approving Inmarsat Transaction, including (A) Private Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Assumption and Assignment*

C. Shortfall Amounts Asserted by Inmarsat

13. Speedcast did not meet the minimum target obligations required by the SAA for 2020, resulting in a shortfall.[26]

14. Inmarsat issued an invoice to Speedcast, Invoice No. 10145104 dated March 31, 2021, in the Shortfall Amount of $2,161,890.00 (the "**Invoice**").[27] The Shortfall Amount reflected in the Invoice is calculated according to the formula in the 2016 SAA, as amended by the 2017 Business Transfer Agreement.[28]

15. The Invoice reflects that Speedcast did not initiate service on the minimum target number of vessels by December 31, 2020, as calculated by Inmarsat.[29] To calculate the $2,161,890.00 Shortfall Amount, Inmarsat invoiced Speedcast 90% of the Minimum RGU Commitment for the year 2020 as set forth in Sections B(4) and C(1) of Schedule A in the 2016 SAA.[30] This $2,161,890.00 Shortfall Amount was used in the administrative expense claim sought by Inmarsat in the Application, which was filed on April 9, 2021.[31] The calculation of the Shortfall Amounts and, more specifically for purposes of the hearing scheduled for June 24, 2021, whether any Shortfall Amount is due, is the only matter that remains in dispute between the Parties. No claims for Services delivered by Inmarsat under any other Existing Agreement or the Surviving Agreement through January 1, 2021 are part of the current dispute before the Court.

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of Certain Contracts, and (C) Settlement and Release of Claims, (II) Approving Form and Manner of Notices of Inmarsat Transaction, and (III) Granting Related Relief [ECF No. 1071].

[26] Application ¶ 7; Reply ¶ 3; Burnett Decl. ¶ 11.

[27] Application ¶ 7.

[28] Application ¶ 7.

[29] *See also* Burnett Decl. ¶ 11.

[30] *See* Inmarsat Invoice and Excel Summary from S. Burnett, dated April 6, 2021.

[31] *See generally*, Application.

Dated: June 23, 2021
Houston, Texas

Respectfully submitted,

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Certificate of Service

I hereby certify that on June 23, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and served on counsel for Inmarsat.

/s/ Paul R. Genender
Paul R. Genender

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
	§	**(Jointly Administered)**
Reorganized Debtors.[1]	§	

SUPPLEMENT TO REORGANIZED DEBTORS' LIMITED OBJECTION TO INMARSAT'S APPLICATION FOR ALLOWANCE OF ADMINISTRATIVE EXPENSE CLAIM

SpeedCast International Limited and its debtor affiliates, as reorganized debtors (the "**Debtors**" and as reorganized the "**Reorganized Debtors**"), file this supplement ("**Supplement**") to their *Limited Objection to Inmarsat's Application for Allowance of Administrative Expense Claim* [ECF No. 1562] ("**Limited Objection**") and in opposition to the Inmarsat's Response to the Limited Objection [ECF No. 1629] ("**Response**").[2] In support, the Reorganized Debtors respectfully represent the matters set forth below.

Much of the background, including the parties' relationship and the agreements governing that relationship, is undisputed.[3] The narrow, limited dispute before the Court is whether any "Shortfall Amounts" are owed from the Reorganized Debtors to Inmarsat despite the global settlement effective January 1, 2021, and the broad releases contained therein. For the reasons described in the Objection and this Supplement, they are not.

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[1] A complete list of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Reorganized Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

[2] All capitalized terms not otherwise defined in this Supplement shall have the meanings prescribed to them in the Limited Objection.

[3] *See generally*, Stipulation of Agreed Facts ("**Stipulation**"), filed with the Court on June 23, 2021.

Brief Summary

1. As expressly agreed by the parties and documented in the express terms of the Termination Agreement, and previewed to this Court in the Debtors' 9019 Motion supported by Inmarsat, one of the primary reasons the Debtors entered into the Inmarsat Transaction was to receive relief from their "take-or-pay" obligations (i.e., the Shortfall Amounts) in the SAA in the form of broad, mutual releases. In return for waiving any rights to these claims, Inmarsat received substantial benefits, including (among other things) Speedcast's customer contracts. This, coupled with the fact that Inmarsat never expressly disclosed or reserved its rights to later assert any claim to the Shortfall Amounts, is why the Reorganized Debtors were shocked to learn that Inmarsat's Application in April 2021 asserts a claim for the previously-released Shortfall Amounts.

2. Attempting to retrade the deal by trying to change the express terms of the parties' agreement, Inmarsat incorrectly claims that the Shortfall Amounts in the SAA were carved out of the "Released Claims" in the narrow, limited category of "Permitted Claims." Those claims were defined to only include "any claims for payment by an Inmarsat Entity ***for services delivered*** by the relevant Inmarsat Entity to a Speedcast Entity ***after 23 April 2020 under, and otherwise on the terms of, any Existing Agreement or the Surviving Agreement***." *See* Termination Agreement § 1.1 (emphasis added). No Inmarsat Services were provided, or contemplated to be provided, directly **under** the SAA, and under basic contract interpretation principles, Inmarsat cannot read the Termination Agreement's unambiguous definition of Permitted claims to mean "**or**" when it plainly says "**and**."

3. All Permitted Claims for Inmarsat Services delivered post-petition have been paid by the Reorganized Debtors as contemplated by the parties and documented in the

agreement's express terms. There is no basis, in law or fact, for Inmarsat's claim for Shortfall Amounts.

The Shortfall Amounts Are "Released Claims"

4. Disputes arose in early 2020 surrounding, among other things, the interpretation and enforceability of the December 31, 2019 amendment to the SAA and the Debtors' continued difficulties in meeting various performance targets in acquiring new customers for the Inmarsat Services, i.e., the take-or-pay obligations, including as a result of the global COVID-19 pandemic.[4] In the event the Debtors did not meet certain minimum targets for deploying FX Services on vessels at the end of each calendar year as required by the SAA (i.e., the "take"), they were required to pay certain "shortfall amounts" to Inmarsat in the form of a contractual penalty.[5] Specifically, in 2020, the Debtors were required to initiate Inmarsat's FX Services on 1,450 vessels.[6] Anticipating they would not meet the new customer requirements under the SAA in 2020, and after filing for chapter 11 protection on April 23, 2020, the Debtors attempted to reach an agreement with Inmarsat by which they could avoid those substantial penalties.[7]

5. In June 2020, the parties began discussing "the various options regarding their go-forward relationship, including . . . a potential transfer of the Debtors' customers to Inmarsat through a negotiated transaction."[8] In the parties' negotiations, Inmarsat expressly

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4 Supplemental Declaration of David Ross ("**Supp. Ross Decl.**"), which is being filed contemporaneously with this Supplement, ¶ 11; *see also* Stipulation ¶ 8.

5 *See* Stipulation ¶ 6; Supp. Ross Decl. ¶¶ 8-9.

6 Supp. Ross Decl. ¶ 11.

7 *Id.*; *Motion of Debtors for Entry of an Order (I) Authorizing and Approving Inmarsat Transaction, including (A) Private Sale Free and Clear of All Liens, Claims, Encumbrances, and Other Interests, (B) Assumption and Assignment of Certain Contracts, and (C) Settlement and Release of Claims, (II) Approving Form and Manner of Notices of Inmarsat Transaction, and (III) Granting Related Relief* [ECF No. 950] ("**9019 Motion**") ¶¶ 9-10.

8 Stipulation ¶ 8; *Declaration of Tony Bates in Support of Motion to Approve Inmarsat Transaction, Asset Sale Agreement, and other Transaction Agreements* [ECF No. 953] ("**Bates Decl.**") ¶ 4.

contemplated that a "smooth transfer of customers to the Inmarsat platform . . . would also include full and final release of Speedcast from all Take or Pay obligations to Inmarsat."[9]

6. Indeed, one of the primary reasons the Debtors entered into the Inmarsat Transaction was to receive relief from their "take-or-pay" obligations in the SAA. As explained to the Court in the Debtors' Rule 9019 Motion, relief from those contractual obligations in the form of a "[w]aiver of all Inmarsat prepetition unsecured claims, totaling approximately $112.3 million USD," among other things, would "bring substantial benefits to the Debtors and their estates" and provide consideration for the assets sold to Inmarsat in the parties' global transaction.[10]

7. Seeking Court approval for the Inmarsat Transaction, the Debtors explained that the mutual releases contained in the Inmarsat Transaction would be in the best interest of the Debtors' estates and were the best way to maximize recoveries for creditors in connection with the Debtors' restructuring efforts.[11] Inmarsat did not object to the 9019 Motion, did not preserve any of its rights related to the Shortfall Amounts in the same, and in fact filed a declaration ***in support of the requested relief***.[12]

8. As both parties acknowledge, the releases in the Termination Agreement—a transaction agreement identified by the ASA—were extremely broad, as was the definition of "Released Claims."[13] As defined in the Termination Agreement, Released Claims meant, other than Permitted Claims (defined below), "***any and all claims, actions, causes of action*** . . . . whether known or unknown . . . disputed or undisputed, based on law or equity . . . ***existing at any time,***

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9 Stipulation ¶ 8; Supp. Ross Decl. ¶ 12 (citing Debtors' Ex. No. 7 [ECF No. 1632-7], filed under seal, and Debtors' Ex. No. 9 [ECF No. 1632-9] at Request for Admission No. 21).

10 Rule 9019 Motion ¶¶ 2, 16(f).

11 *Id.* ¶¶ 22, 27(d).

12 *See generally*, Bates Decl.

13 *See* Stipulation ¶ 11 (agreeing "Inmarsat released most other claims and rights—past, present, or, future—under the Existing Agreements as 'Released Claims'"); Supp. Ross Decl. ¶ 14.

whether asserted or unasserted after the Effective Date." *See* Termination Agreement § 1.1 (emphasis added).

9. The Released Claims were subject to broad releases by both parties, including Inmarsat. In Section 2.6 of the Termination Agreement, Inmarsat expressly agreed to "***absolutely, irrevocably and unconditionally forever release*** and discharge each Speedcast Group Member from . . . ***any Released Claims*** ever held by that Inmarsat Group Member against the relevant Speedcast Group Member or their respective bankruptcy estate(s) ***arising out of or relating to the Existing Agreements whether arising prior to, on or after the Effective Time*** . . . ." (emphasis added).

10. The parties agree that the SAA was an "Existing Agreement" that terminated as of January 1, 2021, and there is no dispute that Inmarsat received the benefit of its bargain, i.e., the Speedcast customer contracts and related assets.[14] Accordingly, this is where Inmarsat's logic fails: the Shortfall Amounts were "Released Claims" in the express, unambiguous terms of the Termination Agreement. *See, e.g.*, *Nat'l Granite Title Ins. Agency, Inc. v. Cadlerock Props. Joint Venture, L.P.*, 5 A.D.3d 361, 362 (2d Dep't 2004) (interpretation of an unambiguous contract is determined "as a matter of law" with effect "given to the intent of parties as reflected by the express language of the agreement").

The Shortfall Amounts Are Not "Permitted Claims"

11. Inmarsat takes a position contrary to the express language of the "Released Claims" definition, contending instead and without support that the Shortfall Amounts fall into the narrow, limited carve-out of "Permitted Claims."[15] The Released Claims did not include "Permitted Claims," which were defined to include "any claims for payment by an Inmarsat Entity

[14] Stipulation ¶¶ 9-10.
[15] *See generally*, Response.

for services delivered by the relevant Inmarsat Entity to a Speedcast Entity ***after 23 April 2020 under, and otherwise on the terms of, any Existing Agreement or the Surviving Agreement***. . . ." Termination Agreement § 1.1 (emphasis added).

12. The Permitted Claims were carved out of the broad Released Claims to capture only two types of claims for payment by Inmarsat for Services delivered and invoiced post-closing, neither of which apply here: (a) certain backup and land-based Services the Debtors agreed to continue and pay for under the Existing Agreement (i.e., the Hong Kong MSA); and (b) older invoices for Services previously delivered under ***other*** Existing Agreements (i.e., other MSAs) that had been accrued but still remained in accounts payable.[16] There is nothing in the express terms of the Termination Agreement to bring any claims other than for ***Services*** actually delivered to Speedcast.[17]

13. The use of the phrase "**under, and**" ends the inquiry. No Inmarsat Services were provided, or contemplated to be provided, directly **under** the SAA at any time,[18] and Inmarsat's claim for payment of the Shortfall Amounts arise under the SAA.[19]

14. This alone demonstrates that the Shortfall Amounts were not "Permitted Claims" and, thus, are released. *Sasson v. TLG Acquisition LLC*, 127 A.D. 3d 480, 481 (1st Dep't 2015) (explaining that "because there is no ambiguity in the word 'and' . . . there is no reason to resort to rules of contract construction based on contractual provisions or context"); *Progressive Ne. Ins. Co. v. State Farm Ins. Cos.*, 81 A.D.3d 1376, 1378 (4th Dep't 2011) (emphasis added) (holding that use of the word "and" in a contract is ***unambiguously conjunctive*** and interpreting the phrase as disjunctive would be a "strained, unnatural and unreasonable" interpretation contrary

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16 Supp. Ross Decl. ¶ 17; *see* Stipulation ¶ 11.
17 *Id.; see generally*, Termination Agreement § 1.1.
18 Declaration of David Ross [ECF No. 1563] ¶ 7.
19 Stipulation ¶¶ 6-7, 14-15.

to "the plain language of th[e] sentence"); *Maxwell v. State Farm Mut. Auto. Ins. Co.*, 92 A.D.2d 1049, 1050 (3d Dep't 1983) (emphasis added) (holding that ***use of the word "and" in contract clause required satisfying both conditions*** because words are "given their ordinary meaning" and "use of the conjunctive 'and'" is "susceptible to but one interpretation").

15. Finally, and while the Reorganized Debtors find the remainder of Inmarsat's argument to be irrelevant for the reasons set forth above, the discount pricing the Debtors received under the SAA is wholly unrelated to the Shortfall Amounts sought by Inmarsat in its Application.[20] Any claims for Shortfall Amounts premised on the connection between the discounted pricing and the Services delivered under the MSAs are contradicted by the SAA's express terms.

16. The 30% discount provided for in the SAA was a "Pricing Principle" applied to the rates for Services provided under the MSAs.[21] It applied throughout the entire term of the SAA and was not dependent on the Debtors meeting any annual minimum targets—it did not increase or decrease based on the number of FX deployed on vessels.[22]

17. By contrast, the Shortfall Amounts were a consequence of the Debtors not meeting certain "Alignment Principles," i.e., the minimum targets (the "**Minimum RGU Commitment**").[23] The Minimum RGU Commitment, which increased each year, compensated Inmarsat for lost revenue if the Debtors did not meet those targets in the form of "shortfall amounts."[24] The discount was not part of calculating the Shortfall Amount in either the 2016 SAA

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20 *See* Supp. Ross Decl. ¶ 7.

21 *Id.* ¶ 6; Stipulation ¶ 4 ("The SAA provided for discount pricing for the FX Services delivered under the MSAs to align the Parties' business interests and stimulate business growth for Inmarsat's FX Services.").

22 Supp. Ross Decl. ¶ 6.

23 *Id.* ¶¶ 7, 9; *see also* Stipulation ¶ 6.

24 Supp. Ross Decl. ¶ 8.

or its subsequent amendments.[25] Simply put, it was not a "price term"—instead, ***it was the antithesis of a price term***. It provided for payment to Inmarsat when Services were ***not*** delivered.[26]

18. For this additional reason, even assuming Inmarsat could change the express language of the Termination Agreement's definition of "Permitted Claims" to read "under, **or**" (which it cannot do), the Shortfall Amounts are not "otherwise on the terms of" the MSAs, which alone provide for the Service descriptions, user requirements, and the like.[27]

Prayer

19. For the reasons set forth above and in their Limited Objection, the Reorganized Debtors respectfully request that the Court find as a matter of law that the Shortfall Amounts were "Released Claims" under the Termination Agreement. The Reorganized Debtors further request any additional relief to which they may be entitled, whether at law or in equity.

[25] Stipulation ¶ 7; Supp. Ross Decl. ¶ 10.
[26] Supp. Ross Decl. ¶ 7.
[27] *See* Declaration of David Ross [ECF No. 1563] ¶ 6.

Dated: June 23, 2021
Houston, Texas

Respectfully submitted,

/s/ Paul R. Genender

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Certificate of Service

I hereby certify that on June 23, 2021, a true and correct copy of the foregoing document was served by the Electronic Case Filing System for the United States Bankruptcy Court for the Southern District of Texas and served on counsel for Inmarsat.

/s/ Paul R. Genender
Paul R. Genender

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE SOUTHERN DISTRICT OF TEXAS
HOUSTON DIVISION

In re:	§	**Chapter 11**
SPEEDCAST INTERNATIONAL LIMITED, *et al.*,	§	**Case No. 20-32243 (MI)**
Reorganized Debtors.[1]	§	**(Jointly Administered)**

SUPPLEMENTAL DECLARATION OF DAVID ROSS

I, David Ross, pursuant to section 1746 of title 28 of the United States Code, hereby declare penalty of perjury under the laws of the United States of America that the following is true and correct to the best of my knowledge, information, and belief:

1. I am the Vice President of Finance of SpeedCast International Limited ("**Speedcast**," and collectively with its affiliated debtors in the above-captioned chapter 11 cases, the "**Debtors**," as reorganized, the "**Reorganized Debtors**"). I am familiar with the Reorganized Debtors' day-to-day operations, business, and financial affairs.

2. I submit this supplemental declaration (the "**Supplemental Declaration**") in support of the *Supplement to Reorganized Debtors' Limited Objection to Inmarsat's Application for Allowance of Administrative Expense Claim* (the "**Supplement**"), which is filed contemporaneously with this Supplemental Declaration, and in further support of the Reorganized Debtors' Limited Objection [ECF No. 1562].[2]

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[1] A complete list of the Reorganized Debtors in these chapter 11 cases may be obtained on the website of the Reorganized Debtors' claims and noticing agent at http://www.kccllc.net/speedcast. The Reorganized Debtors' service address for the purposes of these chapter 11 cases is 4400 S. Sam Houston Parkway East, Houston, Texas 77048.

[2] All capitalized terms not otherwise defined in this Supplemental Declaration shall have the meanings prescribed to them in the Limited Objection or in my prior declaration [ECF No. 1563] (the "**Prior Declaration**").

3. Unless otherwise indicated, the facts in this Supplemental Declaration are based upon my personal knowledge, including my personal knowledge of the Reorganized Debtors' current operations and financial performance, as well as their relationship and agreements with Inmarsat; information learned from my review of relevant documents; and information provided to me by employees of the Reorganized Debtors.

4. If called upon to testify, I could and would competently testify to the facts set forth in this Supplemental Declaration. I am authorized to submit this Supplemental Declaration on behalf of the Reorganized Debtors.

The Shortfall Amounts Are Not the Same as Discounted Pricing under the SAA

5. When Inmarsat launched its FX Services, the Parties entered into the June 10, 2016 Strategic Alliance Agreement ("**SAA**") to align their business interests and stimulate business growth for Inmarsat's FX Services.

6. The SAA provided for discounted pricing for Inmarsat Services delivered under the MSAs. The 30% discount applied to the rates for Services provided under the MSAs and was an SAA "Pricing Principle." This Pricing Principle applied throughout the entire term of the SAA and was not dependent on Speedcast meeting any annual minimum targets—it did not increase or decrease based on the number of FX deployed on vessels.

7. Separately, and by contrast, the SAA required Speedcast to meet certain minimum targets for deploying FX Services at the end of each calendar year (the "**Minimum RGU Commitment**"). Unlike the 30% Pricing Principle, the Shortfall Amounts constituted payments to Inmarsat when Services were ***not*** delivered.

8. This minimum commitment, which increased each year, and the corresponding Shortfall Amount compensated Inmarsat for lost revenue in the form of "shortfall amounts" if

Speedcast did not add vessels to the Fleet Xpress network. Specifically, the Shortfall Amount is calculated by applying a penalty of six months of the average revenue per unit (based on the average monthly Speedcast purchase price) for each vessel that falls below the minimum target (the "**2016 SAA Calculation**").

9. The Minimum RGU Commitment, or "Alignment Principle," in the SAA and its resulting penalties are referred to by the Parties as the "take-or-pay" obligations. In the event the Minimum RGU Commitment was not met (i.e., Speedcast did not meet the "take" portion of the SAA's take-or-pay provisions) at the end of any calendar year, Speedcast was obligated to pay the Shortfall Amounts to Inmarsat.

10. The Shortfall Amounts as calculated by the 2016 SAA and its subsequent amendments does not include any reference to, or clawback of, the discounted Pricing Principle.

The Shortfall Amounts Are "Released Claims"

11. In 2020, Speedcast was required to initiate Inmarsat's FX Services on 1,450 vessels as contemplated by the 2016 SAA and amended by the 2017 Business Transfer Agreement. After filing for chapter 11 protection on April 23, 2020, anticipating it would not meet the new customer requirements under the SAA in 2020 (i.e., the take-or-pay obligations), including as a result of the global COVID-19 pandemic, and in light of certain other disputes that had arisen between the Parties prior to the Petition Date that related to the interpretation and enforceability of the December 31, 2019 SAA amendment, Speedcast attempted to reach an agreement with Inmarsat by which it could avoid those substantial penalties.

12. In June 2020, the Parties began discussing various options regarding their go-forward relationship. This included considering a transfer of Speedcast customers to the Inmarsat platform, which would include a full and final release of Speedcast from all take-or-pay obligations

to Inmarsat. In the parties' negotiations, Inmarsat expressly contemplated that a "smooth transfer of customers to the Inmarsat platform . . . would also include full and final release of Speedcast from all Take or Pay obligations to Inmarsat."[3]

13. After months of negotiations, on November 13, 2020, the Parties entered into the ASA and the other Transaction Agreements, including the Termination Agreement, to effect the Inmarsat Transaction. As a result of the global, commercial Inmarsat Transaction, Speedcast sold certain assets and assigned its related customer contracts, including most of Speedcast's FX and other Inmarsat maritime services customers, to Inmarsat in exchange for an agreed payment from Inmarsat and a mutual release of claims between the Parties.

14. As contemplated by the Parties, the mutual releases documented in the Termination Agreement are very broad, as is the definition of "Released Claims." Under the express terms of the Termination Agreement, Speedcast was liable to pay for all Services delivered by Inmarsat under any of the MSAs through January 1, 2021, and Inmarsat released most other claims and rights—past, present, or future—under the Existing Agreements, including the SAA and its amendments, as "Released Claims."

The Shortfall Amounts Are Not "Permitted Claims"

15. After the Petition Date, Inmarsat provided a majority of its Services to Speedcast pursuant to the Hong Kong MSA and Cyprus MSA, each of which set forth the Services to be provided by Inmarsat, the charges for the Services, and the parties' respective obligations. The Debtors also received certain Services from Inmarsat under the Global Xpress Subscription

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[3] *See* June 17, 2020 email correspondence from T. Bates to S. Wilks; a true and correct copy of which was filed under seal by the Reorganized Debtors on June 15, 2021 as "**Debtors' Ex. No. 7**" [ECF No. 1632-7]. *See also* **Debtors' Ex. No. 9** [ECF No. 1632-9] at Request for Admission No. 21 (admitting Ex. No. 7 is a true and correct copy).

Services Agreement entered into between Inmarsat Global Limited and Evolution Communications Group Ltd (the "**Evolution MSA**," and collectively with the Hong Kong MSA and Cyprus MSA, the "**MSAs**") after the Petition Date.

16. Consistent with the MSAs' terms, Speedcast accepted Inmarsat Services throughout the chapter 11 proceedings. Given these ongoing Services, the Parties agreed to carve out from the broad definition of "Released Claims" any claims for payment by Inmarsat for two narrow, limited categories of Services.

17. First, for ongoing Services delivered under the Hong Kong MSA after the Petition Date through December 31, 2020. This included certain backup and land-based Services Speedcast agreed to continue post-petition. Second, for Inmarsat Services that were previously delivered under any of the MSAs after the Petition Date but prior to the effective date of the Termination Agreement that had been accrued but not yet paid for by Speedcast in the ordinary course. This included older invoices for Services previously delivered under other Existing Agreements, i.e., the Cyprus MSA and Evolution MSA, that had been accrued but still remained in accounts payable.

18. These were referred to as "Permitted Claims" in the Termination Agreement. All Permitted Claims have been paid by the Reorganized Debtors in the ordinary course pursuant to the invoices sent by Inmarsat, and are not part of the current dispute before the Court.

Any Shortfall Amounts Are Calculated by the 2016 SAA

19. As anticipated, Speedcast did not meet the Minimum RGU Commitment required by the SAA for 2020, resulting in a shortfall.

20. Despite the Inmarsat Transaction, including the Parties' global settlement and Termination Agreement, Inmarsat issued an invoice to Speedcast, Invoice No. 10145104 dated

March 31, 2021, in the shortfall amount of $2,161,890.00 (the "**Invoice**").[4] The "shortfall amount" reflected in the Invoice is calculated according to the formula in the 2016 SAA, as amended by the 2017 Business Transfer Agreement. As expected, the Invoice does not reference the SAA's discounted Pricing Principle or request reimbursement of the same.

21. The Invoice reflects that Speedcast did not initiate service on the minimum target number of vessels by December 31, 2020, as calculated by Inmarsat.[5] The Invoice calculated the Shortfall Amount based on the 2016 SAA Calculation. To calculate the $2,161,890.00 Shortfall Amount, Inmarsat invoiced Speedcast 90% of the Minimum RGU Commitment for the year 2020 as set forth in Sections B(4) and C(1) of Schedule A in the 2016 SAA.[6]

Dated: June 23, 2021
Aberdeen, Scotland, UK

/s/ David Ross
Name: David Ross
Title: Vice President Finance

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[4] *See* Inmarsat Invoice and Excel Summary from S. Burnett, dated April 6, 2021; a true and correct copy of which is attached to this Supplemental Declaration as "**Exhibit A**."

[5] *See id.*

[6] *Id.*

EXHIBIT A

Inmarsat Global Ltd.

INVOICE

inmarsat
The mobile satellite company

Bill to

SPEEDCAST LIMITED
9/F., PHASE II
CHINA TAIPING TOWER
8 SUNNING ROAD , CAUSEWAY BAY
HONG KONG
HONG KONG

Details

Number	10145104
Bill to reference	10401
Sold to reference	10401
Your reference	-
Your additional info	-
Billing period end date	31-Mar-2021
Date	31-Mar-2021
Payment due date	**25-May-2021**
Currency	USD

Legacy IDs: Billing Profile: 10401. DP ID: 3052.

Summary

	Total
Other Revenue	2,161,890.00
Total excl Taxes	**2,161,890.00**
Taxes	0.00
Total incl Taxes	**2,161,890.00**

As part of our latest Inmarsat Billing Upgrades we have implemented improvements to our invoices.
A Know Your Invoice guide and further useful documents are available on our webpage.
Please visit www.inmarsat.com/billingupgrades for more information on the changes.

Payment information

Payment details	Payment must be made by Wire Transfer to: Inmarsat Global Ltd. USD: JPMorgan Chase Bank NA, 270 Park Avenue, New York, NY 10017, USA Account details: A/C 825157923 Swift/BIC CHASUS33 ABA/Routing 021000021
Bank fees	Please remit payment including any fees that may be deducted by your bank or intermediary banks to complete the transaction. Only the amount of payment received from your bank will be credited to your account.
Late payment interest	Invoices not paid by the Payment Due Date will be charged interest in accordance with the terms and conditions of your Agreement.

Inmarsat Global Ltd.

inmarsat
The mobile satellite company

Number	**10145104**
Bill to reference	10401
Sold to reference	10401
Your reference	-
Date	31-Mar-2021
Currency	**USD**

Service summary

Description	**Total**
Other items	
Other Revenue	2,161,890.00
Total Other Items	**2,161,890.00**
Total Service Summary	**2,161,890.00**

Inmarsat Global Ltd.

inmarsat
The mobile satellite company

Number	**10145104**
Bill to reference	10401
Sold to reference	10401
Your reference	-
Date	31-Mar-2021
Currency	**USD**

Other Revenue

Line	Product ID	Description	Units	UoM	Rate	Total
1	70101725	ToP Shortfall Penalty for 2020	1	MON	2,161,890.00	2,161,890.00
Total Other Revenue						**2,161,890.00**

Inmarsat Global Ltd.

inmarsat
The mobile satellite company

Support and enquiries

Billing enquiry (except LPI) Please contact Global Customer Operations with any query or dispute regarding this invoice within seven days of the invoice date. Please reference your Bill To number and invoice number in any correspondence.	Enterprise, Aviation and Government customers: globalcustomersupport@inmarsat.com +44 (0) 207 728 1020 Maritime customers: support.maritime@inmarsat.com +47 (0) 70 17 24 00
Late Payment Interest (LPI) Enquiry Please contact the Credit & Collections team with any query or dispute regarding late payment interest within seven days of the invoice date. Please reference your Bill To number and invoice number in any correspondence.	Customers located in North America: collections-americas@inmarsat.com Customers located in Europe, the Middle East, or Africa: collections-EMEA@inmarsat.com Customer located in Asia or the Pacific: collections-APAC@inmarsat.com
Payment information Please contact the Accounts Receivable team for questions relating to how your payments are received and applied.	AR.inquiries@inmarsat.com
Technical support information Inmarsat is dedicated to delivering to you the best customer support possible by going beyond your expectations, no matter where you are or what time of day it is. Global Customer Operations operates 24-hours a day, 365-days a year.	Enterprise, Aviation and Government customers: globalcustomersupport@inmarsat.com +44 (0) 207 728 1020 Maritime customers: support.maritime@inmarsat.com +47 (0) 70 17 24 00
Sales support information	Enterprise, Aviation and Government customers: globalcustomersupport@inmarsat.com +44 (0) 207 728 1020 Maritime customers: support.maritime@inmarsat.com +47 (0) 70 17 24 00
Glossary	
CF	Call Forwarded. For example where a SIM has been configured so that an incoming call is forwarded to another number, eg a corporate office.
ICCID	Integrated Circuit Card Identifier. Unique identifier, stored within and printed on a SIM (Subscriber Identity Module) card.
IMN	Inmarsat Mobile Number. The diallable number for a subscriber using an Inmarsat I-3 terminal.
IMSI	International Mobile Subscriber Identity. A unique number, usually 15 digits, identifying a subscriber in a mobile telecommunication network.
ISN	Inmarsat Serial Number. The hardware ID on an Inmarsat I-3 terminal. A single terminal may have several related IMNs.
MB	Megabyte. Measurement unit for airtime. Refer to the relevant commercial documentation for further details.
MO	Mobile Originated. Call is initiated on a user terminal. Also referred to as 'From Mobile' traffic.
MSISDN	Mobile Station International Subscriber Directory Number. A number used to route calls to and from a terminal in a mobile telecommunications network.
MT	Mobile Terminated. Call is received by a user terminal. Also referred to as To Mobile traffic.
SCAP	Shared Corporate Allowance Plan. A type of rate plan which allows many users to utilise a single allowance.
SQT	Super Quiet Time. A commercial offer which provides advantageous rates for qualifying traffic. May have time-based restrictions.
UoM	Unit of Measure. Used to quantify the volume or amount of services or goods provided. Eg Minute, Megabyte. Usually abbreviated.
UTC	Universal Coordinated Time. Equivalent to Greenwich Mean Time for most purposes. All dates and times in this invoice/credit note are in UTC, unless otherwise stated.
Please be aware that for some airtime, a call setup charge, in additional to a volume based charge, may be applicable. Please refer to the relevant pricing documentation for further information.	

Speedcast ToP shortfall calculation - 2020	
Target vessel numbers	1,450
Actual Vessel numbers	979
Vesssel shortfall	471
Average ARPU	850
Months in year	12
$ shortfall	2,402,100
Shortfall amount (applying 90% in-line with formula)	**2,161,890**

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