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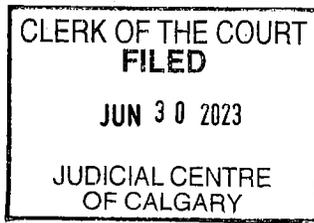
COURT

COURT OF KING'S BENCH OF ALBERTA

JUDICIAL CENTRE

CALGARY

IN THE MATTER OF THE COMPANIES'
CREDITORS ARRANGEMENT ACT, RSC 1985,
c C-36, as amended



AND IN THE MATTER OF CYXTERA
TECHNOLOGIES, INC., CYXTERA CANADA,
LLC, CYXTERA COMMUNICATIONS
CANADA, ULC and CYXTERA CANADA TRS,
ULC

APPLICANTS

CYXTERA TECHNOLOGIES, INC., CYXTERA
CANADA, LLC, CYXTERA
COMMUNICATIONS CANADA, ULC AND
CYXTERA CANADA TRS, ULC

DOCUMENT

AFFIDAVIT

ADDRESS FOR SERVICE AND
CONTACT INFORMATION OF PARTY
FILING THIS DOCUMENT

Gowling WLG (Canada) LLP
421 7 Ave SW Suite 1600
Calgary, AB T2P 4K9
Attn: Tom Cumming/Sam Gabor/Stephen Kroeger
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File No.: A170537

AFFIDAVIT OF ERIC KOZA #2

Sworn on June 30, 2023

I, **Eric Koza**, of the City of New York in the State of New York, United States of America, **SWEAR AND SAY THAT:**

1. I am the Chief Restructuring Officer ("**CRO**") of Cyxtera Technologies, Inc. ("**CTI**"), Cyxtera Canada, LLC ("**Cyxtera LLC**"), Cyxtera Communications Canada, ULC ("**Communications ULC**"), Cyxtera Canada TRS, ULC ("**TRS ULC**", and TRS ULC and Communications ULC

being collectively “**Cyxtera Canada**”, and Cyxtera Canada and Cyxtera LLC being collectively the “**Debtors**”) and the other Chapter 11 Debtors (as defined below), and as such, have personal knowledge of the facts and matters hereinafter deposed to, except where stated to be based upon information and belief, in which case I verily believe them to be true and accurate.

2. I have reviewed the business records maintained by the Debtors herein in respect of the matters at issue, which I verily believe were made in the ordinary and usual course of business. Where I do not have direct personal knowledge of matters deposed to herein, and my knowledge is derived from my review of the business records, I have attached relevant copies of those business records as exhibits to my Affidavit.
3. I have served as the CRO of CTI and the Debtors since May 5, 2023 and am authorized by them to swear this Affidavit.
4. All references to dollar amounts contained herein are in United States dollars unless otherwise stated.

RELIEF REQUESTED

5. This affidavit is sworn in support of an application pursuant to Part IV of the *Companies' Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”, and the recognition proceedings of the Debtors under Part IV of the CCAA being the “**Recognition Proceedings**”) by CTI as foreign representative of the Debtors in the cases commenced by CTI, the Debtors and eleven (11) other affiliated corporations (the “**Chapter 11 Cases**”, and CTI, the Debtors and such affiliated corporations being collectively the “**Chapter 11 Debtors**”) under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101–1532 (the “**US Bankruptcy Code**”) before the United States Bankruptcy Court for the District of New Jersey (the “**US Bankruptcy Court**”) for an Order:
 - (a) recognizing and giving effect in Canada to the following second day orders (collectively, the “**Second Day Orders**”) of the US Bankruptcy Court:
 - (i) an order (i) approving the bidding procedures and auction; (ii) approving stalking horse bid protections; (iii) scheduling bid deadlines and an auction; (iv) approving the form and manner of notice thereof; and (v) granting related relief (the “**Bidding Procedures Order**”);
 - (ii) a final order (i) authorizing the Chapter 11 Debtors to (A) file a consolidated list of their thirty largest unsecured creditors, (B) file a consolidated list of creditors *in lieu* of submitting a separate mailing matrix for each debtor, and (C) redact certain personally identifiable information; (ii) waiving the requirement to file a list of equity holders and provide notices directly to equity security holders; and (iii) granting related relief (the “**Final Consolidated Creditor List Order**”);

- (iii) a final order (i) authorizing the Chapter 11 Debtors to (A) continue to perform under existing hedging contracts, (B) enter into new hedging contracts, (C) grant super priority claims, provide other credit support, and honor obligations under hedging contracts; and (ii) granting related relief (the “**Final Hedging Order**”);
 - (iv) a second interim order (i) authorizing the Chapter 11 Debtors to (A) continue using the cash management system, (B) honor certain prepetition obligations related thereto, (C) maintain existing Chapter 11 Debtor bank accounts, business forms, and books and records, and (D) continue intercompany transactions; and (ii) granting related relief (the “**Second Interim Cash Management Order**”);
 - (v) a final order (i) approving the Chapter 11 Debtors’ proposed adequate assurance for future utility services; (ii) prohibiting utility companies from altering, refusing, or discontinuing services; (iii) approving the Chapter 11 Debtors’ proposed procedures for resolving adequate assurance requests; and (iv) granting related relief (the “**Final Utility Adequate Assurance Order**”);
 - (vi) a final order (i) authorizing the Chapter 11 Debtors to pay prepetition claims of certain critical vendors, foreign vendors, 503(b)(9) claimants, and lien claimants; (ii) granting administrative expense priority to all undisputed obligations on account of outstanding orders; and (iii) granting related relief (the “**Final Critical Vendor Order**”);
 - (vii) a final order (i) authorizing the Chapter 11 Debtors to (A) maintain and administer their customer and partner programs, and (B) honor certain prepetition obligations related thereto; and (ii) granting related relief (the “**Final Customer and Partner Program Order**”);
 - (viii) a final order (i) authorizing the Chapter 11 Debtors to (A) pay prepetition wages, salaries, other compensation, and reimbursable expenses, and (B) continue employee benefits programs; and (ii) granting related relief (the “**Final Employee Compensation Order**”);
 - (ix) a final order (i) authorizing the Chapter 11 Debtors to (A) maintain insurance and surety coverage entered into prepetition and pay related prepetition obligations, and (B) renew, supplement, modify, or purchase insurance and surety coverage; and (ii) granting related relief (the “**Final Insurance Maintenance Order**”); and
 - (x) a final order (i) authorizing the payment of certain taxes and fees; and (ii) granting related relief (the “**Final Tax Payment Order**”);
- (b) approving the professional fees, costs and disbursements for Gowling WLG (Canada) LLP (“**Gowling**”) as Canadian counsel for the Foreign Representative and the Debtors for the period May 23, 2023, up to and including June 26, 2023;

- (c) approving the professional fees and disbursements for Alvarez & Marsal Canada Inc., the Information Officer appointed by the Court of King’s Bench of Alberta (the “**CCAA Court**”) in these Recognition Proceedings, and its counsel, McMillan LLP, in each case for the period of May 23, 2023, up to and including June 26, 2023; and
 - (d) granting such further and other relief as the CCAA Court may deem appropriate.
6. The substantive background to the Chapter 11 Cases and Recognition Proceedings is set out in my affidavit sworn June 6, 2023 (“**Koza Affidavit #1**”).

BACKGROUND

The Parties

7. CTI is a United States corporation incorporated pursuant to the laws of the State of Delaware with its head office in Coral Gables, Florida and its registered office in Wilmington, Delaware. CTI is the ultimate parent corporation of a group of companies operating under the tradename “Cyxtera” that are incorporated in the United States, Canada, United Kingdom, Germany, Australia, Japan, the Netherlands, Hong Kong, Singapore and the Cayman Islands, including the Debtors (collectively “**Cyxtera**” or the “**Cyxtera Group**”). A copy of the organizational chart for the Cyxtera Group is attached hereto and marked as **Exhibit “A”**.
8. Cyxtera LLC is a United States limited liability corporation incorporated pursuant to the laws of the State of Delaware with its registered office in Wilmington, Delaware. Cyxtera LLC’s sole activity is to hold all of the shares in Communications ULC.
9. Communications ULC is an Alberta unlimited liability corporation incorporated pursuant to the laws of the Province of Alberta and has its registered in Calgary, Alberta. Communications ULC is extra-provincially registered in British Columbia, Ontario and Québec and carries on business in those provinces and in Alberta. Communications ULC has four (4) data centre operations in (i) Vancouver, British Columbia, (ii) Mississauga and Markham, Ontario, and (iii) Montreal, Quebec (collectively the “**Canadian Data Centres**”).
10. TRS ULC is an Alberta unlimited liability corporation incorporated pursuant to the laws of Alberta and has its registered office in Calgary, Alberta. TRS ULC has no property other than its corporate records and does not carry on business. Communications ULC is the sole shareholder of TRS ULC.

Chapter 11 Cases and Recognition Proceedings

11. On June 4, 2023 (the “**Petition Date**”), the Debtors and the other Chapter 11 Debtors filed voluntary petitions for relief under Chapter 11 of the US Bankruptcy Code in the US Bankruptcy Court, commencing the Chapter 11 Cases, whereupon the Chapter 11 Debtors received certain automatic relief under the Bankruptcy Code including a world-wide stay of proceedings.

12. Contemporaneously with filing the petitions commencing the Chapter 11 Cases, the Chapter 11 Debtors filed first day motions therein (“**First Day Motions**”) seeking, among other things, certain orders in the Chapter 11 Cases (the “**Chapter 11 Orders**”), which First Day Motions were heard by the US Bankruptcy Court on June 6, 2023 (the “**First Day Hearing**”). Some of the Chapter 11 Orders could be made as final orders at the First Day Hearings (the “**First Day Final Orders**”), but others only as interim orders (the “**First Day Interim Orders**”, along with the First Day Final Orders, the (“**First Day Orders**”)), with the final Second Day Orders to be sought at a second hearing before the US Bankruptcy Court (the “**Second Day Hearing**”).
13. On June 6–7, 2023, the US Bankruptcy Court issued, *inter alia*, the following Chapter 11 Orders in the First Day Motions:
 - (a) the First Day Final Orders:
 - (i) authorizing CTI to act as foreign representative on behalf of the Debtors in these Recognition Proceedings;
 - (ii) restating and enforcing the worldwide automatic stay, anti-discrimination provisions, and *ipso facto* protections of the Bankruptcy Code and approving the form and manner of notice;
 - (iii) establishing certain notice, case management, and administrative procedures;
 - (iv) authorizing the appointment of Kurtzman Carson Consultants LLC as claims and noticing agent effective as of the Petition Date;
 - (v) extending the time to file schedules of assets and liabilities, schedules of executory contracts and unexpired leases, and statements of financial affairs; and
 - (vi) directing the joint administration of the estates of the Chapter 11 Debtors and the Chapter 11 Cases; and
 - (b) the First Day Interim Orders:
 - (i) authorizing the Chapter 11 Debtors to file a consolidated list of their thirty largest unsecured creditors, to file a consolidated list of creditors in lieu of submitting a separate mailing matrix for each debtor, to redact certain personally identifiable information, and waiving the requirement to file a list of equity holders and provide notices directly to equity security holders;
 - (ii) approving notification and hearing procedures for certain transfers of and declarations of worthlessness with respect to common stock;
 - (iii) authorizing the Chapter 11 Debtors to continue to perform under existing hedging contracts, to enter into new hedging contracts, to grant superpriority claims and provide other credit support, and to honor obligations under hedging contracts;

- (iv) authorizing the Chapter 11 Debtors to continue using the cash management system, to honor certain prepetition obligations related thereto, to maintain existing bank accounts, business forms and books and records of the Chapter 11 Debtors, and to continue certain intercompany transactions;
- (v) approving the Chapter 11 Debtors' proposed adequate assurance for future utility services, prohibiting utility companies from altering, refusing, or discontinuing services, and approving the Chapter 11 Debtors' proposed procedures for resolving adequate assurance requests;
- (vi) authorizing the Chapter 11 Debtors to pay prepetition claims of certain critical vendors, foreign vendors, 503(b)(9) claimants and lien claimants, and granting administrative expense priority to all undisputed obligations on account of outstanding orders;
- (vii) authorizing the Chapter 11 Debtors to maintain and administer their customer and partner programs, and honor certain prepetition obligations related thereto;
- (viii) authorizing the Chapter 11 Debtors to pay prepetition wages, salaries, other compensation, and reimbursable expenses, and continue employee benefits programs;
- (ix) authorizing the Chapter 11 Debtors to maintain insurance and surety coverage entered into prepetition and pay related prepetition obligations, and renew, supplement, modify, or purchase insurance and surety coverage;
- (x) authorizing the payment of certain taxes and fees; and
- (xi) authorizing the Chapter 11 Debtors to obtain post-petition financing and to use cash collateral, granting liens and providing superpriority administrative expense claims, granting adequate protection, modifying the automatic stay and scheduling a final hearing (the "**Interim DIP Financing Order**").

14. True copies of the First Day Orders are attached to the Secretarial Affidavit of Kristy DeLure, an assistant employed by our Canadian counsel, Gowling, sworn June 15, 2023 (the "**Secretarial Affidavit**") and filed in these Recognition Proceedings.

15. On June 6, 2023, CTI together with the Debtors filed an originating application under Part IV of the CCAA commencing the Recognition Proceedings and at the hearing of that application on June 7, 2023 (the "**Canadian Recognition Application**"), the Honourable Justice Nixon pronounced the following Orders:

- (a) an initial recognition order (the "**Initial Recognition Order**");

- (i) recognizing that the Foreign Representative is the foreign representative of the Debtors for the purposes of section 45(1) of the CCAA in respect of the Chapter 11 Cases;
 - (ii) recognizing that the centre of each of the Debtors' main interest is the United States of America and that the Chapter 11 Cases are foreign main proceedings as defined in section 45(1) of the CCAA;
 - (iii) until otherwise ordered by the CCAA Court:
 - (A) staying all proceedings taken or that might be taken against any Debtor under the *Bankruptcy and Insolvency Act* or the *Winding-up and Restructuring Act*;
 - (B) restraining further proceedings in any action, suit or proceeding against any Debtor; and
 - (C) prohibiting the commencement of any action, suit or proceeding against any Debtor;
 - (iv) except with leave of the CCAA Court, prohibiting each Debtor from selling or otherwise disposing of, outside the ordinary course of its business, any of its property in Canada that relates to the business, and any of its other property in Canada; and
- (b) a supplemental order (the “**Supplemental Order**”):
- (i) recognizing the First Day Orders and giving them full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA;
 - (ii) appointing Alvarez and Marsal Canada Inc. as an information officer of the CCAA Court (in such capacity, the “**Information Officer**”);
 - (iii) until the termination of the Chapter 11 Cases or such date as may be ordered by the CCAA Court, restraining and staying the commencement or continuance of any proceeding against the Debtors, their business or properties, and until further order of the CCAA Court, staying the exercise of any rights or remedies against the Debtors or their business or properties, or from discontinuing, altering, interfering with, repudiating, terminating or ceasing to perform any right, renewal right, contract, agreement, license or permit in favour of the Debtors, and restraining the termination of the supply of goods and services to the Debtors;
 - (iv) granting an administration (the “**Administration Charge**”) charge in favour of the Information Officer, legal counsel to the Information Officer, and legal counsel to CTI and the Debtors, in an aggregate amount not to exceed

CDN\$400,000 as security for their professional fees and disbursements incurred in the Recognition Proceedings, both before and after the making of such Order;

- (v) granting a charge (the “**DIP Lenders’ Charge**”) against the Debtors’ property in Canada securing the obligations of the Debtors under the Senior Secured Super Priority Debtor-In-Possession Credit Agreement dated June 7, 2023 (“**DIP Credit Agreement**”); and
- (vi) ordering that the Administration Charge and DIP Lenders Charge rank in priority to all other security interests, trusts, liens, charges and encumbrances, claims of secured creditors, statutory or otherwise in favour of any Person, and that as between the Administration Charge and the DIP Lenders’ Charge, the Administration Charge ranks first to a maximum amount of CDN\$400,000, and the DIP Lenders’ Charge ranks second.

DEVELOPMENTS SINCE JUNE 7, 2023

Financial Information

16. At the Canadian Recognition Application, the Honourable Justice Nixon requested that in advance of the next hearing in the Recognition Proceedings, 13-week cash flow projections and financial statements be prepared for the Canadian Court’s review. Because the only Debtor carrying on business and having property in Canada is Communications ULC, the following 13-week cash flow projections and financial statements were prepared for Communications ULC:
- (a) weekly cash flow projections for a 13-week period commencing the week of June 5, 2023 and ending September 3, 2023 prepared by AlixPartners (the “**Cash Flow Projections**”);
 - (b) unaudited financial statements as of and for 2023 ending May 31, 2023 and for the year ending December 31, 2022 prepared by Cyxtera (the “**Financial Statements**”); and
 - (c) Communications ULC trial balance for the months of April and May 2023 prepared by Cyxtera (the “**Trial Balance**”)

Attached are copies of the Cash Flow Projections, Financial Statements and Trial Balance as **Exhibit “B”**, **Exhibit “C”** and **Exhibit “D”** respectively.

17. As reflected in the Cash Flow Projections, Communications ULC will principally be using cash from operations during these proceedings to pay ongoing day-to-day operational expenses for the Canadian Data Centres. Communications ULC is currently maintaining a positive cash balance under the Cash Flow Projections and it is not anticipated that during the 13-week period ending September 3, 2023 that additional working capital funding will be required. It is also not anticipated that there will be any intercompany transactions involving the Debtors during that 13 week period.

18. As reflected in the Financial Statements, Communications ULC operated at a net loss of \$10,200,000 in 2022 and was operating at a net loss of \$12,300,000 in the first five (5) months of 2023.
19. I am advised by Gowling that the Information Officer was provided with the Cash Flow Projections and Financial Statements on June 16, 2023, is in the process of reviewing that information and will report to the CCAA Court following the completion of its review.

Developments in the United States and in the Chapter 11 Cases

20. Since the commencement of the Chapter 11 Proceedings, Cyxtera has continued to pursue a dual restructuring approach pursuant to which Cyxtera has continued to carry out a marketing process and a standalone recapitalization of its balance sheet. As described more fully in Koza Affidavit #1, in March 2023, Cyxtera, with the assistance of its investment bank Guggenheim Securities, LLC (“**Guggenheim Securities**”), launched a comprehensive marketing process (the “**Marketing Process**”) to engage third parties that might be interested in either investing in Cyxtera or purchasing its business and assets. The Marketing Process ran in parallel with Cyxtera’s engagement with the ad hoc group of first lien lenders represented by Gibson, Dunn & Crutcher LLP as legal counsel and Houlihan Lokey, Inc as investment banker (the “**Ad Hoc Group**”) regarding the terms of a comprehensive restructuring transaction.
21. On May 4, 2023, Cyxtera and the Ad Hoc Group entered into a restructuring support agreement (the “**Restructuring Support Agreement**”) under which Cyxtera has pursued a dual-track process under which (a) Cyxtera would be recapitalized (the “**Recapitalization Transaction**”) through the conversion of its first lien, pre-petition indebtedness into equity, and (b) would continue to pursue the Marketing Process to determine if a higher or otherwise better transaction could be consummated.
22. The Marketing Process was ongoing for over two months prior to the Petition Date, during which Guggenheim Securities contacted over seventy-five (75) potential financial and strategic partners (the “**Potential Purchasers**”) to solicit interest in either acquiring some or all of the assets and/or interests in Cyxtera outside of the Chapter 11 Cases (a “**Whole-Company Bid**”) or structuring a sale of or other investment in the company through a chapter 11 plan (“**Plan Sponsor Bid**”). As of June 15, 2023, thirty-seven (37) Potential Purchasers had entered into non-disclosure agreements with Cyxtera and six (6) Potential Purchasers have already submitted non-binding letters of intent, both in the form of Whole-Company Bids and Plan Sponsor Bids.
23. In a second day motion filed on June 15, 2023 with the US Bankruptcy Court, the Chapter 11 Debtors applied to the US Bankruptcy Court for the Bidding Procedures Order (the “**Bidding Procedures Motion**”) under which a the Marketing Process would be continued, procedures and rules would be set out for giving public notice of the Marketing Process, submitting and qualifying bids, qualifying bidders, designating bids as stalking horse bids, providing for break fees and reimbursement of costs in respect thereof, providing for a potential auction, and establishing time lines within which the steps in the procedures would be accomplished

(the “**Bidding Procedures**”). A copy of the Bidding Procedures Motion is attached hereto and marked as **Exhibit “E”**.

24. In designing the Bidding Procedures, the Chapter 11 Debtors sought to:
- (a) provide sufficient time for the Chapter 11 Debtors’ marketing efforts to permit them to identify potential transactions that would provide greater or better values to their estates than the Recapitalization Transaction, while balancing the Chapter 11 Debtors’ desire to minimize administrative expenses, business disruption, and emerge from the Chapter 11 Cases on the fastest timeline possible;
 - (b) take into account the significant prepetition Marketing Process while providing potential purchasers with sufficient time to review diligence and submit bids;
 - (c) provide the opportunity for the Debtors to receive and evaluate additional bids and if necessary to hold an auction to determine the highest or otherwise best bid, for the benefit of all stakeholders in the Chapter 11 Cases;
 - (d) garner additional interest in participating in the Marketing Process and Bidding Procedures; and
 - (e) provide a market check on the value of the proposed recoveries to holders of claims and interests contemplated by the Recapitalization Transaction.
25. The proposed schedule outlined below (the “**Schedule**”) provided for in the Bidding Procedures are calculated to balance the provision of adequate notice to interested parties and potential purchasers with the need to run an expeditious and efficient sale process. The schedule is consistent with the case timeline required by the DIP Credit Agreement and allows for confirmation of a Chapter 11 plan before September 22, 2023. The Schedule is as follows:

Action	Description	Deadline
Stalking Horse Deadline	The deadline by which the Chapter 11 Debtors may choose a Stalking Horse Bidder.	July 16, 2023, at 5:00 p.m. prevailing Eastern Time, in the event there are no acceptable bidders and July 24, 2023, at 5:00 p.m. prevailing Eastern Time in the event there is at least one acceptable bidder
Final Bid Deadline	The deadline by which all binding bids must be actually received pursuant to the Bidding Procedures.	July 19, 2023, at 5:00 p.m. prevailing Eastern Time, in the event there are no acceptable bidders and July 31, 2023, at 5:00 p.m. prevailing Eastern Time in the event there is at least one acceptable bidder

Action	Description	Deadline
Auction	The date and time of the Auction, if one is needed, which will be held at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, 10022.	July 24, 2023, at 10:00 a.m. prevailing Eastern Time, if needed, or August 7, 2023, at 10:00 a.m. prevailing Eastern Time in the event there is at least one acceptable bidder
Notice of Successful Bidder	As soon as reasonably practicable after the conclusion of the Auction, the Chapter 11 Debtors will file on the U.S. Bankruptcy Court docket, but not serve, a notice identifying the Successful Bidder (as defined in the Bidding Procedures), identifying the applicable Successful Bidder, assets, and key terms of the agreement.	As soon as reasonably practicable after the conclusion of the Auction (if necessary).

26. The Bidding Procedures will allow the Chapter 11 Debtors to continue their pre-petition Marketing Process and potentially improve upon the Recapitalization Transaction while ensuring that in all cases the Chapter 11 Debtors, including the Debtors, emerge as quickly as possible from the Chapter 11 Cases and these Recognition Proceedings.
27. On June 21, 2023, the United States Trustee for the District of New Jersey appointed an official committee of unsecured creditors pursuant to section 1102 of the U.S. Bankruptcy Code (the “**Committee**”).
28. On the request of the Committee, the Chapter 11 Debtors motion for a final DIP financing Order, final share transfer order and final cash management order have been adjourned to July 19, 2023, where those motions will be heard before the US Bankruptcy Court. In the event the US Bankruptcy Court grants the aforementioned final orders, it is expected that CTI and the Debtors will thereafter seek recognition of those orders in the Recognition Proceedings. As a result of the motion for the final cash management order being adjourned, the Second Interim Cash Management Order is being sought by the Chapter 11 Debtors in the Chapter 11 Cases.

Developments in Canada

29. Gowling advises me that the obligatory newspaper notices as scheduled to the Initial Recognition Order were published in the National Post on June 13 and 20, 2023. Attached hereto and marked as **Exhibit “F”** are the two newspaper tear sheets from the National Post.
30. All day-to-day operations for Communications ULC and the Canadian Data Centres have continued in the ordinary course since the Petition Date.

APPLICATION AND GROUNDS TO RECOGNIZE THE SECOND DAY ORDERS

Bidding Procedure Order and Other Second Day Final Orders in Chapter 11 Proceedings

31. As discussed above, under the First Day Motions filed by the Chapter 11 Debtors on June 4, 2023, the First Day Interim Orders could only be obtained on an interim basis. Therefore, in addition to filing the Bidding Procedures Motion and the Second Interim Cash Management Order, the Chapter 11 Debtors are seeking the additional Second Day Orders, which would replace the First Day Interim Orders with final Second Day Orders of the US Bankruptcy Court, consisting of the following (collectively referred to as the “**Second Day Final Orders**”):
- (a) Chapter 11 Final Procedural Orders
 - (i) Final Consolidated Creditor List Order; and
 - (b) Chapter 11 Final Operations Support Orders
 - (i) Final Hedging Order;
 - (ii) Final Utility Adequate Assurance Order;
 - (iii) Final Critical Vendor Order;
 - (iv) Final Customer and Partner Program Order;
 - (v) Final Employee Compensation Order;
 - (vi) Final Insurance Maintenance Order; and
 - (vii) Final Tax Payment Order.
32. The Chapter 11 Debtors are relying upon my declarations dated June 5, 2023 as filed in the Chapter 11 Proceedings, as the evidentiary basis for the US Bankruptcy Court also granting the Second Day Final Orders.
33. I understand from speaking to the Chapter 11 Debtors’ U.S. counsel Kirkland & Ellis LLP (“**K&E**”) that once a party is served with a First Day Interim Order, such party has an opportunity to file an objection to that order. If no objection is filed, the general process is for the applicant to file with the US Bankruptcy Court a certificate of no objection and seek entry of the corresponding final order at or prior to the Second Day Hearing.
34. I understand from speaking to K&E that certain utility providers have filed an objection, and certain other utility providers filed a joinder thereto, to the Final Utility Adequate Assurance Order in relation to non-Canadian Cyxtera entities and non-Canadian assets and that the Chapter 11 Debtors and those objecting parties have agreed to adjourn the Final Utility Adequate Assurance Order as to those utility providers to the hearing scheduled for July 19, 2023. No other objections have been filed to the entering of the other Second Day Final Orders and the other

Second Day Final Orders are expected to be granted and entered by the US Bankruptcy Court either at the Second Day Hearing or on certificates of no objection prior to the Second Day Hearing.

Recognition in Canada of the Bidding Procedures Order and Second Day Orders

35. As discussed above, in this Application, CTI and the Debtors are seeking an Order of the CCAA Court recognizing and giving effect to the Bidding Procedures Order and the Second Day Final Orders. CTI and the Debtors are relying upon:
- (a) the evidence in Koza Affidavit #1 in support of the recognition of the Bidding Procedures Order and the Second Day Final Orders by this Honourable Court in this Recognition Proceeding, which attaches the First Day Motions as exhibits;
 - (b) the copies of the First Day Interim Orders attached as exhibits to the Secretarial Affidavit;
 - (c) the additional evidence submitted in this Affidavit; and
 - (d) any other evidence submitted in this Recognition Proceeding.
36. It is of critical importance to CTI, the Debtors and other Chapter 11 Debtors, and to continued coordination of the Chapter 11 Cases and this Recognition Proceeding, that the Bidding Procedures Order and Second Day Final Orders be recognized and be given effect in Canada by this Honourable Court. While I will discuss specific reasons for this with respect to the Bidding Procedures Order and the Final Utility Adequate Assurance Order below, the reasons for this importance include that the Debtors have no business or activity, or senior management structures, or access to debt or equity financing, or administrative structures, that is or could be independent of or separate from the other Chapter 11 Debtors, and therefore the restructuring or other resolution of the Debtors cannot be independent on any practical level of the restructuring or other resolution of the other Chapter 11 Debtors;

Bidding Procedures Order

37. As discussed above, the Debtors are seeking recognition of the Bidding Procedure Order in the Recognition Proceedings. The Debtors believe that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will maximize the value of the Debtors' estates. The proposed Bidding Procedures will allow the Chapter 11 Debtors to conduct a potential auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders. In particular, the Bidding Procedures contemplate an open and public marketing process with minimum barriers to entry and provide Potential Purchasers with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.
38. The Debtors believe that proposed Bidding Procedures will encourage competitive bidding, including for Communications ULC's Canadian assets, and are appropriate under the relevant

standards governing auctions in U.S. bankruptcy proceedings. Accordingly, the Debtors seek recognition of the Bidding Procedure Order in these Recognition Proceedings as a result of the assets in Canada forming part of Cyxtera's assets available for bidding in the Chapter 11 Cases.

Final Utility Adequate Assurance Order

39. The Second Day Motion for the Final Utility Adequate Assurance Order seeks final approval of an adequate assurance of payment fund for future utility services. The Final Utility Adequate Assurance Order is the same order as the Interim Utility Adequate Assurance Order with the exception of certain provisions continuing the entry of the final order as to certain objecting utility providers in order to give the parties additional time to resolve their disputes with the Chapter 11 Debtors.

Committee Review of Second Day Orders

40. The Committee began reviewing the Bidding Procedures Motion and Second Day Final Orders shortly after it was appointed and raised certain questions and concerns with the Chapter 11 Debtors. Certain Second Day Orders have been revised to reflect comments from the Committee. Attached hereto and marked as **Exhibits "G" to "P"** are the ten (10) certificates of no objection filed by the Chapter 11 Debtors for the Second Day Orders which append redline versions of the Second Day Orders reflecting the Committee's comments and resulting revisions to the Bidding Procedures Order and First Day Interim Orders.

APPROVAL OF FEES AND DISBURSEMENTS

41. I understand from Gowling that the Supplemental Order requires that Gowling obtain approval of its professional fees, costs and disbursements in the Recognition Proceedings. Attached hereto and marked as **Exhibit "Q"** is Gowling's invoice to CTI dated June 28, 2023 for its work performed from May 23, 2023 to June 26, 2023. I have reviewed the invoice and it is accurate, fair and reasonable, and based on the necessary work performed by Gowling.
42. I understand from Gowling that the Supplemental Order further requires that the Information Officer and its legal counsel McMillan LLP obtain approval of their respective professional fees, costs and disbursements in the Recognition Proceedings. I am advised by Gowling that those professionals respective invoices will be included in the Information Officer's first report to the CCAA Court to be filed prior to the July 4, 2023 hearing date. I have reviewed the invoices and they appear to be fair and reasonable, and appear to be based on the actual work performed by the Information Officer and its counsel respectively.

This is Exhibit "A" referred to in the Affidavit of
Eric Koza Sworn before me this 30th day of June, 2023



A Notary Public in and for the State of New Jersey

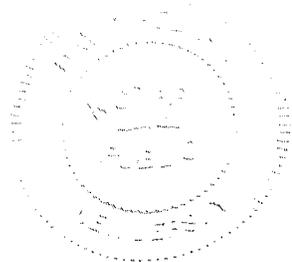
State of NEW JERSEY
County of MORRIS
Signed and sworn to (or affirmed) before me on 30 June 2023 by

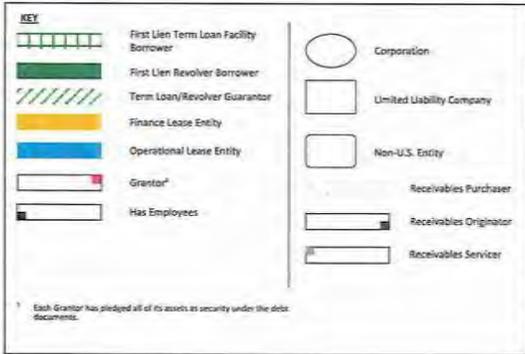
Eric Koza Eric Koza
(Name of individual making statement)


Signature of notarial officer
Stamp

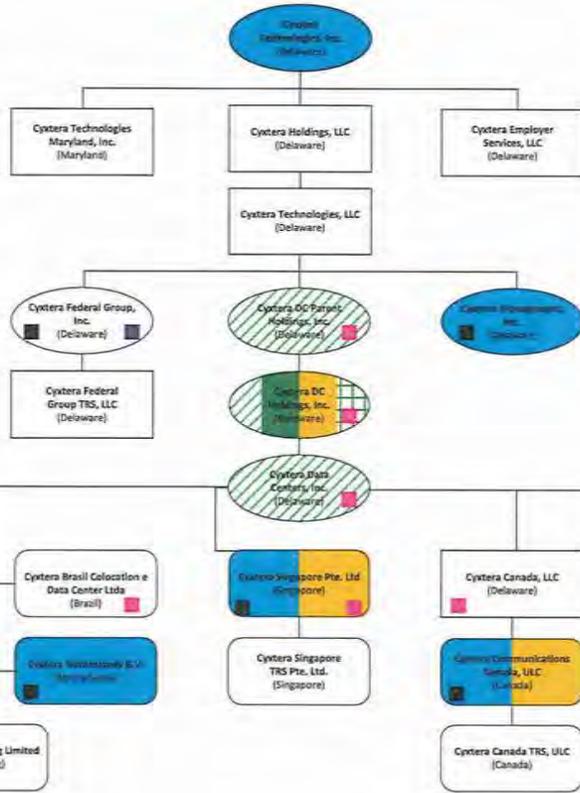
DAVID HELMAN
Name of Notary Public
Notary Public, State of New Jersey Title of office
My commission expires FEBRUARY 13, 2027

DAVID HELMAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 13, 2027





Ownership is 100% unless otherwise indicated



Funded indebtedness

Facility	Maturity Date	Interest Rate	Security	Principal Outstanding (\$MM)
First Lien Term Loan Facility (2017) ¹	May 2028	L + 3.00% ²	Equity interests and material real property	\$770.7
First Lien Term Loan Facility (2019) ¹	May 2024	L + 4.00% ²	Equity interests and material real property	\$96.7
First Lien Revolver	April 2024	Variable ³	Equity interests and material real property	\$97.2
Bridge Facility	May 2024	Variable ³	Equity interests and material real property	\$30.8
PNC Receivables Account	Variable	Variable		
Total:				\$1,015,100,000

1. Maturity dates as of September 30, 2023, based on the scheduled maturity dates based on the debt documents.
2. Maturity dates as of September 30, 2023, based on the scheduled maturity dates based on the debt documents.
3. Quarterly interest rate: +0.00% - 4.00%, +0.00% - 4.00%, +0.00% - 4.00%.
4. Quarterly interest rate: +0.00% - 4.00%, +0.00% - 4.00%.

Cyxtera Technologies, Inc. Management		Cyxtera Technologies, Inc. Board of Directors	
- Nelson Fonseca	Chief Executive Officer	- Manuel D. Medina	- Fahim Ahmed
- Carlos Sagasta	Chief Financial Officer	- Greg Waters	- Benjamin Phillips
- Victor Semah	General Counsel	- Nelson Fonseca	- John W. Diercksen
- Eric Kosa	Chief Restructuring Officer	- Fred Arnold*	- Roger Metbar*
- David Keasey	Chief Revenue Officer	- Scott Vogel*	
- Frank Barnett	Chief HR Officer		
- Mitch Fonseca	Chief Development Officer		
- Holland Barry	Field Chief Technology Officer		

* Disinterested Directors

This is **Exhibit "B"** referred to in the Affidavit of
Eric Koza Sworn before me this 30th day of June, 2023

[Handwritten Signature]

A Notary Public in and for the State of New Jersey

State of NEW JERSEY
County of MONMOUTH
Signed and sworn to (or affirmed) before me on 30 June 2023 by

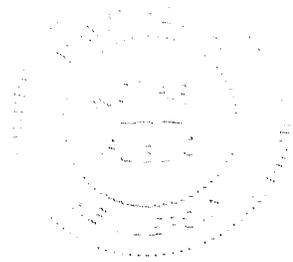
Eric Koza Eric Koza
(Name of individual making statement)

[Handwritten Signature]

Signature of notarial officer
Stamp

DAVID HELMAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 13, 2027

DAVID HELMAN
Name of Notary Public
Notary Public, State of New Jersey Title of office
My commission expires FEBRUARY 13, 2027



Cyxtera Technologies, Inc.
13 Week Cash Flow
Canada - Cyxtera Communications Canada, ULC
(\$ in thousands)

	Week 1	Week 2	Week 3	Week 4	Week 5	Week 6	Week 7	Week 8	Week 9	Week 10	Week 11	Week 12	Week 13
	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST	FCST
	5-Jun 11-Jun	12-Jun 18-Jun	19-Jun 25-Jun	26-Jun 2-Jul	3-Jul 9-Jul	10-Jul 16-Jul	17-Jul 23-Jul	24-Jul 30-Jul	31-Jul 6-Aug	7-Aug 13-Aug	14-Aug 20-Aug	21-Aug 27-Aug	28-Aug 3-Sep
Total Receipts	\$ 387	\$ 452	\$ 507	\$ 500	\$ 714	\$ 582	\$ 590	\$ 663	\$ 643	\$ 469	\$ 466	\$ 487	\$ 439
Payroll & Commissions	\$ -	\$ (67)	\$ -	\$ (67)	\$ -	\$ (67)	\$ -	\$ (67)	\$ -	\$ (67)	\$ -	\$ (67)	\$ -
Capital Expenditures	(34)	(47)	(17)	(26)	(17)	(51)	-	-	-	-	-	-	-
Other Operating Disbursements	(154)	(87)	(62)	(654)	(111)	(25)	(9)	(157)	(483)	(57)	(13)	(29)	(381)
Total Operating Disbursements	\$ (188)	\$ (200)	\$ (79)	\$ (747)	\$ (128)	\$ (143)	\$ (9)	\$ (224)	\$ (483)	\$ (124)	\$ (13)	\$ (96)	\$ (381)
OPERATING CASH FLOW	\$ 199	\$ 252	\$ 428	\$ (246)	\$ 586	\$ 440	\$ 582	\$ 439	\$ 160	\$ 346	\$ 452	\$ 391	\$ 58
Net I/C Activity	-	-	-	-	-	-	-	-	-	-	-	-	-
Other Disbursements	-	-	-	-	-	-	-	-	-	-	-	-	-
NET CASH FLOW	\$ 199	\$ 252	\$ 428	\$ (246)	\$ 586	\$ 440	\$ 582	\$ 439	\$ 160	\$ 346	\$ 452	\$ 391	\$ 58
Beginning Cash	\$ 3,362	\$ 3,561	\$ 3,813	\$ 4,241	\$ 3,995	\$ 4,581	\$ 5,021	\$ 5,603	\$ 6,042	\$ 6,202	\$ 6,548	\$ 7,000	\$ 7,391
Change in Cash	199	252	428	(246)	586	440	582	439	160	346	452	391	58
ENDING CASH	\$ 3,561	\$ 3,813	\$ 4,241	\$ 3,995	\$ 4,581	\$ 5,021	\$ 5,603	\$ 6,042	\$ 6,202	\$ 6,548	\$ 7,000	\$ 7,391	\$ 7,449

This is Exhibit "C" referred to in the Affidavit of
Eric Koza Sworn before me this 30th day of June, 2023

DAVID HELMAN

A Notary Public in and for the State of New Jersey

State of NEW JERSEY
County of MORRIS
Signed and sworn to (or affirmed) before me on 30 JUNE 2023 by

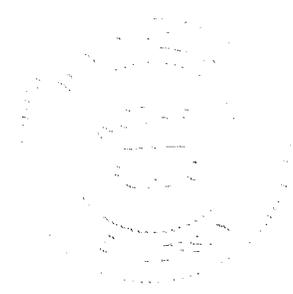
Eric Koza
(Name of individual making statement)

DAVID HELMAN

Signature of notarial officer
Stamp

DAVID HELMAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 13, 2027

DAVID HELMAN
Name of Notary Public
Notary Public, State of New Jersey Title of office
My commission expires FEBRUARY 13, 2027



CYXTERA COMMUNICATIONS CANADA, ULC
Financial Statements
As of and for Five Months Ended May 31, 2023 and Year
Ended December 31, 2022

CYXTERA COMMUNICATIONS CANADA, ULC
Balance Sheets
(unaudited, in millions, except share information)

	May 31, 2023	December 31, 2022
Current assets:		
Cash	C\$ 4.3	C\$ 2.8
Accounts receivable, net of allowance	2.5	2.8
Prepaid and other current assets	3.4	0.4
Total current assets	10.2	6.1
Property, plant and equipment, net	82.9	86.9
Goodwill	20.5	34.0
Right of use asset	13.2	13.9
Other assets	1.2	1.2
Total assets	C\$ 127.9	C\$ 142.0
Liabilities and shareholder's equity:		
Current liabilities:		
Accounts payable	C\$ 1.1	C\$ 0.9
Accrued expenses	4.3	1.4
Due to affiliates	30.1	34.5
Operating lease liability	0.9	0.9
Deferred revenue	3.9	3.3
Other current liabilities	—	0.2
Total current liabilities	40.4	41.2
Finance leases and other financing obligations, net of current portion	30.0	30.0
Operating lease liability, net of current portion	5.3	5.6
Other liabilities	3.3	4.0
Total liabilities	79.1	80.7
Shareholder's equity:		
Additional paid-in capital	85.2	85.2
Accumulated deficit	(36.4)	(24.1)
Total shareholder's equity	48.8	61.1
Total liabilities and shareholder's equity	C\$ 127.8	C\$ 141.8

Note: Cyxtera Communications Canada, ULC (the "Company") guaranteed the due and punctual payment and performance of the obligations of Cyxtera DC Holdings, Inc. (the "Borrower") under (1) the First Lien Pari Passu Guarantee Agreement dated as of May 4, 2023 by and among Cyxtera DC Parent Holdings, Inc. ("Holdings"), the Borrower, the Company, Cyxtera Canada TRS, ULC, the other guarantors from time to time party thereto and Wilmington Savings Fund Society, FSB, as administrative agent, in respect of a secured bridge facility in the aggregate principal amount of US \$50,000,000, and (2) the Supplement No. 1 dated as of May 4, 2023 to that certain First Lien Guarantee Agreement dated as of May 1, 2017 by and among Holdings, the Borrower, the subsidiaries of the Borrower from time to time party thereto, and any intermediate parent of the Borrower from time to time party thereto and Citibank, N.A., as administrative agent, in respect of secured revolving and term loan facilities in the aggregate principal amount of US \$1,065,000,000.

CYXTERA COMMUNICATIONS CANADA, ULC
 Statements of Operations
 (unaudited, in millions)

	Five Months	
	Ended 2023	Year Ended 2022
Revenues	C\$ 17.0	C\$ 38.8
Operating costs and expenses:		
Cost of revenues, excluding depreciation and amortization	9.6	27.1
Selling, general and administrative expenses	0.3	0.5
Depreciation and amortization	4.5	10.1
Goodwill impairment	13.6	7.9
Total operating costs and expenses	28.0	45.5
Income from operations	(11.0)	(6.8)
Interest and other expenses, net	1.4	3.3
Loss before income taxes	(12.3)	(10.2)
Income tax expense (benefit)	—	—
Net (loss) income	C\$ (12.3)	C\$ (10.2)

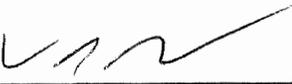
This is Exhibit "D" referred to in the Affidavit of
Eric Koza Sworn before me this 30th day of June, 2023

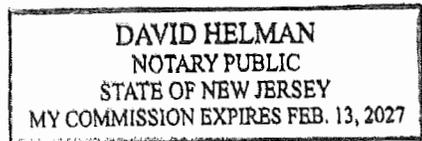


A Notary Public in and for the State of New Jersey

State of NEW JERSEY
County of MORRIS
Signed and sworn to (or affirmed) before me on 30 JUNE 2023 by

 Eric Koza
(Name of individual making statement)


Signature of notarial officer
Stamp



DAVID HELMAN
Name of Notary Public
Notary Public, State of New Jersey Title of office
My commission expires FEbruary 13, 2027



Financial Statement Item	Text for B/S P&L Item	May-23	Apr-23	Absolute Difference	Percentage Difference
7	ASSETS	0.00	0.00	0.00	
7	=====	0.00	0.00	0.00	
97	CURRENT ASSETS	0.00	0.00	0.00	
97	-----	0.00	0.00	0.00	
8	CASH & CASH EQUIVALENTS	0.00	0.00	0.00	
8	-----	0.00	0.00	0.00	
18	11306816 BOA-CXT-1110-8206 - Wires In	-9,916.59	-54,583.84	44,667.25	81.8
18	11307000 BOA-CXT-1110-8222 - Concentration Account	4,298,446.63	2,523,625.95	1,774,820.68	70.3
18	11313300 BOA-CXT-1110-8230 - Concentration Account	1,877.56	2,028.42	-150.86	7.4-
18	* Total Bank Account	4,290,407.60	2,471,070.53	1,819,337.07	73.6
8	** Total Cash & Cash Equivalents	4,290,407.60	2,471,070.53	1,819,337.07	73.6
9	ACCOUNTS RECEIVABLE	0.00	0.00	0.00	
187	12030000 Unbilled Revenue	104,513.24	58,448.22	46,065.02	78.8
187		104,513.24	58,448.22	46,065.02	78.8
188		104,513.24	58,448.22	46,065.02	78.8
181	12010400 CTL Trade Receivables - BRM	32,549.64	32,549.64	0.00	0.0
181	12010600 CTL Trade Receivables - Clearing	190,177.03	190,177.03	0.00	0.0
181		222,726.67	222,726.67	0.00	0.0
84		222,726.67	222,726.67	0.00	0.0
183	12010200 Trade Receivables - BRM	1,976,155.58	2,331,940.71	-355,785.13	15.3-
183		1,976,155.58	2,331,940.71	-355,785.13	15.3-
185	11306819 BOA-CXT-1110-8206 - A/R Receipts	-5,522.46	0.00	-5,522.46	
185		-5,522.46	0.00	-5,522.46	
155		1,970,633.12	2,331,940.71	-361,307.59	15.5-
19	* Total Receivables	2,193,359.79	2,554,667.38	-361,307.59	14.1-
148	12070000 Allowance for Doubtful Receivables - Regular	16,453.56	19,707.70	-3,254.14	16.5-
148	12080000 Allowance for Doubtful Receivables - Specific	60,229.93	60,229.93	0.00	0.0
148	12090000 Allowance for Doubtful Receivables - LPF & ETF	14,047.60	14,047.60	0.00	0.0
148		90,731.09	93,985.23	-3,254.14	3.5-
106	* Allowance for Doubtful Accounts	90,731.09	93,985.23	-3,254.14	3.5-
138	12060000 Other Receivables	73,437.73	73,437.73	0.00	0.0
138	* Other Receivables	73,437.73	73,437.73	0.00	0.0
20		73,437.73	73,437.73	0.00	0.0
9	** Accounts Receivable	2,462,041.85	2,780,538.56	-318,496.71	11.5-
101	PREPAID AND OTHER CURRENT ASSETS	0.00	0.00	0.00	

101	-----	0.00	0.00	0.00
150	14000800 Deferred Installation Costs - External	81,011.05	82,240.87	-1,229.82 1.5-
150	14000810 Deferred Installation Costs - Internal	0.01	137.86	-137.85 100.0-
150	14000820 Deferred Commission Costs - Internal	91,510.21	99,350.49	-7,840.28 7.9-
150	14000830 Deferred Commission Costs - External	2,893.74	3,116.21	-222.47 7.1-
150		175,415.01	184,845.43	-9,430.42 5.1-
167	* Deferred Charges	175,415.01	184,845.43	-9,430.42 5.1-
22	12604050 VAT - Input Tax	3,026,635.92	2,881,676.64	144,959.28 5.0
22		3,026,635.92	2,881,676.64	144,959.28 5.0
23	14000000 Prepaid Expenses	247,890.15	262,161.18	-14,271.03 5.4-
23	14000300 Prepaid Rent	0.02	0.02	0.00 0.0
23		247,890.17	262,161.20	-14,271.03 5.4-
101	** Total Prepaid and Other Current Assets	3,449,941.10	3,328,683.27	121,257.83 3.6
97	*** Total Current Assets	10,202,390.55	8,580,292.36	1,622,098.19 18.9
99	Non-Current Assets	0.00	0.00	0.00
99	NON-CURRENT ASSETS	0.00	0.00	0.00
13	TOTAL PROPERTY, PLANT, & EQUIPMENT	0.00	0.00	0.00
13	-----	0.00	0.00	0.00
26	16002000 Machinery & Equipment	16,602,688.28	16,560,132.18	42,556.10 0.3
26	16003500 Leasehold Improvements	83,272,202.29	83,251,313.17	20,889.12 0.0
26	16005000 Office Equipment	81,384.55	81,384.55	0.00 0.0
26	16006000 Furniture and Fixtures	133,496.56	133,496.56	0.00 0.0
26	16007000 Computer Hardware and Equipment	2,347,962.02	2,347,962.02	0.00 0.0
26	16009000 Construction in Progress	1,063,701.35	890,798.60	172,902.75 19.4
26	16018000 Capital Leases - Equipment	73,083.35	73,083.35	0.00 0.0
26	16019000 Capital Leases - Land and Building	29,884,010.46	29,884,010.46	0.00 0.0
26	39913200 Initial FI-AM offset - Construction in Progress	10.78	10.78	0.00 0.0
26		133,458,539.64	133,222,191.67	236,347.97 0.2
14	ACCUMULATED DEPRECIATION ON PP&E	0.00	0.00	0.00
14	17002000 Accumulated Depreciation - Machinery & Equipment	-2,456,561.81	-2,353,460.45	-103,101.36 4.4-
14	17003500 Acc Depr- Leasehold Improvements	-41,253,112.22	-40,561,309.23	-691,802.99 1.7-
14	17005000 Accumulated Depreciation - Office Equipment	-81,384.55	-81,384.55	0.00 0.0
14	17006000 Accumulated Depreciation - Furniture and Fixtures	-119,701.35	-119,509.89	-191.46 0.2-
14	17007000 Accumulated Depreciation - Computer Hardware	-1,001,920.66	-969,666.43	-32,254.23 3.3-
14	17018000 Accumulated Depreciation - Capital Leases	-73,083.35	-73,083.35	0.00 0.0
14	17019000 Accum. Depr - Capital Lease - Land and Building	-5,582,520.83	-5,480,840.96	-101,679.87 1.9-
14	* Accumulated Depreciation on PP&E	-50,568,284.77	-49,639,254.86	-929,029.91 1.9-

13	* Total Property, Plant, & Equipment	82,890,254.87	83,582,936.81	-692,681.94	0.8-
255	39913350 Initial FI-AM offset - Operating lease, ROU	6,214,560.52	6,214,560.52	0.00	0.0
255		6,214,560.52	6,214,560.52	0.00	0.0
271		6,214,560.52	6,214,560.52	0.00	0.0
113	GOODWILL	0.00	0.00	0.00	
113	-----	0.00	0.00	0.00	
154	39913330 Initial FI-AM offset - Goodwill	20,471,976.79	20,471,976.79	0.00	0.0
154		20,471,976.79	20,471,976.79	0.00	0.0
113	** Total Goodwill	20,471,976.79	20,471,976.79	0.00	0.0
10	NET INTANGIBLES	0.00	0.00	0.00	
10	-----	0.00	0.00	0.00	
35	19411000 Developed Technology	25,086.33	25,086.33	0.00	0.0
35	19415000 Favorable Leasehold Interests	14,006,815.77	14,006,815.77	0.00	0.0
35	*Intangible Assets	14,031,902.10	14,031,902.10	0.00	0.0
36	19501400 Accumulated Amortization-Developed Technology	-25,086.33	-25,086.33	0.00	0.0
36	19501800 Amortization - Favorable Leasehold Interests	-7,026,679.01	-6,932,352.84	-94,326.17	1.4-
36	* Less: Amortization of Intangible Assets	-7,051,765.34	-6,957,439.17	-94,326.17	1.4-
10	** Total Net Intangibles	6,980,136.76	7,074,462.93	-94,326.17	1.3-
16	OTHER LONG TERM ASSETS	0.00	0.00	0.00	
161	19321000 Deferred Tax Asset, non-current	3,761,323.00	3,761,323.00	0.00	0.0
161	19322000 Deferred Tax Asset Reserve, non-current	-3,761,323.00	-3,761,323.00	0.00	0.0
161		0.00	0.00	0.00	
27	* Deferred Tax Asset	0.00	0.00	0.00	
33	19026000 Other Assets, non-current	1,065,840.00	1,065,840.00	0.00	0.0
33	* Other Assets - Long Term	1,065,840.00	1,065,840.00	0.00	0.0
16	** Total Other Long Term Assets	1,065,840.00	1,065,840.00	0.00	0.0
99	*** Total Non-Current Assets	117,622,768.94	118,409,777.05	-787,008.11	0.7-
7	**** TOTAL ASSETS	127,825,159.49	126,990,069.41	835,090.08	0.7
6	LIABILITIES AND STOCKHOLDERS EQUITY	0.00	0.00	0.00	
6	=====	0.00	0.00	0.00	
37	CURRENT LIABILITIES	0.00	0.00	0.00	
116	-----	0.00	0.00	0.00	
40	TRADE PAYABLES	0.00	0.00	0.00	
40	-----	0.00	0.00	0.00	
40	21100000 Trade Payables	-937,777.59	-1,168,393.02	230,615.43	19.7
40	21120000 Goods Received/Invoice Received	-204,100.39	-92,394.95	-111,705.44	120.9-
40	21120100 Goods Received/Invoice Received - Revaluation	1,191.50	1,191.50	0.00	0.0

40	** Total Trade Payables	-1,140,686.48	-1,259,596.47	118,909.99 9.4
116	** ACCOUNTS PAYABLE	-1,140,686.48	-1,259,596.47	118,909.99 9.4
43	ACCRUED EXPENSES	0.00	0.00	0.00
43	-----	0.00	0.00	0.00
12	21130100 Accrued Bonuses	-51,203.69	-41,036.09	-10,167.60 24.8-
12	21130500 Accrued Payroll - Savings Plan	-6,739.41	0.00	-6,739.41
12	21130700 Accrued Payroll - Taxes	-28,710.89	-27,915.36	-795.53 2.8-
12	21130800 Accrued Payroll - ESPP	0.00	-8,766.15	8,766.15 100.0
12	21131600 Accrued Payroll - Benefit Withholding	-20,555.77	-17,726.65	-2,829.12 16.0-
12		-107,209.76	-95,444.25	-11,765.51 12.3-
51	-----	0.00	0.00	0.00
32	24002000 Sales/Use Tax Accrued (MW1) - State	-7,265,584.32	-6,785,486.44	-480,097.88 7.1-
32	24003000 Sales/Use Tax Accrued (MW2) - County	-104,050.31	-95,844.82	-8,205.49 8.6-
32	24004000 Sales/Use Tax Accrued (MW3) - City	-113,684.95	-73,686.98	-39,997.97 54.3-
32	24005800 Income Tax Payable - Foreign	1.09	1.09	0.00 0.0
32		-7,483,318.49	-6,955,017.15	-528,301.34 7.6-
31	24009000 VAT Tax Payable	16,262,135.49	16,262,135.49	0.00 0.0
31	24009020 Accrued Non-US Sales Tax	-11,645,733.50	-11,645,733.50	0.00 0.0
31	24009500 Withholding Tax Payable	-269,948.08	-269,948.08	0.00 0.0
31		4,346,453.91	4,346,453.91	0.00 0.0
51	** Total Taxes Payable (LT)	-3,136,864.58	-2,608,563.24	-528,301.34 20.3-
15	21133000 Accrued Expenses	-363,268.03	-386,024.79	22,756.76 5.9
15	21133100 Accrued Rent	-160,988.58	-160,988.58	0.00 0.0
15	21133700 Accrued Third Party Colo	-83,150.00	-83,150.00	0.00 0.0
15	21135600 Accrued Utilities	-444,079.36	-449,151.46	5,072.10 1.1
15		-1,051,485.97	-1,079,314.83	27,828.86 2.6
43	** Total Accrued Expenses	-4,295,560.31	-3,783,322.32	-512,237.99 13.5-
118	INTERCOMPANY RECEIVABLES/(PAYABLES)	0.00	0.00	0.00
118	-----	0.00	0.00	0.00
42	INTERCOMPANY PAYABLES	0.00	0.00	0.00
42	-----	0.00	0.00	0.00
42	25003000 Intracompany JE Clearing Account	-36,425,416.21	-36,776,734.15	351,317.94 1.0
42	** Intercompany Payables	-36,425,416.21	-36,776,734.15	351,317.94 1.0
118	** Total Intercompany Receivables/(Payables)	-36,425,416.21	-36,776,734.15	351,317.94 1.0
118	-----	0.00	0.00	0.00
257	21195000 Operating Lease Liabilities, current portion	-880,851.11	-880,851.11	0.00 0.0
257		-880,851.11	-880,851.11	0.00 0.0

274		-880,851.11	-880,851.11	0.00 0.0
261	21450400 Advance Billings, current	-2,579,141.09	-2,594,013.23	14,872.14 0.6
261		-2,579,141.09	-2,594,013.23	14,872.14 0.6
260		-2,579,141.09	-2,594,013.23	14,872.14 0.6
166	21450000 Deferred Installation Charges - BRM	-1,564,966.67	-1,583,207.41	18,240.74 1.2
166	21450075 Deferred Free Month Credits	194,339.28	186,777.79	7,561.49 4.0
166		-1,370,627.39	-1,396,429.62	25,802.23 1.8
179	** ST - DEFERRED REVENUE	-1,370,627.39	-1,396,429.62	25,802.23 1.8
278		-3,949,768.48	-3,990,442.85	40,674.37 1.0
170	21119000 CTL Customer Receipts	-14,689.28	-14,689.28	0.00 0.0
170	39916400 Initial - CTL Conduit Account	0.66	0.66	0.00 0.0
170	* Other Current Liabilities	-14,688.62	-14,688.62	0.00 0.0
135		-14,688.62	-14,688.62	0.00 0.0
37	*** Current Liabilities	-46,706,971.21	-46,705,635.52	-1,335.69 0.0
38	NON-CURRENT LIABILITIES	0.00	0.00	0.00
125	-----	0.00	0.00	0.00
49	Operating lease liabilities, less current prt	0.00	0.00	0.00
49	-----	0.00	0.00	0.00
49	25000500 Operating Lease Liabilities, non-current	-5,333,709.41	-5,333,709.41	0.00 0.0
49	Operating lease liabilities, less current prt	-5,333,709.41	-5,333,709.41	0.00 0.0
125	Operating lease liabilities, less current prt	-5,333,709.41	-5,333,709.41	0.00 0.0
175	25000000 Capital Lease Obligation - DC, non-current	-30,040,218.57	-30,040,218.57	0.00 0.0
175		-30,040,218.57	-30,040,218.57	0.00 0.0
44		-30,040,218.57	-30,040,218.57	0.00 0.0
50	Deferred Tax Liability	0.00	0.00	0.00
50	-----	0.00	0.00	0.00
50	27000000 Deferred Tax Liability - Long Term	0.50	0.50	0.00 0.0
50	27000100 Deferred Tax Asset Reserve - Long Term	-3.00	-3.00	0.00 0.0
50	* Deferred Tax Liability	-2.50	-2.50	0.00 0.0
141	** Deferred Tax Liability	-2.50	-2.50	0.00 0.0
262	21450300 Deferred Rent	-338,905.02	-337,224.23	-1,680.79 0.5-
262		-338,905.02	-337,224.23	-1,680.79 0.5-
169	* Deferred Rent (Step-Rent)	-338,905.02	-337,224.23	-1,680.79 0.5-
178	28000000 Asset Retirement Obligation	-2,150,450.56	-2,136,316.33	-14,134.23 0.7-
178		-2,150,450.56	-2,136,316.33	-14,134.23 0.7-
130	* Asset Retirement Obligation	-2,150,450.56	-2,136,316.33	-14,134.23 0.7-
52	OTHER LONG TERM LIABILITIES	0.00	0.00	0.00

52	-----	0.00	0.00	0.00
129	19422000 Unfavorable Leasehold Interests	-14,224.13	-14,224.13	0.00 0.0
129	19502200 Accumulated Amort - Unfavorable Leasehold Interest	14,224.13	14,224.13	0.00 0.0
129		0.00	0.00	0.00
24	21501000 Accrued Interest	-826,259.36	-820,945.46	-5,313.90 0.6-
24	* Accrued Interest - Long Term	-826,259.36	-820,945.46	-5,313.90 0.6-
52	** Total Other Long Term Liabilities	-826,259.36	-820,945.46	-5,313.90 0.6-
286		-3,315,614.94	-3,294,486.02	-21,128.92 0.6-
38	*** Total Non-Current Liabilities	-38,689,545.42	-38,668,416.50	-21,128.92 0.1-
39	SHAREHOLDER'S EQUITY	0.00	0.00	0.00
54	CAPITAL IN EXCESS OF PAR	0.00	0.00	0.00
54	-----	0.00	0.00	0.00
54	32000000 Capital in Excess of Par Value	-85,180,742.99	-85,180,742.99	0.00 0.0
54	32000202 Paid-In Capital (ESPPs)	-19.29	-460.16	440.87 95.8
54	* Total Capital in Excess of Par	-85,180,762.28	-85,181,203.15	440.87 0.0
55	RETAINED EARNINGS	0.00	0.00	0.00
55	-----	0.00	0.00	0.00
55	33000000 Retained Earnings	24,130,417.71	24,130,417.71	0.00 0.0
55	* Total Retained Earnings	24,130,417.71	24,130,417.71	0.00 0.0
29	00399999 999 Line Offset Account	0.82	0.82	0.00 0.0
29		0.82	0.82	0.00 0.0
56	* Total Retained Earnings	0.00	0.00	0.00
4		18,621,700.89	19,434,767.23	-813,066.34 4.2-
56	* Total Profit/Loss Current Year	18,621,700.89	19,434,767.23	-813,066.34 4.2-
39	*** Total Equity	-42,428,642.86	-41,616,017.39	-812,625.47 2.0-
6	**** TOTAL LIABILITIES & STOCKHOLDERS EQUITY	-127,825,159.49	-126,990,069.41	-835,090.08 0.7-
71	INCOME STATEMENT	0.00	0.00	0.00
69	**REVENUES	0.00	0.00	0.00
72	40000200 Power - Circuits	-27,647.66	-22,114.54	-5,533.12 25.0-
72	40000300 Usable KW	-5,896,899.83	-4,732,512.34	-1,164,387.49 24.6-
72	40000350 Secure Cabinet	-1,630,079.33	-1,293,145.60	-336,933.73 26.1-
72	40000400 Allocated KW	-1,280,846.86	-1,024,414.56	-256,432.30 25.0-
72	40000500 Metered	-2,521,509.04	-2,015,716.10	-505,792.94 25.1-
72		-11,356,982.72	-9,087,903.14	-2,269,079.58 25.0-
70	40000100 Space	-1,024,299.15	-819,100.02	-205,199.13 25.1-
70	40000600 Office Space	-45,954.80	-36,755.74	-9,199.06 25.0-
70	40001500 Storage Space - MRR	-32,255.67	-25,755.00	-6,500.67 25.2-

70		-1,102,509.62	-881,610.76	-220,898.86	25.1-
80	40001000 MRR Remote Hands	-19,425.60	-15,540.48	-3,885.12	25.0-
80		-19,425.60	-15,540.48	-3,885.12	25.0-
139	40001700 Other	-27,144.09	-21,788.13	-5,355.96	24.6-
139		-27,144.09	-21,788.13	-5,355.96	24.6-
205	40000800 Access Control	-23,193.70	-18,554.96	-4,638.74	25.0-
205	40000900 Surveillance	-7,350.00	-5,880.00	-1,470.00	25.0-
205		-30,543.70	-24,434.96	-6,108.74	25.0-
128		-12,536,605.73	-10,031,277.47	-2,505,328.26	25.0-
303	40005200 Cross Connect	-1,834,280.85	-1,466,911.25	-367,369.60	25.0-
303		-1,834,280.85	-1,466,911.25	-367,369.60	25.0-
314	40005320 POE	-20,109.87	-16,084.46	-4,025.41	25.0-
314		-20,109.87	-16,084.46	-4,025.41	25.0-
204	40001200 Structure Cabling	-8,363.00	-6,690.40	-1,672.60	25.0-
204		-8,363.00	-6,690.40	-1,672.60	25.0-
305		-28,472.87	-22,774.86	-5,698.01	25.0-
306	40001400 Riser Connect	-303,441.49	-242,001.96	-61,439.53	25.4-
306		-303,441.49	-242,001.96	-61,439.53	25.4-
304		-2,166,195.21	-1,731,688.07	-434,507.14	25.1-
307	40005100 IP	-91,849.58	-72,067.28	-19,782.30	27.4-
307		-91,849.58	-72,067.28	-19,782.30	27.4-
308	40005305 CxD Single Service Port	-21,535.38	-16,282.94	-5,252.44	32.3-
308		-21,535.38	-16,282.94	-5,252.44	32.3-
309	40005300 Metro Connect	-8,400.00	-6,720.00	-1,680.00	25.0-
309		-8,400.00	-6,720.00	-1,680.00	25.0-
94		-121,784.96	-95,070.22	-26,714.74	28.1-
191		-2,287,980.17	-1,826,758.29	-461,221.88	25.2-
110	40001100 AOM	-17,002.30	-13,601.84	-3,400.46	25.0-
110		-17,002.30	-13,601.84	-3,400.46	25.0-
193	40000410 CEC Overage - Usage	-34,281.88	-23,003.53	-11,278.35	49.0-
193	40000510 Metered - Usage	-336,204.10	-267,306.55	-68,897.55	25.8-
193	40005110 IP Connect - Usage	-981.75	0.00	-981.75	
193		-371,467.73	-290,310.08	-81,157.65	28.0-
316	40007500 Customer Discount/Adjustments	6.18	6.18	0.00	0.0
316	40007510 Customer Free Months	29,193.85	22,457.67	6,736.18	30.0
316		29,200.03	22,463.85	6,736.18	30.0
127		-15,183,855.90	-12,139,483.83	-3,044,372.07	25.1-

203	40000700 VRR Storage Space	-53,836.66	-46,211.50	-7,625.16	16.5-
203		-53,836.66	-46,211.50	-7,625.16	16.5-
194	40002000 VRR Remote Hands	-211,673.70	-170,370.79	-41,302.91	24.2-
194		-211,673.70	-170,370.79	-41,302.91	24.2-
192		-265,510.36	-216,582.29	-48,928.07	22.6-
195	40007610 Customer Lag - Reserve	-1,847.29	-1,847.29	0.00	0.0
195		-1,847.29	-1,847.29	0.00	0.0
196	40007000 Late Fees	-12,286.40	-4,693.84	-7,592.56	161.8-
196	40007010 Late Fees Reserve	-12,862.23	-12,862.23	0.00	0.0
196		-25,148.63	-17,556.07	-7,592.56	43.2-
209	40002500 Early Termination Fees	-103,476.22	-99,475.42	-4,000.80	4.0-
209		-103,476.22	-99,475.42	-4,000.80	4.0-
281		-130,472.14	-118,878.78	-11,593.36	9.8-
198	40002200 Service Install Fee - Colocation	-55,463.36	-42,810.23	-12,653.13	29.6-
198	40002205 Service Install Fee - Reserve	45,998.07	45,998.07	0.00	0.0
198	40002300 Service Equipment Fee - Colocation	-95,869.60	-77,316.79	-18,552.81	24.0-
198	40002400 Service Setup Fee - Colocation	-185,624.18	-145,621.31	-40,002.87	27.5-
198		-290,959.07	-219,750.26	-71,208.81	32.4-
199	40005400 Service Setup Fee - Cross Connect	-47,526.55	-38,184.52	-9,342.03	24.5-
199	40005600 Service Equipment Fee - Cross Connect	-14.46	-11.49	-2.97	25.8-
199		-47,541.01	-38,196.01	-9,345.00	24.5-
201	40005500 Service Setup Fee - Network Service	-876.96	-663.99	-212.97	32.1-
201		-876.96	-663.99	-212.97	32.1-
287		-339,377.04	-258,610.26	-80,766.78	31.2-
41		-15,919,215.44	-12,733,555.16	-3,185,660.28	25.0-
100	49000900 Intercompany Cross Revenue	-1,129,674.86	-907,962.22	-221,712.64	24.4-
100		-1,129,674.86	-907,962.22	-221,712.64	24.4-
69		-17,048,890.30	-13,641,517.38	-3,407,372.92	25.0-
65	50000100 Rent	1,757,024.80	1,405,056.64	351,968.16	25.1
65	50000101 Rent SL	11,219.95	9,539.16	1,680.79	17.6
65	50000102 Rent CAP	-1,202,669.25	-962,135.40	-240,533.85	25.0-
65		565,575.50	452,460.40	113,115.10	25.0
300	50000200 CAM	281,655.70	226,512.80	55,142.90	24.3
300	50000300 Insurance	18,102.20	14,481.76	3,620.44	25.0
300	50000400 Property Tax	289,185.38	232,463.58	56,721.80	24.4
300	50000600 Other Land Lord Costs	13,264.58	11,119.58	2,145.00	19.3
300		602,207.86	484,577.72	117,630.14	24.3

301	71102300 Amortization - Favorable Leasehold Interest	471,630.86	377,304.69	94,326.17	25.0
301		471,630.86	377,304.69	94,326.17	25.0
218	50011100 Asset Retirement Obligation	69,512.65	55,378.42	14,134.23	25.5
218		69,512.65	55,378.42	14,134.23	25.5
34		1,708,926.87	1,369,721.23	339,205.64	24.8
46	50001100 Power	1,984,867.73	1,562,643.70	422,224.03	27.0
46	50001200 Water & Sewer	23,106.96	18,336.73	4,770.23	26.0
46	50001300 Chilled Water	54,600.00	43,680.00	10,920.00	25.0
46	50001400 Generator Fuel Expense	12,500.69	7,493.44	5,007.25	66.8
46		2,075,075.38	1,632,153.87	442,921.51	27.1
297	50002185 COS - EH&S Services	1,182.04	1,182.04	0.00	0.0
297		1,182.04	1,182.04	0.00	0.0
298	50002195 COS - Tools and Tool Calibration	3,119.19	2,165.72	953.47	44.0
298	50008330 Facility Supplies	5,199.07	4,702.68	496.39	10.6
298	50008340 Vending & Bldng Services	1,060.20	379.48	680.72	179.4
298	50008360 Facilities Freight & Postage	1,689.35	1,689.35	0.00	0.0
298		11,067.81	8,937.23	2,130.58	23.8
226	50002100 Other-PM-Building Fixed Contract	4,306.72	4,306.72	0.00	0.0
226		4,306.72	4,306.72	0.00	0.0
273	50002110 Building Maintenance - Break/Fix	2,817.60	2,719.60	98.00	3.6
273		2,817.60	2,719.60	98.00	3.6
275	50002115 Building NonContract Routine	496.68	150.98	345.70	229.0
275		496.68	150.98	345.70	229.0
224		7,621.00	7,177.30	443.70	6.2
279	50002121 Battery Maintenance-PM-Electrical Fixed Contract	3,851.00	3,851.00	0.00	0.0
279	50002122 Battery Monitoring-PM-Electrical Fixed Contract	13,730.72	12,647.99	1,082.73	8.6
279	50002124 Fuel Systems-Not fuel-PM-Electrical Fixed Contract	1,440.00	1,440.00	0.00	0.0
279	50002126 Generator Inspections-PM-Electrical Fixed Contract	29,956.03	24,094.65	5,861.38	24.3
279	50002127 IR Scan Inspections -PM-Electrical Fixed Contract	31,800.00	31,800.00	0.00	0.0
279		80,777.75	73,833.64	6,944.11	9.4
280	50002130 Electrical Maintenance - Break/Fix	41,361.74	41,116.74	245.00	0.6
280		41,361.74	41,116.74	245.00	0.6
284	50002135 Electrical NonContract Routine	14,075.60	13,330.00	745.60	5.6
284		14,075.60	13,330.00	745.60	5.6
291		136,215.09	128,280.38	7,934.71	6.2
285	50002141 Air Handler Inspection(AHU)-PM-HVAC Fixed Contract	20,738.00	20,738.00	0.00	0.0
285	50002142 Chiller Inspections -PM-HVAC Fixed Contract	64,774.27	64,774.27	0.00	0.0

285	50002144 CRAC/H Inspections -PM-HVAC Fixed Contract	3,300.00	3,300.00	0.00 0.0
285	50002146 Water Treatment -PM-HVAC Fixed Contract	3,718.19	2,963.51	754.68 25.5
285		92,530.46	91,775.78	754.68 0.8
288	50002150 HVAC Maintenance - Break/Fix	49,225.19	45,840.91	3,384.28 7.4
288		49,225.19	45,840.91	3,384.28 7.4
289	50002155 Other -HVAC NonContract Routine	10,454.90	6,674.90	3,780.00 56.6
289	50002156 Air Filters -HVAC NonContract Routine	2,151.60	2,151.60	0.00 0.0
289		12,606.50	8,826.50	3,780.00 42.8
292		154,362.15	146,443.19	7,918.96 5.4
290	50002161 FireAlarm Control Panel (FACP)-Fire Fixed Contract	2,795.04	2,613.88	181.16 6.9
290	50002163 Fire Sprinkler Systems-Fire Fixed Contract	38,763.00	38,363.00	400.00 1.0
290		41,558.04	40,976.88	581.16 1.4
295	50002177 Fire Panel Battery Replace-Fire NonContractRoutine	3,666.20	3,666.20	0.00 0.0
295		3,666.20	3,666.20	0.00 0.0
293		45,224.24	44,643.08	581.16 1.3
228	50001130 Trash Expense	7,759.49	4,028.72	3,730.77 92.6
228	50002200 Janitorial Services - Fixed Contract	16,299.00	14,814.00	1,485.00 10.0
228	50002210 Janitorial Services - Other	1,004.85	1,004.85	0.00 0.0
228	50002220 Pest Control	2,134.98	1,700.15	434.83 25.6
228		27,198.32	21,547.72	5,650.60 26.2
58		382,870.65	358,210.94	24,659.71 6.9
231	50008100 General COGS - Colocation	264.85	264.85	0.00 0.0
231		264.85	264.85	0.00 0.0
234	50010260 Installation Cost - Colocation	16,433.88	11,815.74	4,618.14 39.1
234	50010270 Installation Cost - Technical Acc.	-16,433.88	-11,815.74	-4,618.14 39.1-
234	50010280 Installation Cost - Amortization	31,677.36	25,829.40	5,847.96 22.6
234		31,677.36	25,829.40	5,847.96 22.6
215	50010240 Third Party - Cross Connect	11,000.00	8,800.00	2,200.00 25.0
215	50010290 Third Party - Rack Power	286,000.00	228,800.00	57,200.00 25.0
215		297,000.00	237,600.00	59,400.00 25.0
229	50004100 Security - Contract Guard Services	407,218.45	327,885.16	79,333.29 24.2
229	50004220 Security - Break/Fix	1,751.01	1,625.91	125.10 7.7
229		408,969.46	329,511.07	79,458.39 24.1
235	50010100 Subscription Services	30,792.77	24,589.97	6,202.80 25.2
235	50010200 MRR Access and Interconnection Fee	39,455.00	31,310.00	8,145.00 26.0
235		70,247.77	55,899.97	14,347.80 25.7
232	50006110 IP Connect Bandwidth	23,667.58	18,797.45	4,870.13 25.9

232	50006120 Cloud Connect Bandwidth	1,650.00	1,320.00	330.00	25.0
232	50006130 Dark Fiber	26,000.00	20,800.00	5,200.00	25.0
232		51,317.58	40,917.45	10,400.13	25.4
227	50010210 Customer Decommissioning	63,600.00	62,920.00	680.00	1.1
227		63,600.00	62,920.00	680.00	1.1
233	50010620 Pro Fees - Remote Hands	200.00	0.00	200.00	
233		200.00	0.00	200.00	
236	54000100 Payroll Expense - Salaries	629,904.95	503,923.96	125,980.99	25.0
236	54000120 Payroll Expense - Labor Deferral	2,652.64	2,514.79	137.85	5.5
236	54000300 Payroll Expense - Overtime Salaries & Wages	48,180.42	36,423.56	11,756.86	32.3
236	54000310 Payroll Expense - Holiday Pay Worked	2,830.91	2,428.18	402.73	16.6
236	54000600 Payroll Expense - Other Personnel Exp.	146.89	146.89	0.00	0.0
236	54020100 Payroll - Cellular Expense	8,125.00	6,500.00	1,625.00	25.0
236	54020200 Payroll - Wellness Incentive	2,242.25	1,793.80	448.45	25.0
236	54020300 Payroll - Tuition Assistance	32.80	26.24	6.56	25.0
236		694,115.86	553,757.42	140,358.44	25.3
237	54011100 Payroll - Bonus	50,838.00	40,670.40	10,167.60	25.0
237		50,838.00	40,670.40	10,167.60	25.0
238	54011306 Stock Compensation - ESPP	439.26	439.26	0.00	0.0
238		439.26	439.26	0.00	0.0
239	54005100 Payroll Expense - Tax and Soc Security - Actual	86,236.76	71,427.71	14,809.05	20.7
239		86,236.76	71,427.71	14,809.05	20.7
217	54010100 Payroll Expense - 401K Contributions	25,807.64	21,304.03	4,503.61	21.1
217	54010200 Payroll Expense - Group Health Benefits	26,172.96	20,655.72	5,517.24	26.7
217	54010300 Payroll Expense - Other Benefits	37,716.90	29,718.14	7,998.76	26.9
217		89,697.50	71,677.89	18,019.61	25.1
241	55000100 Travel Expenses - Airfare	3,650.42	3,650.42	0.00	0.0
241	55000200 Travel Expenses - Hotel and Accommodation	1,955.28	114.04	1,841.24	1,614.6
241	55000300 Travel Expenses - Ground Transportation	6,753.92	5,048.14	1,705.78	33.8
241	55000400 Travel Expenses - Meals	41.66	41.66	0.00	0.0
241	55000500 Meals and Entertainment - non T&E	196.78	96.89	99.89	103.1
241	55000700 Travel Expenses - Miscellaneous	-173.37	-173.37	0.00	0.0
241	55000800 Travel Expense - Processing Fees	134.63	93.79	40.84	43.5
241		12,559.32	8,871.57	3,687.75	41.6
299	50010610 Pro Fees - Contractors	37,426.20	14,520.00	22,906.20	157.8
299		37,426.20	14,520.00	22,906.20	157.8
230	50004310 COS Cellular Services	2,080.30	1,639.32	440.98	26.9

230	50004315 COS Internet	31.69	31.69	0.00	0.0
230	50004325 COS Office Supplies	2,653.77	2,388.81	264.96	11.1
230	50004350 COS Training Education	690.63	690.63	0.00	0.0
230		5,456.39	4,750.45	705.94	14.9
73		976,769.29	766,114.70	210,654.59	27.5
68		6,066,919.21	4,879,143.48	1,187,775.73	24.3
244	61011306 Stock Compensation - ESPP	-440.87	0.00	-440.87	
244		-440.87	0.00	-440.87	
219	61005700 Payroll Expense - Workers' Comp. Contributions	414.03	339.30	74.73	22.0
219		414.03	339.30	74.73	22.0
246	61011500 Sales Commissions - Internal Cost	7,985.00	7,985.00	0.00	0.0
246	61011504 Sales Commissions - Internal Technical	-7,985.00	-7,985.00	0.00	0.0
246	61011505 Sales Commissions - Internal Deferral	38,535.88	30,695.60	7,840.28	25.5
246	61011515 Sales Commissions - External Deferral	1,112.77	890.30	222.47	25.0
246		39,648.65	31,585.90	8,062.75	25.5
77		39,621.81	31,925.20	7,696.61	24.1
86	64000300 Professional Services - Tax	5,884.54	4,699.07	1,185.47	25.2
86	64000500 Professional Services - Legal	272,685.95	77,683.15	195,002.80	251.0
86		278,570.49	82,382.22	196,188.27	238.1
91	65002400 Insurance	13,270.98	10,080.27	3,190.71	31.7
91		13,270.98	10,080.27	3,190.71	31.7
93	65004400 Network Bandwidth - (NB)	146.97	0.00	146.97	
93		146.97	0.00	146.97	
96	65008100 Repairs and Maintenance	429.52	0.00	429.52	
96		429.52	0.00	429.52	
137	67006000 Bad Debt Expense	11,163.07	7,908.93	3,254.14	41.1
137		11,163.07	7,908.93	3,254.14	41.1
66		343,202.84	132,296.62	210,906.22	159.4
157	DEPRECIATION AND AMORTIZATION EXPENSE	0.00	0.00	0.00	
157	-----	0.00	0.00	0.00	
62	71011200 Depreciation - Machinery & Equipment	399,467.40	296,366.04	103,101.36	34.8
62	71011400 Depreciation - Leasehold Improvements	3,447,222.72	2,755,419.73	691,802.99	25.1
62	71011700 Depreciation - Furniture and Fixtures	957.33	765.87	191.46	25.0
62	71011800 Depreciation - Computer Hardware	158,829.05	126,574.82	32,254.23	25.5
62	71101900 Amortization - Capital Lease - Land and Building	508,399.36	406,719.49	101,679.87	25.0
62	* Depreciation Expense	4,514,875.86	3,585,845.95	929,029.91	25.9
157	** Total Depreciation and Amortization Exp.	4,514,875.86	3,585,845.95	929,029.91	25.9

277	71201000 Impairment - Goodwill	13,567,752.64	13,567,752.64	0.00	0.0
277		13,567,752.64	13,567,752.64	0.00	0.0
136	72000410 Interest Expense - Capital Leases	1,228,822.08	982,974.33	245,847.75	25.0
136		1,228,822.08	982,974.33	245,847.75	25.0
88		1,228,822.08	982,974.33	245,847.75	25.0
302		1,228,822.08	982,974.33	245,847.75	25.0
250	72005100 Realized Loss from Exchange Rate Differences	29,880.84	13,029.90	16,850.94	129.3
250	72005200 Realized Gain from exchange rate differences	-4,885.12	-4,369.15	-515.97	11.8-
250		24,995.72	8,660.75	16,334.97	188.6
251	72006100 Unrealized Loss from Currency Valuation	-2,330,772.71	-2,330,772.71	0.00	0.0
251	72006200 Unrealized Gain from currency valuation	8,661,516.81	8,661,516.81	0.00	0.0
251		6,330,744.10	6,330,744.10	0.00	0.0
61		6,355,739.82	6,339,404.85	16,334.97	0.3
264	72002100 Bank Charges	19,381.49	14,969.49	4,412.00	29.5
264		19,381.49	14,969.49	4,412.00	29.5
267	79990100 Allocations	3,573,897.25	3,573,897.25	0.00	0.0
267		3,573,897.25	3,573,897.25	0.00	0.0
64		9,949,018.56	9,928,271.59	20,746.97	0.2
71	NET INCOME	18,621,700.89	19,434,767.23	-813,066.34	4.2-
3		-18,621,700.89	-19,434,767.23	813,066.34	4.2

This is Exhibit "E" referred to in the Affidavit of
Eric Koza Sworn before me this 30th day of June, 2023

[Handwritten Signature]

A Notary Public in and for the State of New Jersey

State of NEW JERSEY
County of MORRIS
Signed and sworn to (or affirmed) before me on 30 JUNE 2023 by

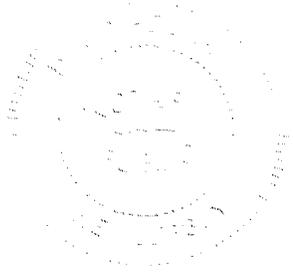
[Signature] Eric Koza
(Name of individual making statement)

[Handwritten Signature]

Signature of notarial officer
Stamp

DAVID HELMAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 13, 2027

DAVID HELMAN
Name of Notary Public
Notary Public, State of New Jersey Title of office
My commission expires FEBRUARY 13, 2027



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*Proposed Co-Counsel for Debtors and
Debtors in Possession*

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

**DEBTORS' MOTION FOR
ENTRY OF AN ORDER (I) APPROVING THE
BIDDING PROCEDURES AND AUCTION, (II) APPROVING
STALKING HORSE BID PROTECTIONS, (III) SCHEDULING**

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.



BID DEADLINES AND AN AUCTION, (IV) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (V) GRANTING RELATED RELIEF

TO THE HONORABLE JOHN K. SHERWOOD

UNITED STATES BANKRUPTCY JUDGE:

The above-captioned debtors and debtors in possession (collectively, the “Debtors”) respectfully state as follows in support of this motion (the “Motion”):²

Relief Requested

1. The Debtors seek entry of an order, substantially in the form attached hereto as **Exhibit A** (the “Order”): (a) authorizing and approving the proposed marketing, auction, and bidding procedures attached as Exhibit 1 to the Order (the “Bidding Procedures”), by which the Debtors will solicit and, if value-maximizing, in accordance with the terms of the Restructuring Support Agreement, will select the highest or otherwise best offer(s) for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”), (b) establishing certain dates and deadlines related thereto and scheduling an auction, if any, (the “Auction”), (c) approving the manner of notice of the Auction, as may be necessary, and (d) granting related relief.

² A detailed description of the Debtors and their businesses, including the facts and circumstances giving rise to the Debtors’ chapter 11 cases, is set forth in the *Declaration of Eric Koza, Chief Restructuring Officer of Cyxtera Technologies, Inc., in Support of the Chapter 11 Petitions and First Day Motions* (the “First Day Declaration”) [Docket No. 20]. Capitalized terms used but not defined in this Motion have the meaning ascribed to them in the First Day Declaration or the Bidding Procedures, as applicable.

Jurisdiction and Venue

2. The United States Bankruptcy Court for the District of New Jersey (the “Court”) has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11*, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.). The Debtors confirm their consent to the Court entering a final order in connection with this Motion to the extent that it is later determined that the Court, absent consent of the parties, cannot enter final orders or judgments in connection herewith consistent with Article III of the United States Constitution.

3. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

4. The bases for the relief requested herein are sections 105(a), 363, 365, 503, and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 6004, and 6006(a) of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rules 6004-1, 6004-2, and 9013-1(a)(3) of the Local Bankruptcy Rules for the District of New Jersey (the “Local Rules”).

Background

5. The Debtors, together with their non-Debtor affiliates (collectively, “Cyxtera”), are a leading global data center provider of: (i) colocation services—the practice of providing space and power to customers in reliable, redundant, and secure data centers to host customers’ critical applications and workloads in an integrated ecosystem; (ii) interconnection services—the practice of providing fast, highly reliable, convenient, and affordable connections between customers and their network service providers; (iii) bare metal services—the practice of offering customers on demand access to private bare metal servers and cloud technology with seamless connection to third party partner services; and (iv) deployment and ongoing support services in connection with Cyxtera’s full suite of data center offerings. Cyxtera offers its first-in-class services to more than 2,000 customers. Founded in 2017 and headquartered in Coral Gables, Florida, Cyxtera employs

a global workforce of over 600 employees and operates a footprint of more than sixty data centers in over thirty markets around the world, including the United States, Canada, London, Amsterdam, Singapore, Tokyo, and Germany.

6. On June 4, 2023 (the “Petition Date”), each of the Debtors filed a voluntary petition for relief under chapter 11 of the Bankruptcy Code. On June 6, 2023, the Court entered an order [Docket No. 71] authorizing the joint administration and procedural consolidation of these chapter 11 cases pursuant to Bankruptcy Rule 1015(b). The Debtors are operating their businesses and managing their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No request for the appointment of a trustee or examiner has been made in these chapter 11 cases and no official committees have been appointed or designated.

Introduction

7. As described more fully in the First Day Declaration, in March 2023, the Debtors, with the assistance of their proposed investment banker Guggenheim Securities, LLC (“Guggenheim Securities”), launched a comprehensive marketing process (the “Marketing Process”) to engage interested third parties in a potential sale transaction (the “Sale Transaction”). The Marketing Process ran in parallel with the Company’s engagement with the ad hoc group of first lien lenders represented by Gibson, Dunn & Crutcher LLP as legal counsel and Houlihan Lokey, Inc as investment banker (the “Ad Hoc Group”) regarding the terms of a comprehensive restructuring transaction.

8. On May 4, 2023, the Debtors and the Ad Hoc Group entered into the restructuring support agreement (the “Restructuring Support Agreement”), which contemplates a dual-track process whereby the Debtors will pursue a recapitalization transaction (the “Recapitalization Transaction”) that would equitize the Debtors’ first lien indebtedness under the Debtors’ prepetition credit agreements (the “Prepetition Credit Agreements”), while simultaneously

finalizing the Marketing Process to determine whether a higher or otherwise better transaction can be consummated.

9. In connection with the Marketing Process, which had been progressing for over two months as of the Petition Date, the Debtors, through Guggenheim Securities, contacted over seventy-five potential financial and strategic partners (the “Potential Purchasers”) to solicit interest in acquiring some or all of the assets and/or interests in the company outside of chapter 11 (“Whole-Company Bid”) or structuring a sale or other investment in the company through a chapter 11 plan (“Plan Sponsor Bid”). As of the filing of this Motion, thirty-seven Potential Purchasers have entered into non-disclosure agreements with the Debtors and six Potential Purchasers have already submitted non-binding letters of intent, both in the form of Whole-Company Bids and Plan Sponsor Bids.

10. By this Motion, the Debtors seek to continue the Marketing Process for bids in all forms so that the Debtors can attract as many high-quality Bids (as defined herein) as possible. If the Debtors identify a transaction with a third party, whether for the purchase of some or all of the New Equity Interests or the Assets, that provides stakeholders with greater or otherwise better value than the Recapitalization Transaction, the Debtors can “toggle” to that path.

11. The Debtors also seek to establish a schedule that provides sufficient time to finalize the Debtors’ marketing efforts for a Potential Purchaser while balancing the Debtors’ desire to minimize administrative expenses and business disruption as they work to emerge from these chapter 11 cases on the fastest timeline possible. Accordingly, the proposed schedule (the “Schedule”) takes into account the significant prepetition marketing that has already occurred while providing sufficient time postpetition for Potential Purchasers to review diligence and

submit Bids. The Schedule is also consistent with the case timeline required by the Debtors' DIP Credit Agreement³ and allows for confirmation of a plan before September 22, 2023.

12. The Bidding Procedures proposed herein provide further opportunity to market the Sale Package, receive and evaluate any additional Bids, and, if necessary, hold an Auction to determine the highest or otherwise best bid. The Bidding Procedures also provide the best path to (a) garner additional interest in the Sale Package, (b) receive the highest recovery available for all stakeholders, and (c) conduct a market check on the value of the proposed recoveries to holders of claims and interests contemplated by the Recapitalization Transaction.

13. The Bidding Procedures will allow the Debtors to continue their prepetition Marketing Process and potentiality improve upon the Recapitalization Transaction while ensuring that in all cases the Debtors emerge as quickly and as smoothly as possible. The Debtors, therefore, request that the Court approve the Bidding Procedures as set forth herein.

Proposed Sale Process and Selection of Stalking Horse Bidder

I. The Bidding Procedures.

14. The Bidding Procedures describe, among other things, the procedures for interested parties to access due diligence, the manner in which bidders and Bids become "qualified", the conduct of any auction, the selection and approval of a successful bidder or bidders and back-up bidders, and the deadlines with respect to the foregoing.

³ Pursuant to the *Interim Order (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* (the "Interim DIP Order") [Docket No. 70], on June 7, 2023, the Debtors incurred postpetition debtor-in-possession financing (the "DIP Facility") under that certain senior secured superpriority debtor-in-possession credit agreement (the "DIP Credit Agreement") by and between the Debtors, the DIP Agent (as defined in the DIP Credit Agreement), and the lenders party thereto.

15. The deadlines set forth in the Bidding Procedures were calculated to balance the need to provide adequate notice to parties in interest and Potential Purchasers with the need to run an expeditious and efficient sale process. The Bidding Procedures are designed to generate the highest or otherwise best available recoveries to the Debtors' stakeholders by encouraging prospective bidders to submit competitive, value-maximizing Plan Sponsor Bids. The Debtors believe that the Bidding Procedures and the timeline set forth therein are in the best interests of the Debtors' estates, will establish whether and to what extent any additional market for the Sale Package exists, and provide interested parties with sufficient opportunity to participate. Because the Bidding Procedures are attached as Exhibit 1 to the Order, they are not restated in their entirety herein. Generally speaking, however, the Bidding Procedures establish the following, among other things:⁴

- a. **Public Announcement of Auction.** As soon as reasonably practicable after entry of the Order, the Debtors shall cause a notice of the Auction, the Order, and the Bidding Procedures, substantially in the form attached to the Order as Exhibit 2 (the "Auction Notice"), to be served on the parties that receive notice of this Motion. In addition, as soon as practicable after entry of the Order, the Debtors will post the Auction Notice on the website of the Debtors' proposed claims and noticing agent at <https://www.kccllc.net/cyxtera> and publish the Auction Notice, with any modifications necessary for ease of publication, on one occasion in *The New York Times* (National Edition) and/or another national publication.

See Bid. Proc., at § II.

- b. **Potential Bidder Requirements.** To participate in the bidding process each Potential Bidder must deliver or have previously delivered to the Debtors the following preliminary documentation:
 1. an executed confidentiality agreement (a "Confidentiality Agreement") in form and substance acceptable to the Debtors;

⁴ This summary is provided in accordance with Local Rule 6004-2(b) and for the convenience of the Court and parties in interest. To the extent there is any conflict between this summary and the Bidding Procedures, the latter governs in all respects.

2. a statement of what portion of the New Equity Interests and/or the Assets that the Potential Bidder intends to acquire;
3. sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the New Equity Interests or the Assets, the adequacy of which must be acceptable to the Debtors, in consultation with the Consultation Parties;⁵ and
4. a statement detailing whether the Potential Bidder is partnering with or otherwise working with any other interested party in connection with the potential submission of a joint Bid, the identity of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable.

See Bid. Proc., at § III.

- c. **Qualified Bid Requirements.** To be eligible to participate in the Auction, an Acceptable Bidder must deliver to the Debtors and their advisors an irrevocable offer to purchase some or all of the New Equity Interests and/or Assets (each, a “Bid”) and shall meet the following criteria, among other things, on or prior to the Bid Deadline:

1. each Bid must clearly state (a) whether the bidder seeks to purchase some or all of the New Equity Interests or some or all of the Assets; and (b) if applicable, the liabilities and obligations to be assumed, including any debt and cure costs to be assumed;
2. each Bid must be accompanied by a cash deposit in the amount equal to ten percent of the aggregate purchase price of the Bid;
3. each Bid must (a) clearly set forth the purchase price to be paid for the New Equity Interests and/or some or all of the Assets (the “Purchase Price”), (b) identify separately the cash and non-cash components of the Purchase Price, (c) indicate the allocation of the Purchase Price among the Sale Package and related uses, if applicable; *provided* that, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation; and (d) describe its proposed post-emergence debt obligations and liquidity position for Reorganized Cyxtera, if applicable. The Purchase Price should be a single point value in U.S. Dollars on a cash-free, debt-free basis. Any Bid for substantially all of the New Equity Interests or Assets must also include a statement as to whether the Bid is conditioned on

⁵ The term “Consultation Parties” shall mean any official committee of unsecured creditors appointed in these chapter 11 cases (the “Committee”) and the Ad Hoc Group.

purchasing all of such or whether the Qualified Bid should be viewed as separate Bid for one or more sets of such;

4. to the extent that the Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors' satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder's obligations under the proposed Sale Transaction and other obligations under its Bid;
5. each Bid must include: (a) a chapter 11 plan and/or a draft purchase agreement along with copies that are marked to reflect any amendments and modifications; (b) a schedule of contracts and leases to be rejected to the extent applicable to the Bid, (c) a statement from the Acceptable Bidder specifying what, if any, other materials, conditions, due diligence, documents, exhibits, schedules, and/or ancillary materials are integral to such Bid or the Debtors' consideration thereof, (d), any other material documents integral to such Bid, and (e) a statement from the Acceptable Bidder that (i) it is prepared to enter into the Sale Transaction, no later than ten (10) business days after the conclusion of the Auction, subject to any necessary regulatory approvals, as specified by the Acceptable Bidder (or, if no Auction is held, the deadline by which all binding Bids must be actually received pursuant to the Bidding Procedures (the "Bid Deadline")) and (ii) the Qualified Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the "Back-Up Bid")) until the consummation of the Sale Transaction;
6. each Bid must include a description of the Acceptable Bidder's intentions with respect to the relevant members of the Debtors' current management team and other employees, and a description of any contemplated incentive plan, to the extent applicable;
7. each Bid must contain evidence that the Acceptable Bidder has obtained all necessary authorizations or approvals from its shareholders and/or its board of managers or directors, or any other internal and other approvals, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid;
8. the Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale Transaction, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price; and

- (b) agree not to engage in any collusion with respect to any Bids, the Auction, or the Sale Transaction;
9. each Bid must state that in the event such Bid is chosen as the Back-Up Bid, it shall remain irrevocable until the Debtors and the Successful Bidder consummate the applicable Sale Transaction;
 10. each Bid shall provide that the Acceptable Bidder will serve as a Back-Up Bidder if the Acceptable Bidder's Bid is the next highest or otherwise best bid;
 11. each Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the applicable Sale Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty days following execution and delivery of the applicable purchase agreement and/or confirmation of the Plan, those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible);
 12. each Bid must state the Acceptable Bidder's expected Closing date;
 13. the Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, and the Closing, as applicable; and
 14. each Bid must identify with particularity each and every condition to Closing.

See Bid. Proc., at § IV.

- d. **Stalking Horse Bid Protections.** In the event that the Debtors receive multiple Qualified Bids, at any time until July 16, 2023, at 5:00 p.m. (prevailing Eastern Time), the Debtors shall be authorized, but not obligated, in an exercise of their reasonable business judgment, with the consent of the Ad Hoc Group, and in consultation with the Committee, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder, (x) provide a break-up fee (the "Break Up Fee") and (y) agree to reimburse the reasonable and

documented out of pocket fees and expenses of such Stalking Horse Bidder(s) (the “Expense Reimbursement”). *See* Bid. Proc., at § IX.

- e. **Modification of the Bid Procedures.** A reservation of the rights of the Debtors to modify the Bidding Procedures in good faith, with the consent of the Ad Hoc Group, and in consultation with the Committee, to further the goal of attaining the highest or otherwise best offer, or impose, at or prior to the Auction, additional terms and conditions on the Sale Transaction. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders. *See* Bid. Proc., at § XVI.

16. Importantly, the Bidding Procedures recognize the Debtors’ fiduciary obligations to maximize value, and, as such, do not impair the Debtors’ ability to consider all Qualified Bid proposals, whether for the purchase of some or all of the New Equity Interests or the Assets, and preserve the Debtors’ right to modify the Bidding Procedures as necessary or appropriate to maximize value for their estates. Moreover, the Debtors will provide information about the ongoing sale process and consult with the Consultation Parties, as applicable, to ensure that the Debtors’ stakeholders are apprised of the status and determinations related to the Sale Transaction.

II. The Proposed Schedule.

17. The Debtors are seeking approval of the Bidding Procedures and the following proposed Schedule for the Marketing Process to establish a clear and open process for the solicitation, receipt, and evaluation of third-party bids on a timeline that allows the Debtors to consummate a Sale through a Plan. The Debtors respectfully request that the Court approve the Schedule.

a. **The Schedule.**

Action	Description	Deadline
Stalking Horse Deadline	The deadline by which the Debtors may choose a Stalking Horse Bidder	July 16, 2023, at 5:00 p.m. prevailing Eastern Time
Final Bid Deadline	The deadline by which all binding Bids must be actually received pursuant to the Bidding Procedures.	July 19, 2023, at 5:00 p.m. prevailing Eastern Time
Auction	The date and time of the Auction, if one is needed, which will be held at the offices of Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York, 10022.	July 24, 2023, at 10:00 a.m. prevailing Eastern Time, if needed.
Notice of Successful Bidder	As soon as reasonably practicable after the conclusion of the Auction, the Debtors will file on the docket, but not serve, a notice identifying the Successful Bidder (as defined in the Bidding Procedures) (the " <u>Notice of Successful Bidder</u> "), identifying the applicable Successful Bidder, Assets, and key terms of the agreement.	As soon as reasonably practicable after the conclusion of the Auction (if necessary).

18. The timelines contemplated in the foregoing Schedule are essential for the Debtors' swift emergence from chapter 11 and preserving the value of the Debtors' estates. Accordingly, the Debtors believe the relief requested herein is in the best interest of the Debtors' estates, will provide interested parties with sufficient opportunity to participate, and, therefore, should be approved.

III. Form and Manner of Auction Notice.

19. The Auction, if needed, will be held on July 24, 2023, at 10:00 a.m. prevailing Eastern Time (or such other date as selected by the Debtors) at the offices of the Debtors' proposed co-counsel: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022.

20. As soon as practicable after entry of the Order, the Debtors will cause the Auction Notice to be served on the parties that receive notice of this Motion. In addition, as soon as practicable after entry of the Order, the Debtors will post the Auction Notice on the website of the Debtors' proposed claims and noticing agent at <https://www.kccllc.net/cyxtera> and publish the Auction Notice, with any modifications necessary for ease of publication, on one occasion in

The New York Times (National Edition) and/or another national publication to provide notice to any other potential interested parties. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

21. The Auction Notice is reasonably calculated to provide all interested parties with timely and proper notice of the proposed Sale Transaction, including the date, time, and place of the Auction (if any), the Bidding Procedures, and the dates and deadlines related thereto. Accordingly, the Debtors request that the form and manner of the Auction Notice be approved and no other or further notice of the Auction be required.

Basis for Relief

I. The Relief Sought in the Order Is in the Best Interests of the Debtors' Estates and Should Be Approved.

22. “When conducting an asset sale, the ultimate responsibility of the debtor, and the primary focus of the bankruptcy court, is the maximization of the value of the assets sold.” John J. Jerome & Robert D. Drain, *Bankruptcy Court is Newest Arena for M&A Action*, N.Y.L.J., June 3, 1991; *see In re Mushroom Transp. Co.*, 382 F.3d 325, 339 (3d Cir 2004) (debtor-in-possession “had a fiduciary duty to protect and maximize the estate’s assets”); *In re Adams Res. Expl. Corp.*, No. 17-10866, 2017 WL 5493616, at *12 (Bankr. D. Del. May 24, 2017) (“The relief requested in the Sale Motion is a necessary and appropriate step toward enabling the Debtor to maximize the value of its bankruptcy estate, and it is in the best interests of the Debtor, its estate and its creditors.”). In furtherance of that goal, bidding procedures and bid protections, such as those proposed here, may be used in court-supervised sales because they streamline the acquisition process, “help to provide an adequate basis by which to compare offers,” and maximize value. Jerome & Drain (1991) at 8, col. 4; *see In re Edwards*, 228 B.R. 552, 561 (Bankr. E.D. Pa. 1998) (“The purpose of procedural bidding orders is to facilitate an open and fair public sale designed to

maximize value for the estate.”); *In re O’Brien Env’t Energy, Inc.*, 181 F.3d 527, 535 (3d Cir. 1999) (recognizing that bid protections “encourage a prospective bidder to do the due diligence that is the prerequisite to any bid by assuring the prospective bidder that it will receive compensation for that undertaking if it is unsuccessful”); *In re Dura Automotive Sys., Inc.*, No. 06-11202, 2007 WL 7728109, at *90 (Bankr. D. Del. Aug. 15, 2007) (recognizing that bidding procedures “intended to enhance competitive bidding are consistent with the goal of maximizing the value received by the estate and therefore are appropriate in the context of bankruptcy sales”); *Off. Comm. of Subordinated Bondholders v. Integrated Res., Inc. (In re Integrated Res., Inc.)*, 147 B.R. 650, 659 (S.D.N.Y. 1992) (bidding procedures and bid protections “are important tools to encourage bidding and to maximize the value of the debtor’s assets”); *In re Metaldyne Corp.*, 409 B.R. 661, 670 (Bankr. S.D.N.Y. 2009) (“[b]idder protections are granted when a bidder provides a floor for bidding by expending resources to conduct due diligence and allowing its bid to be shopped around for a higher offer”). In overseeing a sale subject to an auction process, the bankruptcy court must weigh:

on the one hand, providing for an orderly bidding process, recognizing the danger that absent such a fixed and fair process bidders may decline to participate in the auction; and, on the other hand, retaining the liberty to respond to differing circumstances so as to obtain the greatest return for the bankrupt estate.

In re Fin. News Network, Inc., 980 F.2d 165, 166 (2d Cir. 1992). Because the bankruptcy court must perform this balancing act, “a bankruptcy judge’s broad discretionary power in conducting the sale of a debtor’s assets should not be narrowed by technical rules mindlessly followed” that “reduce the broad discretion and flexibility a bankruptcy court must necessarily have to enhance the value of the estates before it.” *Id.* at 169–70; see *Dura Automotive*, 2007 WL 7728109, at *90 (“The paramount goal in any proposed sale of property of the estate is to maximize the proceeds received by the estate.”).

23. Here, the Debtors submit that the Bidding Procedures are a valid exercise of their business judgment, fair and appropriate under the circumstances, consistent with procedures routinely approved by courts in this circuit and in the best interest of their estates. Courts have consistently held that a debtor's business judgment is entitled to substantial deference with respect to the procedures to be used in selling an estate's assets. *See, e.g., In re Culp*, 550 B.R. 683, 697 (D. Del. 2015) (“‘In determining whether to authorize use, sale or lease of property of the estate under Section 363, courts require the [debtor] to show that a sound business purpose justifies such actions.’ If the [debtor’s] decision evidences a sound business purpose, then the Bankruptcy Court should approve the sale.”) (quoting *In re Montgomery Ward Holding Corp.*, 242 B.R. 147, 153 (D. Del. 1999)); *In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996) (citing *In re Schipper*, 933 F.2d 513, 515 (7th Cir. 1991)); *Schipper*, 933 F.2d at 515 (internal citations and quotations omitted) (“Under Section 363, the debtor in possession can sell property of the estate . . . if he has an ‘articulated business justification’”); *see Integrated Res.*, 147 B.R. at 656 (applying business judgment rule to bidding procedures and incentives and noting that “[c]ourts are loath to interfere with corporate decisions absent a showing of bad faith, self-interest, or gross negligence”).

24. The Debtors believe that the proposed Bidding Procedures will promote active bidding from seriously interested parties and will maximize the value of the Sale Package for the benefit of the Debtors' estates. The proposed Bidding Procedures will allow the Debtors to conduct an Auction in a controlled, fair, and open fashion that will encourage participation by financially capable bidders who can demonstrate the ability consummate a Plan. In particular, the Bidding Procedures contemplate an open and public marketing process with minimum barriers to entry and provide Potential Purchasers with sufficient time to perform due diligence and acquire the information necessary to submit a timely and well-informed bid.

25. The Debtors respectfully submit that the proposed Bidding Procedures will encourage competitive bidding, are appropriate under the relevant standards governing auction proceedings in bankruptcy proceedings, and are consistent with the controlling legal standard in the Third Circuit. Accordingly, the Debtors request that the Court approve the Bidding Procedures as a valid exercise of the Debtors' business judgment.

II. The Stalking Horse Bid Protections Are Necessary and Appropriate and Should Be Approved.

26. In the event the Debtors seek to appoint a Stalking Horse Bidder, the Debtors seek authority to offer customary bid protections, including the Break Up Fee and Expense Reimbursement. The use of a stalking horse in a public auction process for a sale in chapter 11 is a customary practice, as the use of a stalking horse bid is, in many circumstances, the best way to maximize value in an auction process by “establish[ing] a framework for competitive bidding and facilitat[ing] a realization of that value.” *Off. Comm. of Unsecured Creditors v. Interforum Holding LLC*, No. 11-CV-219, 2011 WL 2671254, No. 11-219, *1 (E.D. Wis. July 7, 2011).

27. Generally, bidding protections, such as breakup fees, are a normal and, in many cases, necessary component of significant sales under the Bankruptcy Code. *See Integrated Res.*, 147 B.R. at 659–60 (“Break-up fees are important tools to encourage bidding and to maximize the value of the debtor’s assets. . . . In fact, because the . . . corporation has a duty to encourage bidding, break-up fees can be *necessary* to discharge [such] duties to maximize value.”) (emphasis added). As a result, courts routinely approve such bidding protections in connection with proposed bankruptcy sales where a proposed fee or reimbursement provides a benefit to the estate. *See In re Energy Future Holdings Corp.*, 904 F.3d 298 (3d Cir. 2018) (holding that “[T]he allowability of break-up fees . . . depends upon the requesting party’s ability to show that the fees

[a]re actually necessary to preserve the value of the estate.”) (internal quotations omitted) (alterations in original); *In re Reliant Energy Channelview LP*, 594 F.3d 200, 206 (3d Cir. 2010); *O’Brien*, 181 F.3d 527. The Debtors believe that the allowance of the Stalking Horse Bid Protections is in the best interests of the Debtors’ estates and their creditors, as a Stalking Horse Bidder, if designated, will establish a floor for further bidding that may increase the consideration given in exchange for the New Equity Interests or the Assets for the benefit of the Debtors’ estates.

28. In the Third Circuit, bidding protections, such as those proposed here, are subject to the general standard used for administrative expenses under section 503 of the Bankruptcy Code. *Energy Future*, 904 F.3d at 313 (citing *O’Brien*, 181 F.3d at 535); *Reliant Energy*, 594 F.3d at 206 (holding that the general standard used for all administrative expenses applies to break-up fees). Thus, “the allowability of break-up fees, like that of other administrative expenses, depends upon the requesting party’s ability to show that the fees were actually necessary to preserve the value of the estate.” *Reliant Energy*, 594 F.3d at 206 (internal quotations omitted) (quoting *O’Brien*, 181 F.3d at 535).

29. The Debtors propose to pay the Stalking Horse Bid Protections only in the event they determine, after good faith, arm’s-length negotiations, with the consent of the Ad Hoc Group, and in consultation with the Committee, that designating a Stalking Horse Bidder would be necessary and beneficial for their estates. Courts in this district have routinely approved breakup fees and/or expense reimbursements offered to stalking horse bidders. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359 (VFP) (Bankr. D.N.J. April 25, 2023) [Docket No. 92] (approving bidding procedures and bidding protections, including expense reimbursement, breakup fees, “topping,” termination, or other similar fees or payment.); *In re David’s Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. April 17, 2023) [Docket No. 72] (approving bidding

procedures and bidding protections including a breakup fee and/or expense reimbursement payable in connection with any stalking horse asset purchase agreement); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 30, 2023) [Docket No. 441] (approving bidding procedures and bidding protections including a breakup fee and expense reimbursement payable to each stalking horse bidder); *In re Alliant Techs., L.L.C.*, No. 21-19748 (JKS) (Bankr. D.N.J. Jan. 21, 2022) [Docket No. 101] (approving bidding procedures and bidding protections including an expense reimbursement payable to the stalking horse bidder); *In re RTW Retailwinds, Inc.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) [Docket No. 192] (approving bidding procedures and bidding protections including a breakup fee payable to the stalking horse bidder); *In re SLT Holdco, Inc.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 13, 2020) [Docket No. 72] (same).

30. Without the Stalking Horse Bid Protections, a potential bidder may elect not to participate in the process at all to the detriment of the Debtors' estates. The Bidding Procedures do not require the payment of the Stalking Horse Bid Protections. Rather, the Debtors have the option of paying or otherwise incurring such obligations in the event that offering such Stalking Horse Bid Protections is necessary to foster a competitive bidding process that will maximize the value of the Debtors' estates. In that instance, the value created for the Debtors' estates will likely greatly outweigh the cost of any Stalking Horse Bid Protections. In any case, granting the Debtors authority to offer the Stalking Horse Bid Protections sends a strong signal to the market that the Debtors are serious about running a competitive sale process to generate the best result for the Debtors and their estates.

31. The Break Up Fee will not exceed three percent of any proposed purchase price. This is an amount that is well within market for transactions of this type, and which has been routinely approved by courts in this district. *See, e.g., In re Bed Bath & Beyond Inc.*, No. 23-13359

(VFP) (Bankr. D.N.J. April 25, 2023) [Docket No. 92] (approving stalking horse bid protections, including a break-up fee and expense reimbursement, not to exceed three percent of the proposed purchase price in the aggregate); *In re David's Bridal, LLC*, No. 23-13131 (CMG) (Bankr. D.N.J. April 17, 2023) [Docket No. 72] (approving break-up fee of up to three percent of the proposed purchase price); *In re BlockFi Inc.*, No. 22-19361 (MBK) (Bankr. D.N.J. Jan. 30, 2023) [Docket No. 441] (same); *In re RTW Retailwinds, Inc.*, No. 20-18445 (JKS) (Bankr. D.N.J. Aug. 8, 2020) [Docket No. 192] (same); *In re SLT Holdco, Inc.*, No. 20-18368 (MBK) (Bankr. D.N.J. July 13, 2020) [Docket No. 72] (same); *In re New England Motor Freight, Inc.*, No. 19-12809 (JKS) (Bankr. D.N.J. April 8, 2019) [Docket No. 427] (same); *In re Aceto Corp.*, No. 19-13448 (VFP) (Bankr. D.N.J. Mar. 19, 2019) [Docket No. 174] (approving breakup fee of up to two percent of the cash component of the proposed purchase price).

32. Accordingly, for the reasons set forth above, the Debtors respectfully submit that the Court grant the Debtors the authority to incur and pay the Stalking Horse Bid Protections to the extent the Stalking Horse Bid Protections are necessary to preserve the value of the Debtors' estates.

III. The Form and Manner of Notice Should Be Approved.

33. Pursuant to Bankruptcy Rule 2002(a), the Debtors are required to provide creditors with 21 days' notice of the Auction. Pursuant to Bankruptcy Rule 2002(c), such notice must include the time and place of the Auction and the deadline for filing any objections to such a sale.

34. As soon as reasonably practicable following entry of the Order, the Debtors will cause the Auction Notice to be served upon (a) the United States Attorney's Office for the District of New Jersey, (b) the Internal Revenue Service, (c) the Ad Hoc Group, (d) the Committee (e) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (f) the attorneys general for the states in which the Debtors operate, (g) any parties known or reasonably

believed to have expressed an interest in the Sale Package, (h) all entities known or reasonably believed to have asserted a lien, encumbrance, claim, or other interest in any of the Debtors' assets, and (i) any party that has requested notice pursuant to Bankruptcy Rule 2002.

35. The Debtors submit that the Auction Notice constitutes good and adequate notice of the Auction and the proceedings with respect thereto in compliance with, and satisfaction of, the applicable requirements of Bankruptcy Rule 2002 and Local Rule 2002-1. Accordingly, no further notice is necessary and the Debtors request that this Court approve the form and manner of the notice of the Auction Notice.

Relief Under Bankruptcy Rules 6004(h) and 6006(d) Is Appropriate

36. Bankruptcy Rule 6004(h) provides that an “order authorizing the use, sale, or lease of property . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise.” Additionally, Bankruptcy Rule 6006(d) provides that an “order authorizing the trustee to assign an executory contract or unexpired lease . . . is stayed until the expiration of fourteen days after the entry of the order, unless the court orders otherwise.” The Debtors request that the Court’s order approving the Sale Transaction (the “Sale Order”) be effective immediately upon its entry by providing that the fourteen-day stays under Bankruptcy Rules 6004(h) and 6006(d) are waived.

37. The purpose of Bankruptcy Rules 6004(h) and 6006(d) is to provide sufficient time for an objecting party to appeal before an order can be implemented. *See* Advisory Committee Notes to Fed. R. Bankr. P. 6004(h) and 6006(d). Although Bankruptcy Rules 6004(h) and 6006(d) and the Advisory Committee Notes are silent as to when a court should “order otherwise” and eliminate or reduce the fourteen-day stay period, the leading treatise on bankruptcy suggests that the fourteen-day stay should be eliminated to allow a sale or other transaction to close immediately “where there has been no objection to procedure.” 10 *Collier on Bankruptcy* 6004.10 (15th rev.

ed. 2006). Furthermore, if an objection is filed and overruled, and the objecting party informs the court of its intent to appeal, the stay may be reduced to the amount of time actually necessary to file such appeal. *Id.*

38. To maximize the value received for the Sale Package, the Debtors seek to close the Sale Transaction as soon as possible after a hearing on confirmation of the Debtors' chapter 11 plan. Accordingly, the Debtors hereby request that the Court waive the fourteen-day stay period under Bankruptcy Rules 6004(h) and 6006(d).

Disclosures Under Local Rule 6004-1

39. Local Rule 6004-1 requires, among other things, that a debtor include the "material terms of the proposed sale" in a sale motion. As set forth above, the Debtors and their professionals have commenced an aggressive marketing of the Debtors' assets. Nevertheless, the Debtors do not, as yet, have a signed agreement. Moreover, because the Debtors continue to negotiate with parties in interest, they cannot, as yet, identify, with any reasonable specificity, the terms of the sale of the New Equity Interests or Assets. Accordingly, the Debtors are unable, at this time, to make the disclosures required under Local Rule 6004-1. In the event the Debtors secure one or more Stalking Horse Bidder(s), the Debtors will file a Stalking Horse Agreement and commitment agreement and make the requisite disclosures.

Request of Waiver of Stay

40. To the extent that the relief sought in the Motion constitutes a use of property under section 363(b) of the Bankruptcy Code, the Debtors seek a waiver of the fourteen-day stay under Bankruptcy Rule 6004(h). As explained herein, the relief requested in this Motion is immediately

necessary for the Debtors to be able to continue to operate their businesses and preserve the value of their estates.

Waiver of Memorandum of Law

41. The Debtors respectfully request that the Court waive the requirement to file a separate memorandum of law pursuant to Local Rule 9013-1(a)(3) because the legal basis upon which the Debtors rely is set forth herein and the Motion does not raise any novel issues of law.

Reservation of Rights

42. Notwithstanding anything to the contrary herein, nothing contained in this Motion or any actions taken pursuant to any order granting the relief requested by this Motion is intended or should be construed as (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Motion or any order granting the relief requested by this Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in this Motion are valid, and the

rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

No Prior Request

43. No prior request for the relief sought in this Motion has been made to this Court or any other court.

Notice

44. The Debtors will provide notice of this Motion to the following parties or their respective counsel: (a) the U.S. Trustee for the District of New Jersey; (b) the holders of the thirty (30) largest unsecured claims against the Debtors (on a consolidated basis); (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc Group; (d) the agents under each of the Debtors' prepetition secured credit facilities and counsel thereto; (e) the office of the attorney general for each of the states in which the Debtors operate; (f) the United States Attorney's Office for the District of New Jersey; (g) the Securities and Exchange Commission; (h) the Internal Revenue Service; (i) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors submit that, in light of the nature of the relief requested, no other or further notice need be given.

[Remainder of page intentionally left blank.]

WHEREFORE, the Debtors respectfully request that the Court enter an order, in substantially the form submitted herewith, granting the relief requested herein and such other relief as is just and proper under the circumstances.

Dated: June 15, 2023

/s/ Michael D. Sirota

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*Proposed Co-Counsel for Debtors and
Debtors in Possession*

Exhibit A

Proposed Order

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

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

KIRKLAND & ELLIS LLP

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Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

**ORDER (I) APPROVING THE
BIDDING PROCEDURES AND AUCTION, (II) APPROVING
STALKING HORSE BID PROTECTIONS, (III) SCHEDULING**

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.kcellc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

BID DEADLINES AND AN AUCTION, (IV) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (V) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered three (3) through and including twelve (12), is **ORDERED**.

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

Upon the *Motion For Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* (the “Motion”),² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”) (a) authorizing and approving the proposed marketing, auction, and bidding procedures attached hereto as **Exhibit 1** to the Order (the “Bidding Procedures”), by which the Debtors will solicit and select the highest or otherwise best offer(s) for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”), (b) establishing certain dates and deadlines related thereto and scheduling an auction, if any, (the “Auction”), (c) approving the manner of notice of the Auction, as may be necessary, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
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and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures, which are fair, reasonable, and appropriate under the circumstances and designed to maximize the recovery on, and realizable value of the Debtors' enterprise, including with respect to the proposed procedures for providing Bid Protections as determined by the Debtors in an exercise of their business judgment in accordance with the Bidding Procedures.
3. The Debtors' proposed notice of the Motion and the Hearing was (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iii) adequate and sufficient under the circumstances of these chapter 11 cases, and no other or further notice is required. A reasonable opportunity to object or

(Page | 5)

Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

be heard regarding the relief granted by this Order has been afforded to all interested persons and entities.

4. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

I. Important Dates and Deadlines.

5. **Final Bid Deadline.** July 19, 2023, at 5:00 p.m. prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures.

6. **Stalking Horse Bidders and Bid Protections.** The Debtors, upon entry of this Order, shall be authorized, but are not obligated or directed, in an exercise of their reasonable business judgment, with the consent of the Ad Hoc Group, and in consultation with the Committee, to select one or more Stalking Horse Bidders with respect to some or all of the New Equity Interests and/or Assets by no later than July 16, 2023 at 5:00 p.m., prevailing Eastern Time, enter into a stalking horse agreement (the "Stalking Horse Agreement"), and subject to paragraphs 7 and 8, to provide such Stalking Horse Bidders with Bid Protections without further action or order by this Court.

7. In the event that the Debtors, with the consent of the Ad Hoc Group, and in consultation with the Committee, enter into a Stalking Horse Agreement with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court designating a Stalking Horse Bidder and authorizing entry into a Stalking Horse Agreement (the "Stalking Horse Notice") and serve the Stalking Horse Notice on the

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

Stalking Horse Bidder, the Ad Hoc Group, the Committee, and the U.S. Trustee. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bid and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the amount and calculation thereof); (v) specify whether the Stalking Horse Bid includes the New Equity Interests or the Assets (and which Assets); (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse Notice within two business days of filing with the Court, (the "Notice Period"), the Debtors may submit an order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period and as soon thereafter as the Court is available.

8. Upon entry of an order that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement (the "Stalking Horse Order"), the Debtors, with the consent of the Ad Hoc Group, and in consultation with the Committee, are authorized, but not directed, to incur and pay (a) the Break Up Fee in an amount not to exceed three percent

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of the proposed Purchase Price and (b) the Expense Reimbursement to each Stalking Horse Bidder subject to the terms of the Stalking Horse Agreement and the Stalking Horse Order.

9. Except as otherwise set forth in the Bidding Procedures, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

10. **Auction.** The date and time of the Auction, if needed, is July 24, 2023, at 10:00 a.m. prevailing Eastern Time, which time may be extended by the Debtors in their sole discretion, upon written notice with the Court. The Auction will be held at the offices of co-counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022. Only the Debtors, the Consultation Parties, the Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine in their reasonable discretion, in each case, along with the representatives and advisors, shall be entitled to participate in the Auction, and only Qualified Bidders will be entitled to make Overbids (as defined in the Bidding Procedures) at the Auction; *provided, however,* that any party in interest may attend the Auction.

11. **Notice of Successful Bidder.** As soon as reasonably practicable upon conclusion of the Auction, the Debtors shall file a Notice of Successful Bidder.

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II. Auction, Bidding Procedures, Auction Notice, and Related Relief.

12. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are incorporated herein and are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Sale Transaction. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures. Notwithstanding anything to the contrary, the Debtors, with the consent of the Ad Hoc Group and in consultation with the Committee, may modify the Bidding Procedures as necessary or appropriate to maximize value for their estates.

13. Any deposit provided by a Stalking Horse Bidder or other Qualified Bidder shall be held in escrow by the Debtors or their agent and shall not become property of the Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement, the Bidding Procedures, or order of this Court, as applicable.

14. The Auction Notice, substantially in the form attached hereto as **Exhibit 2**, is hereby approved. As soon as reasonably practicable following the entry of this Order, the Debtors will cause the Auction Notice to be served upon (a) the office of the U.S. Trustee; (b) the Ad Hoc Group; (c) the Committee; (d) the United States Attorney's Office for the District of New Jersey, (e) the Internal Revenue Service, (f) the attorneys general in the states where the Debtors conduct their business operations, (g) any Qualified Bidders, and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors shall also post notice of the date, time, and place

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of the Auction on the website of the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants LLC (the "Notice and Claims Agent"), at <https://www.kccllc.net/cyxtera>.

15. Pursuant to Local Rule 6004-2: (a) each bidder participating at the Auction shall be required to confirm that it has not engaged in any bad faith or collusion with respect to the bidding or the Sale Transaction, as set forth in the Bidding Procedures; (b) the Auction shall be conducted openly and all parties in interest will be permitted to attend; (c) the bidding at the Auction will be documented, recorded, or videotaped, and (d) the Court will consider whether to confirm the results of the Auction and whether to approve the Sale Transaction by no later than September 22, 2023.

III. Miscellaneous.

16. Nothing in this Order or the Bidding Procedures shall be deemed a waiver of any rights, remedies or defenses that any party (including the Debtors, the Ad Hoc Group, any Stalking Horse Bidder, if applicable, or any other prospective purchaser) has or may have under applicable bankruptcy and non-bankruptcy law, under any indemnity agreements, or related agreements or any letters of credit relating thereto, or any rights, remedies, or defenses of the Debtors with respect thereto, including seeking Bankruptcy Court relief with regard to the Auction, the Bidding Procedures, the Sale Transaction, and any related items (including, if necessary, to seek an extension of the Bid Deadline).

17. The Debtors may modify any of the dates and deadlines set forth herein in consultation with the Consultation Parties, *provided* that the Debtors will serve notice (email from counsel to the Debtors, Kirkland & Ellis LLP, to suffice) to any Qualified Bidder, Stalking Horse

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Bidder, the Ad Hoc Group, the Committee, and the U.S. Trustee, as applicable and appropriate, informing them of such modification. The Debtors, in consultation with the Consultation Parties, are further authorized, but not directed, to conduct multiple Sale Transactions and/or Auctions (as necessary) in substantial conformity with the Schedule and Bidding Procedures established through this Order.

18. The failure to include or reference a particular provision of the Bidding Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

19. In the event of any inconsistencies between this Order and the Motion and/or the Bidding Procedures, this Order shall govern in all respects.

20. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any

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other party in interest's, claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

21. Nothing in the Motion, this Order or the Bidding Procedures waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

22. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to and in compliance with, the requirements imposed on the Debtors under the terms of each interim and final order entered by the Court in respect of *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens*

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and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief [Docket No. 70] (the “DIP Orders”), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

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

24. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

25. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

26. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

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

Exhibit 1

Bidding Procedures

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:	Chapter 11
CYXTERA TECHNOLOGIES, INC., <i>et al.</i> ,	Case No. 23-14853 (JKS)
Debtors. ¹	(Jointly Administered)

**BIDDING PROCEDURES FOR THE
SUBMISSION, RECEIPT, AND ANALYSIS OF BIDS IN
CONNECTION WITH THE SALE OF THE DEBTORS' SALE PACKAGE**

On June 4, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

The Debtors filed these chapter 11 cases after entering into a restructuring support agreement (the “Restructuring Support Agreement”) [Docket No. 20, Ex. B] with the support of certain of the Debtors’ lenders whose claims represent approximately 64 percent of the claims arising on account of obligations under that certain first lien credit agreement by and between Cyxtera DC Holdings, Inc., Cyxtera DC Parent Holdings, Inc., Cyxtera Communications, LLC, and Cyxtera Data Centers, Inc., the first lien lenders from time to time party thereto, and Citibank, N.A., as administrative agent and collateral agent (the claims thereunder, the “First Lien Claims”). The Restructuring Support Agreement contemplates two paths to a value-maximizing reorganization: (a) a standalone recapitalization of the Debtors’ balance sheet (the “Recapitalization Transaction”) and (b) the Sale Transaction (as defined herein). Specifically, the Restructuring Support Agreement contemplates that the Debtors will continue their Marketing Process, and if such process does not maximize value for the Debtors’ stakeholders, pursue the Recapitalization Transaction. Accordingly, the Recapitalization Transaction serves as an alternative restructuring proposal, by which the lenders party to the Restructuring Support Agreement have agreed to, among other things, receive their pro rata share of New Equity Interests and a new second-out take-back debt facility on behalf of their First Lien Claims and convert the DIP Facility into a first-out take-back debt facility at exit.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

On [], 2023, the Court entered an order (the “Bidding Procedures Order”),² approving, among other things, these bidding procedures (the “Bidding Procedures”). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit bids and conduct an auction (the “Auction”) for the sale or disposition (collectively, the “Sale,” and each, a “Sale Transaction”) of all or substantially all of the New Equity Interests and/or the Assets.

Copies of the Bidding Procedures Order or any other documents in the Debtors’ chapter 11 cases are available upon request to Kurtzman Carson Consultants LLC by calling (877) 726-6510 (U.S. / Canada) or (424) 236-7250 (International) or visiting the Debtors’ restructuring website at (<https://www.kccllc.net/cyxtera>).

I. Sale Package to be Auctioned.

The Debtors seek the highest or otherwise best offer(s) for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”).

II. Public Announcement of Auction.

As soon as practicable after entry of the Bidding Procedures Order, the Debtors shall (i) cause a notice of the Auction, the Bidding Procedures Order, and the Bidding Procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the “Auction Notice”) to be served on the parties that received notice of the Motion, (ii) post the Auction Notice on the website of the proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>, and (iii) publish the Auction Notice, with any modifications necessary for ease of publication, on one occasion in *The New York Times* (National Edition), and/or another national publication to provide notice to any other potential interested parties. The Auction Notice shall include a general description of the contents of the Sale Package.

III. Potential Bidder Requirements.

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence materials, a person or entity interested in purchasing the Sale Package or part of the Sale Package (a “Potential Bidder”) must deliver or have previously delivered to each of (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher Marcus, P.C. (christopher.marcus@kirkland.com), Derek I. Hunter (derek.hunter@kirkland.com); (ii) the Debtors’ proposed investment banker, Guggenheim Securities, LLC (“Guggenheim Securities”), 330 Madison Avenue, New York, New York, 10017, Attn: Ronen Bojmel

² Capitalized terms used but not defined herein have the meanings ascribed to them in the *Debtors’ Motion For Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. []] (the “Motion”), or the Bidding Procedures Order, as applicable.

(Ronen.Bojmel@guggenheimpartners.com), Josh Mendelsohn
(Josh.Mendelsohn@guggenheimpartners.com), Andrew Goodman
(Andrew.Goodman@guggenheimpartners.com); (iii) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166, Attn: Scott Greenberg (sgreenberg@gibsondunn.com), Steven Domanowski (sdomanowski@gibsondunn.com) and Stephen D. Silverman (ssilverman@gibsondunn.com); and (iv) counsel to any statutorily appointed Committee (collectively, the “Notice Parties”) the following preliminary documentation (collectively, the “Preliminary Bid Documents”):

- a. an executed confidentiality agreement (a “Confidentiality Agreement”) in form and substance acceptable to the Debtors;
- b. a statement of what portion of the New Equity Interests and/or the Assets that the Potential Bidder intends to acquire;
- c. sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the New Equity Interests or the Assets, the adequacy of which must be acceptable to the Debtors, in consultation with the Consultation Parties; and
- d. a statement detailing whether the Potential Bidder is partnering with or otherwise working with any other interested party in connection with the potential submission of a joint Bid, the identity of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable.

Within four business days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtors will determine, in consultation with the Consultation Parties,³ and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a bid (such Potential Bidder, an “Acceptable Bidder”). The Debtors shall promptly inform the Consultation Parties of any entity that becomes an Acceptable Bidder. For the avoidance of doubt, any party that has already executed a Confidentiality Agreement and submitted a non-binding indication of interest prior to the Petition Date and, in the judgment of the Debtors, has provided adequate forms of the preliminary documentation requested above, shall automatically be deemed an Acceptable Bidder.

IV. Qualified Bid Requirements.

To be eligible to participate in the Auction, an Acceptable Bidder must deliver to the Debtors and their advisors an irrevocable offer for the purchase of some or all of the New Equity Interests and/or the Assets (each, a “Bid”), and shall meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

- a. **Purchased Sale Package and Assumed Liabilities.** Each Bid must clearly state the following: (a) whether the bidder seeks to purchase some or all of the New

³ The term “Consultation Parties” shall mean any official committee of unsecured creditors appointed in these chapter 11 cases (the “Committee”) and the Ad Hoc Group.

Equity Interests or some or all of the Assets; and (b) if applicable, the liabilities and obligations to be assumed, including any debt and cure costs to be assumed.

- b. **Good Faith Deposit.** Each Bid must be accompanied by a cash deposit in the amount equal to ten percent of the aggregate purchase price of the Bid, to be held in an escrow account to be identified and established by the Debtors (the “Good Faith Deposit”); *provided* that the DIP Agent and the Prepetition Priority/IL Administrative Agents (together, the “Agents”) (as defined in the Interim DIP Order, or any final order related thereto) shall not be required to submit a Good Faith Deposit. To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals ten percent of the increased aggregate purchase price promptly and in no event later than one (1) business day following the conclusion of the Auction.
- c. **Purchase Price.** Each Bid must (a) clearly set forth the purchase price to be paid for the New Equity Interests and/or some or all of the Assets (the “Purchase Price”), (b) identify separately the cash and non-cash components of the Purchase Price, (c) indicate the allocation of the Purchase Price among the Sale Package and related uses, if applicable; *provided* that, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation; and (d) describe its proposed post-emergence debt obligations and liquidity position for Reorganized Cyxtera, if applicable. The Purchase Price should be a single point value in U.S. Dollars on a cash-free, debt-free basis. Any Bid for substantially all of the New Equity Interests or Assets must also include a statement as to whether the Bid is conditioned on purchasing all of such or whether the Qualified Bid should be viewed as separate Bid for one or more sets of such.
- d. **Sources of Financing.** To the extent that the Bid is not accompanied by evidence of the Acceptable Bidder’s capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors’ satisfaction that demonstrates that the Acceptable Bidder has received sufficient debt and/or equity funding commitments to satisfy the Acceptable Bidder’s obligations under the proposed Sale Transaction and other obligations under its Bid. Such funding commitments or other financing must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or credit committee approvals, and shall have covenants and conditions acceptable to the Debtors.
- e. **Same or Better Terms; Bid Documents.** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the “Bid Documents”). The Bid Documents shall include, at a minimum: (a) a chapter 11 plan and/or a draft purchase agreement, the form of which will be provided to any Acceptable Bidder prior to the Bid Deadline (as defined herein), including the exhibits and schedules related thereto and any related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the Sale, along with copies that are marked to reflect any amendments and modifications from the Plan or purchase

agreement provided, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures; (b) a schedule of contracts and leases to be rejected to the extent applicable to the Bid, (c) a statement from the Acceptable Bidder specifying what, if any, other materials, conditions, due diligence, documents, exhibits, schedules, and/or ancillary materials are integral to such Bid or the Debtors' consideration thereof, (d), any other material documents integral to such Bid, and (e) a statement from the Acceptable Bidder that (i) it is prepared to enter into the Sale Transaction, no later than ten (10) business days after the conclusion of the Auction, subject to any necessary regulatory approvals, as specified by the Acceptable Bidder (or, if no Auction is held, the deadline by which all binding Bids must be actually received pursuant to the Bidding Procedures (the "Bid Deadline")) and (ii) the Qualified Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the "Back-Up Bid")) until the consummation of the Sale Transaction.

- f. **No Fees.** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid(s) is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized, with the consultation of the Consultation Parties, to provide the Stalking Horse Bid Protections (defined below) to one or more Stalking Horse Bidders in accordance with these Bidding Procedures; *provided, further*, that nothing in these Bidding Procedures shall limit, alter or impair the rights of any party to payment and reimbursement of expenses that are set forth in the DIP Orders, and parties entitled to payment or reimbursement of expenses under the DIP Orders shall be entitled to payment or reimbursement of expenses incurred in connection with these Bidding Procedures and the matters contemplated hereby.
- g. **Employee Obligations.** Each Bid must include a description of the Acceptable Bidder's intentions with respect to the relevant members of the Debtors' current management team and other employees, and a description of any contemplated incentive plan, to the extent applicable.
- h. **Contingencies; No Financing or Diligence Outs.** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline.
- i. **Identity & Corporate Authority.** Each Bid must (i) fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the New Equity Interests or the Assets), and the complete terms of any such participation, along with sufficient evidence that the

Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties, and (ii) include contract information for the specific person(s) and counsel whom the Debtors' advisors should contract regarding such Bid. A Bid must also fully disclose any business relationships, affiliations, or agreements with the Debtors, any known, potential, prospective bidder or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.

- j. **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (i) has had an opportunity to conduct any and all due diligence prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, regarding the completeness of any information provided in connection therewith, except as expressly stated in the Acceptable Bidder's proposed purchase agreement.
- k. **Authorization.** Each Bid must contain evidence that the Acceptable Bidder has obtained all necessary authorizations or approvals from its shareholders and/or its board of managers or directors, or any other internal and other approvals, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- l. **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable business judgment on a case-by-case basis, so long as a joint bid meets the Qualified Bid requirements and the applicable bidders otherwise comply with these Bidding Procedures.
- m. **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the "Adequate Assurance Information") to demonstrate, to the reasonable satisfaction of the Debtors that such Acceptable Bidder (a) has the financial wherewithal and ability to consummate Sale Transaction (the "Closing"), and (b) can provide adequate assurance of future performance in connection with the proposed transaction. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- n. **Acknowledgement of Compliance with Bidding Procedures, Bidding Order, Bankruptcy Code, and Non-Bankruptcy Law.** Each Bid must acknowledge its compliance in all respects with these Bidding Procedures, the Bidding Procedures Order, Bankruptcy Code and any applicable non-bankruptcy law.
- o. **No Collusion.** The Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale Transaction, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price; and (b) agree not to engage in any collusion with respect to any Bids,

the Auction, or the Sale Transaction. For the avoidance of doubt, this requirement does not restrict Potential Bidder(s) from working with other Potential Bidder(s) with the Debtors' prior written consent (email from Guggenheim Securities shall suffice).

- p. **Good Faith Offer.** Each Bid must constitute a good faith, *bona fide* offer to consummate the Sale Transaction.
- q. **Irrevocable.** Each Bid must state that in the event such Bid is chosen as the Back-Up Bid (as defined below), it shall remain irrevocable until the Debtors and the Successful Bidder consummate the applicable Sale Transaction.
- r. **Back-Up Bid.** Each Bid shall provide that the Acceptable Bidder will serve as a Back-Up Bidder (as defined below) if the Acceptable Bidder's Bid is the next highest or otherwise best bid.
- s. **Regulatory Approvals and Covenants.** Each Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the applicable Sale Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty days following execution and delivery of the applicable purchase agreement and/or confirmation of the Debtors' chapter 11 plan (the "Plan"), those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible).
- t. **Expected Closing Date.** Each Bid must state the Acceptable Bidder's expected date of closing of the Sale Transaction.
- u. **Time Frame for Closing.** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors.
- v. **Adherence to Bidding Procedures.** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
- w. **Consent to Jurisdiction.** The Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, and the Closing, as applicable.

- x. **Conditions to Closing.** Each Bid must identify with particularity each and every condition to closing.

Only Bids fulfilling all of the preceding requirements contained in this section, or otherwise in the Debtors' reasonable business judgment, with the consultation of the Ad Hoc Group and the Committee, may be deemed to be "Qualified Bids," and only those parties submitting Qualified Bids may, in the Debtors' reasonable business judgment, be deemed to be "Qualified Bidders"; *provided* that, notwithstanding anything to the contrary herein, any Bid submitted by any of the Agents or their respective designees, shall be a Qualified Bid.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Sale Package, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Sale Package with governmental laws, the truth, accuracy, or completeness of any documents related to the Sale Package, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Sale Package. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the New Equity Interests or the Assets, as applicable, except to the extent expressly provided in the Court's Sale Order. Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Sale Package or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Court's Sale Order.

In advance of the commencement of the Auction, as is reasonably practicable, the Debtors, with the consultation of the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction.

V. Right to Credit Bid.

Any Qualified Bidder who has a valid and perfected lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured.

VI. Obtaining Due Diligence Access.

Only Acceptable Bidders shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and additional non-public information regarding the Debtors.

No Acceptable Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement. Beginning on the date the Debtors determine that a party is an Acceptable Bidder, or as soon as reasonably practicable thereafter, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request.

Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The Debtors and their advisors shall coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale Transaction. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

A. Communications with Acceptable Bidders (including Qualified Bidders).

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications, including any diligence requests, with Acceptable Bidders (including any Qualified Bidders) shall be through Guggenheim Securities.

B. Due Diligence from Acceptable Bidders (including Qualified Bidders).

Each Acceptable Bidder (including any Qualified Bidder) shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors and their respective advisors, regarding the ability of such Acceptable Bidder (including any Qualified Bidder) to consummate its contemplated transaction. Failure by an Acceptable Bidder (including any Qualified Bidder, other than a Stalking Horse Bidder, if any) to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, to determine that such bidder is no longer an Acceptable Bidder (including any Qualified Bidder, other than a Stalking Horse Bidder, if any) or that a bid made by such bidder is not a Qualified Bid.

The Debtors have designated Ronen Bojmel, Josh Mendelsohn, and Andrew Goodman of Guggenheim Securities to coordinate all reasonable requests for additional information and due diligence access. They can be reached at Ronen.Bojmel@guggenheimpartners.com; Josh.Mendelsohn@guggenheimpartners.com; and Andrew.Goodman@guggenheimpartners.com.

VII. Bid Deadline.

Binding Bids must be submitted in writing to the aforementioned Notice Parties so as to be **actually received** no later than 5:00 p.m. (prevailing Eastern Time) on July 19, 2023.

The Debtors may extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment for all or certain Acceptable Bidders.

VIII. Evaluation of Qualified Bids.

The Debtors shall, in consultation with the Ad Hoc Group, evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' business judgment, the highest or otherwise best Qualified Bid or combination of Qualified Bids for the New Equity Interests or the Assets, as applicable (the "Starting Bid"). The Debtors shall promptly provide to the Consultation Parties and the U.S. Trustee copies of all Bids received by the Debtors, including the Starting Bid, but in no event later than the next business day following receipt; *provided* that the Consultation Parties and the U.S. Trustee must treat such Bids and any related information as confidential and shall not publicly disclose such information without the written consent of the Debtors and the applicable bidder.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; (d) whether the Qualified Bid contemplates a Sale Transaction for the Debtors' New Equity Interests or a Sale Transaction for the Assets; (e) whether the Qualified Bid contemplates a Sale Transaction that would be consummated through a Plan or a sale pursuant to section 363 of the Bankruptcy Code; (f) the certainty of a Qualified Bid leading to a confirmed Plan and (g) the tax consequences of such Qualified Bid. Prior to commencing the Auction, the Debtors shall notify the Stalking Horse Bidder, if any, and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder, if any, and each Qualified Bidder.

IX. Stalking Horse Bid Protections.

Pursuant to the Bidding Procedures Order, the Debtors may, with the consent of the Ad Hoc Group, and in consultation with the Committee, designate one or more Bidders to be a stalking horse Bidder (each a "Stalking Horse Bidder"), which if any, are entitled to certain Stalking Horse Bid Protections (defined below) in the amounts set forth in, and in accordance with the terms of the Bidding Procedures Order. For the avoidance of doubt, except for the Stalking Horse Bidder,

and as otherwise set forth herein, no other party submitting an offer, a Bid, or a Qualified Bid shall be entitled to any Expense Reimbursement, Break Up Fee, termination fee, or similar fee or payment.

In the event that the Debtors receive multiple Qualified Bids, at any time until July 16, 2023, at 5:00 p.m. (prevailing Eastern Time), the Debtors shall be authorized, but not obligated, in their reasonable business judgment, with the consent of the Ad Hoc Group, and in consultation with the Committee, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder (x) agree to provide a Break Up Fee not to exceed three percent of the Purchase Price and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses of such Stalking Horse Bidder(s) the ("Stalking Horse Bid Protections").

In the event that the Debtors enter into a stalking horse agreement (the "Stalking Horse Agreement") with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court designating a Stalking Horse Bidder and authorizing entry into a Stalking Horse Agreement (the "Stalking Horse Notice") and serve the Stalking Horse Notice on the Stalking Horse Bidder, the U.S. Trustee, and the Consultation Parties. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor); (ii) set forth the amount of the Bid submitted by the Stalking Horse Bidder and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Bid submitted by the Stalking Horse Bidder; (iv) specify any proposed Stalking Horse Bid Protections (including the amount and calculation thereof); (v) specify whether the Bid submitted by the Stalking Horse Bidder includes the New Equity Interests or the Assets (and which Assets); (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Stalking Horse Bid Protections. If there are no objections to the Stalking Horse Notice within two business days of filing with the Court, (the "Notice Period"), the Debtors may submit an order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period and as soon thereafter as the Court is available.

Upon entry of an order that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement (the "Stalking Horse Order"), the Debtors are authorized, but not directed, to incur and pay (a) the Break Up Fee in an amount not to exceed three percent of the proposed Purchase Price and (b) the Expense Reimbursement to each Stalking Horse Bidder in accordance with the terms of such Stalking Horse Order and Stalking Horse Agreement.

Except as otherwise set forth herein, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any Expense Reimbursement, Break Up Fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have

waived their right to request or to file with the Court any request for Expense Reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

X. No Qualified Bids.

If any Bid is the only Qualified Bid received by the Bid Deadline, the Debtors may decide, in their reasonable business judgment, after consultation with the Consultation Parties, to designate such Bid as the Successful Bid (as defined below) as to the applicable Sale Package and pursue entry of an order approving a Sale Transaction with respect to such Sale Package. The Debtors shall promptly file notice of any cancellation of the Auction, where applicable, as the Successful Bid with the Court.

XI. Auction.

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for any particular Asset or portion of Sale Package by the Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment with respect to such Sale Package or portion of Sale Package. If the Debtors do not receive any Qualified Bid, the Debtors will not conduct the Auction. If one or more Qualified Bids (other than the Bid submitted by the Stalking Horse Bidder, if any) are received by the Bid Deadline with respect to the New Equity Interests or the Assets, then the Debtors shall conduct the Auction with respect to such New Equity Interests or Assets in accordance with the Auction Procedures (as defined below).

An Auction, if necessary shall commence on July 24, at 10:00 a.m. (prevailing Eastern Time), or such later time or other place as the Debtors determine in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- a. except as otherwise provided herein, only Qualified Bidders shall be entitled to bid at the Auction;
- b. the Qualified Bidders, including any Stalking Horse Bidders, if any, must appear in person or through duly-authorized representatives at the Auction;
- c. bidding shall begin with the Starting Bid;
- d. subsequent bids (each, an "Overbid") may only be made at the Auction and shall be at least (i) a 2% increase in cash, cash equivalents, or other such consideration that the Debtors, in their reasonable business judgment, deem equivalent (including the right of a secured creditor to credit bid any remaining amount of its secured claims) over the previous bid *plus* (ii) in the event that the Debtors have entered into a Stalking Horse Agreement to which the Overbid relates, the aggregate amount of Stalking Horse Bid Protections (including, for the avoidance of doubt, any Break Up Fees and/or Expense Reimbursements) under such Stalking Horse Agreement (a "Minimum Overbid"), and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum

Overbid. The Debtors may, in their reasonable business judgment and in consultation with the Ad Hoc Group, announce increases or reductions to the Minimum Overbid at any time during the Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder may submit at the Auction must contain a Purchase Price in cash, cash equivalents, or such other consideration that the Debtors, in their reasonable business judgment deem equivalent (including the right of a secured creditor to credit bid any remaining amount of its secured claims) that exceeds the then existing highest Bid by at least the amount of the Minimum Overbid;

- e. at the commencement of the Auction, the Debtors may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit successive bid(s);
- f. each Qualified Bidder will be permitted a reasonable time to respond to previous bids at the Auction, as determined by the Debtors; *provided*, that, unless the Debtors determine otherwise, a failure to respond and submit successive bid(s) at the Auction will result in disqualification;
- g. during the course of the Auction, the Debtors shall, after submission of each Overbid, promptly inform each Qualified Bidder of the terms of the previous bids and inform each Qualified Bidder which Overbid(s) reflect, in the Debtors' view the highest or otherwise best bid(s) with respect to the New Equity Interests or the Assets, as applicable;
- h. the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- i. each Qualified Bidder will be required to confirm on the record that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Sale Transaction. For the avoidance of doubt, (a) this requirements does not restrict Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors' prior written consent;
- j. each Qualified Bidder will be required to confirm that its bid is a good faith, *bona fide* offer and it intends to consummate the Sale Transaction if selected as the Successful Bid in accordance with these Bidding Procedures (as may be modified in accordance herewith at the Auction);
- k. the Court and the Debtors will not consider bids made after the Auction has been closed;
- l. the Debtors, in their reasonable business judgment and in consultation with the Ad Hoc Group, may reject, at any time before entry of an order of the Court approving a Successful Bid, any Bid that the Debtors determine is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale Transaction, or

- (iii) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders;
- m. the Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any Bid made by a Qualified Bidder during the Auction; and
- n. notwithstanding anything herein to the contrary at any time choose to adjourn the Auction by announcement at the Auction. The Debtors shall promptly file notice of such adjournment with the Court.

For the avoidance of doubt, nothing in the Bidding Procedures, including the Auction Procedures, will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors, in consultation with counsel).

Any Auction rules adopted by the Debtors will not modify any of the terms of the Stalking Horse Agreement or the rights of the Stalking Horse Bidder, if any, without the consent of the Stalking Horse Bidder, if any.

Except as otherwise determined by the Debtors only (i) the Debtors, (ii) the Consultation Parties, (iii) the Office of the United States Trustee, (iv) any other Qualified Bidders, and (v) the respective representatives and professionals of the foregoing parties shall be entitled to participate in the Auction, however, any party in interest may be permitted to attend the Auction.

XII. Acceptance of the Successful Bid.

The Auction shall continue until (i) there is only one Qualified Bid or a combination of Qualified Bids that the Debtors determine, in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties and outlined below in further detail, and in consultation with the Consultation Parties, is the highest or otherwise best bid to purchase the New Equity Interests or Assets, as applicable (each, a "Successful Bid"), and (ii) the Debtors determine, in their reasonable business judgment, in consultation with the Consultation Parties, that further bidding is unlikely to result in a different Successful Bid or Successful Bids that would be reasonably acceptable to the Debtors, at which point, the Auction will be closed.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors in addition to any other factors that the Debtors deem appropriate: (a) the amount and nature of the total consideration, which includes but is not limited to, assumed liabilities (administrative liabilities, cure payments), and the amount of executory contracts and leased locations being assumed; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; and (d) the tax consequences of such Qualified Bid; and (e) any other consideration that may impact the Debtors' stakeholders.

Any Qualified Bidder that submits a Successful Bid will be deemed a “Successful Bidder” with respect to the New Equity Interests or Assets contemplated for purchase pursuant to such Successful Bid. The Debtors shall file notice of the Successful Bid and the Successful Bidder with the Court as soon as reasonably practicable after conclusion of the Auction. Following conclusion of the Auction and selection of a Successful Bidder, the Debtors shall present the results of the Auction at a hearing and shall seek (a) certain findings from the Court regarding the Auction, including, among other things, that (i) the Auction was conducted, and the Successful Bidder or Successful Bidders were selected, in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure, and (iii) consummation of the Successful Bid or Successful Bids will provide the highest or otherwise best value for the New Equity Interests or Assets, as applicable, and is in the best interests of the Debtors’ estates, and (b) Court approval to enter into a binding purchase agreement with the Successful Bidder on the terms of the Successful Bid.

Within one (1) business day of the selection of the Successful Bidder, such Successful Bidder (including both the Stalking Horse Bidder, if any, and Back-Up Bidder, if applicable) shall make a cash deposit, in addition to its Good Faith Deposit, in an amount calculated on the basis of the increased aggregate purchase price such that the Successful Bidder’s total cash deposit is equal to ten percent of the aggregate purchase price, submitted by wire transfer of immediately available funds to an escrow account to be identified and established by the Debtors pursuant to a customary and reasonable escrow agreement; *provided* that the Agents shall not be required to make any deposit. Each Successful Bidder and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made.

XIII. Designation of Back-Up Bidder.

The Back-Up Bid to purchase any applicable New Equity Interests or Assets (the “Back-Up Bidder”) will be determined by the Debtors at the conclusion of the Auction, and will be announced at that time to all the Qualified Bidders participating in the Auction. The Debtors’ selection of a Back-Up Bid shall be deemed final and the Debtors shall not accept any further bids or offers to submit a bid after such selection. The Debtors will be authorized, but not required, to consummate the Sale Transaction with the Back-Up Bidder without further order of the Court, so long as such Back-Up Bid shall have been approved in connection with the Court’s approval of the Successful Bid, or subject to Court approval if not.

If for any reason a Successful Bidder fails to consummate the purchase of such New Equity Interests or Assets, as applicable, within the time permitted, then the Back-Up Bidder will automatically be deemed to have submitted the Successful Bid, and the Back-Up Bidder shall be deemed a Successful Bidder and shall be required to consummate any Sale Transaction with the Debtors as soon as is reasonably practicable without further order of the Court, upon 24 hours advance notice filed with the Court. To the extent any objections are raised and remain unresolved, the Court may schedule a hearing on an expedited basis to adjudicate such objection.

The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) forty-five (45) days after completion of the Auction, (ii) consummation of a Sale Transaction with one or more Successful Bidders at an Auction, and (iii) the release of such Back-Up Bid by

the Debtors in writing (the “Back-Up Termination Date”). The Debtors shall return the Back-Up Bidder’s deposit owed within five (5) business days of the Back-Up Termination Date.

XIV. Confirmation Hearing.

In the event a transaction is consummated through a Plan, a hearing before the Court to consider confirmation of the Plan (the “Confirmation Hearing”) will be held at a date and time consistent with the any order approving the Debtors’ disclosure statement and scheduling applicable dates and deadlines related thereto, including confirmation of the Plan. The Confirmation Hearing will be before the Honorable John K. Sherwood, United States Bankruptcy Judge for the Bankruptcy Court for the District of New Jersey at 50 Walnut Street, 3rd Floor, Newark, New Jersey 07102, and otherwise in accordance with any scheduling orders entered by the Court relating to confirmation of the Plan or approval of any disclosure statement related thereto.

At the Confirmation Hearing, the Debtors will present the Plan, which may incorporate the terms of the Successful Bid or Successful Bids, to the Court for confirmation.

XV. Return of Good Faith Deposit.

The Good Faith Deposit(s) of the Successful Bidder or Successful Bidders, if any, will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’ estates and be credited to the portion of such Successful Bidder’s or Successful Bidders’ applicable Purchase Price.

If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable), if any, fails to consummate the Successful Bid or Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit(s) of such Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposits of any unsuccessful Qualified Bidders (except for any Back-Up Bidder or Back-Up Bidders and any Stalking Horse Bidders) will be returned within five business days after consummation of the applicable Sale Transaction or upon the permanent withdrawal of the applicable proposed Sale Transaction.

The Good Faith Deposit(s) of any Back-Up Bidder or Back-Up Bidders, if any, will be returned to such Back-Up Bidder or Back-Up Bidders no later than five (5) business days of the Back-Up Termination Date.

The return of any Good Faith Deposits of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders’ Plan or purchase agreement, as applicable. All such deposits shall be held in escrow and at no time shall be deemed property of the Debtors’ estates absent further order of the Court.

XVI. Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures in good faith, with the consent of the Ad Hoc Group, and in consultation with the Committee, to further the goal of attaining the highest or otherwise best offer, or impose, at or prior to the Auction, additional terms and conditions on the Sale. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders. Notwithstanding anything to the contrary herein, the Debtors may elect to consummate the Sale under section 363(f) of the Bankruptcy Code as opposed to pursuant to the Plan with the Successful Bidder or Successful Bidders.

XVII. Consent to Jurisdiction.

All Qualified Bidders at the Auction will be deemed to have consented to the core jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Transaction hearing, or the construction and enforcement of any agreement or any other document relating to the Sale any Sale Transaction if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Court on an expedited basis.

XVIII. Fiduciary Out.

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor to take any action or to refrain from taking any action related to any sale transaction or with respect to these Bidding Procedures, to the extent such Debtor, board of director, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Further, notwithstanding anything to the contrary in these Bidding Procedures or the Bidding Procedures Order, through the date of the Auction (if held), nothing in these Bidding Procedures or the Bidding Procedures Order shall diminish the right of the Debtors and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives to: (a) consider, respond to, and facilitate alternate proposals for sales or other restructuring transactions involving New Equity Interests or the Assets (each an "Alternate Proposal"); (b) provide access to non-public information concerning the Debtors to any entity or enter into confidentiality agreements or nondisclosure agreements with any entity with respect to Alternate Proposals; (c) maintain or continue discussions or negotiations with respect to Alternate Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any

inquiries, proposals, discussions, or negotiations of Alternate Proposals; and (e) enter into or continue discussions or negotiations with any person or entity regarding any Alternate Proposal.

XIX. DIP Orders & Restructuring Support Agreement.

For the avoidance of doubt, nothing in these Bidding Procedures shall amend, modify or impair any provision of the DIP Orders or the Restructuring Support Agreement, or the rights of the DIP Agent, Consenting Stakeholders, or the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement), as applicable.

Exhibit 2

Auction Notice

KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP

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fyudkin@coleschotz.com

*Proposed Co-Counsel for Debtors and
Debtors in Possession*

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

NOTICE OF SALE BY AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that on [], 2023, the United States Bankruptcy Court for the District of New Jersey (the “Court”) entered the *Order (I) Approving the Bidding Procedures and*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief [Docket No. []] (the “Bidding Procedures Order”)² in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”) consistent with the bidding procedures (the “Bidding Procedures”) approved by the Court pursuant to the Bidding Procedures Order. **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that the deadline by which all binding bids must be actually received pursuant to the Bidding Procedures is **July 16, 2023, at 5:00 p.m. (prevailing Eastern Time).**

PLEASE TAKE FURTHER NOTICE that if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “Auction”) of the Assets **on July 24, 2023, at 10:00 a.m. (prevailing Eastern Time)** at the offices of co-counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022.

PLEASE TAKE FURTHER NOTICE that only the Debtors, the Consultation Parties, the Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine in their reasonable discretion, in each case, along with the representatives and advisors, shall be entitled to participate in the Auction, and only Qualified Bidders will be entitled to make Overbids (as defined in the Bidding Procedures) at the Auction; *provided, however*, that any party in interest may attend the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.** Copies of the Bidding Procedures, the Bidding Procedures Order, and any other related documents are available upon request to Kurtzman Carson Consultants LLC by calling (877) 726-6510 (U.S. / Canada) or (424) 236-7250 (International) or visiting the Debtors’ restructuring website at (<https://www.kccllc.net/cyxtera>).

² Capitalized terms used but not defined in this notice have the meanings given to them in the Bidding Procedures Order.

Dated: [____], 2023

/s/ DRAFT

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.

Warren A. Usatine, Esq.

Felice R. Yudkin, Esq.

Court Plaza North, 25 Main Street

Hackensack, New Jersey 07601

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KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Edward O. Sassower, P.C. (*pro hac vice* pending)

Christopher Marcus, P.C. (*pro hac vice* pending)

Derek I. Hunter (*pro hac vice* pending)

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christopher.marcus@kirkland.com
derek.hunter@kirkland.com

*Proposed Co-Counsel for Debtors and
Debtors in Possession*

This is Exhibit "F" referred to in the Affidavit of
Eric Koza Sworn before me this 30th day of June, 2023

[Signature]

A Notary Public in and for the State of New Jersey

State of NEW JERSEY
County of MORRIS
Signed and sworn to (or affirmed) before me on 30 JUNE 2023 by

[Signature] Eric Koza
(Name of individual making statement)

[Signature]

Signature of notarial officer
Stamp

DAVID HELMAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 13, 2027

DAVID HELMAN
Name of Notary Public
Notary Public, State of New Jersey Title of office
My commission expires FEBRUARY 13, 2027



TECHNOLOGY

GROUP TO ADVOCATE FOR SEMICONDUCTOR INDUSTRY

AIRLINES

Sunwing to be integrated into WestJet

'LONG-TERM MOVE'

CHRISTOPHER REVOLLOS

WestJet Airlines Ltd. will wind down Sunwing Airlines and integrate the low-cost carrier into its mainline business within two years as part of a strategy to streamline operations amid fierce competition.

The move, announced in an internal memo obtained by The Canadian Press, has raised questions among some industry observers

about the impact on airfares and travellers' flight options. Sunwing Airlines president Len Corrado said in the memo the change will open up markets for the 38-year-old company as well as its workers.

"WestJet will eventually move to a one jet aircraft operating certificate (AOC) model and Sunwing Airlines will be integrated into WestJet. This is a long-term move that will unlock greater scale and growth opportunities for our people, and specifically for our airline employees within the group,"

Several Canadian tech organizations are forming a group to advance the country's semiconductor industry. The group is called the Semiconductor Industry Leadership and Innovation Canada Action Network. It says it will advocate for the semiconductor industry with the federal and provincial governments and develop a made-in-Canada action plan for leadership across the global sector. Members of the group include the Council of Canadian Innovators, CMC Microsystems, the Alliance for Semiconductor Innovation, Canada's Semiconductor

Council and the Canadian Innovation Network. The USF Group of Canadian Research Universities, Optique and IS&Q are also members. Semiconductor supply chains were started during the pandemic and many companies found themselves scrambling to make or obtain as many of the chips as possible. "Semiconductors are a critical technology, used by virtually all advanced industries as inputs, and they are only becoming more important as technology advances," said Gordon Harring, chief executive of CMC Microsystems. The Canadian Press

Corrado said in the memo, dated Wednesday.

"While exact timelines are still being finalized, the integration is expected to take up to a couple years."

The decision comes the week after WestJet opted to fold budget subsidiary Swoop's operations under its flagship banner.

Both moves magnify the major consolidation of the Canadian aviation market that followed WestJet's acquisition of Sturtevant's main airline and vacation divisions last month. The Canadian Press

THE TORONTO-DOMINION BANK

(In arrears in Canadian dollars)

Notice is hereby given that a dividend in an amount of ninety-six cents (96 cents) per fully paid common share in the capital stock of the Toronto-Dominion Bank (the "Bank") has been declared for the quarter ending July 31, 2023, payable on or after July 31, 2023 to shareholders of record at the close of business on July 14, 2023.

In case of missing shareholder records, holders of the Bank's common shares will be deemed to have their dividends reinvested in additional common shares of the Bank to approximate what the dividend Reinvestment Plan (the "Plan").

Under the Plan, the Bank has the discretion to either purchase or sell additional common shares in the open market or issue them from treasury. If issued from treasury, the Bank may decide to issue a dividend of up to 1% to the Average Market Price as defined in the Plan of the additional shares. At this time, the Bank has decided to continue to issue the additional shares from treasury, but will no longer issue the Average Market Price. This change will be effective beginning with the dividend declared today for the quarter ending July 31, 2023 until further announcement.

Registered holders of record of the Bank's common shares wishing to join the Plan can do so by completing a form from TD Bank Company (1-800-387-6825) or on the Bank's website www.td.com/tddividend page, to order to participate in the Plan in arrears for this dividend. Dividend forms for registered holders must be received by TD Bank Company at P.O. Box 4225, Postal Station A, Toronto, Ontario, M5W 0Z5, or by facsimile at 1-888-488-1418, before the close of business on July 16, 2023. Beneficial or non-registered holders of the Bank's common shares wishing to join the Plan must contact their financial institution or broker for instructions on how to enroll in arrears of the dividend.

Registered holders who participate in the Plan and who wish to terminate that participation must first elect to do so by the date on which they are entitled to be paid on and after July 31, 2023 are not re-entitled to common shares under the Plan until they receive notice from TD Bank Company at the above address by no later than July 6, 2023. Beneficial or non-registered holders who participate in the Plan and who wish to terminate that participation in their common shares will be deemed to have their dividends reinvested in additional common shares of the Bank to approximate what the dividend Reinvestment Plan (the "Plan") would have done for the quarter ending July 31, 2023.

Notice is also hereby given that dividends have been declared on the following Non-Cumulative Redeemable Class A First Preference Shares of the Bank, payable on and after July 31, 2023 in the amounts of record at the close of business on July 16, 2023:

- Series A, in an amount per share of \$0.238875;
- Series B, in an amount per share of \$0.238875;
- Series C, in an amount per share of \$0.242075;
- Series D, in an amount per share of \$0.238875;
- Series E, in an amount per share of \$0.238875;
- Series F, in an amount per share of \$0.238875;
- Series G, in an amount per share of \$0.238875;
- Series H, in an amount per share of \$0.238875;
- Series I, in an amount per share of \$0.238875;
- Series J, in an amount per share of \$0.238875;
- Series K, in an amount per share of \$0.238875;
- Series L, in an amount per share of \$0.238875;
- Series M, in an amount per share of \$0.238875;
- Series N, in an amount per share of \$0.238875;
- Series O, in an amount per share of \$0.238875;
- Series P, in an amount per share of \$0.238875;
- Series Q, in an amount per share of \$0.238875;
- Series R, in an amount per share of \$0.238875;
- Series S, in an amount per share of \$0.238875;
- Series T, in an amount per share of \$0.238875;
- Series U, in an amount per share of \$0.238875;
- Series V, in an amount per share of \$0.238875;
- Series W, in an amount per share of \$0.238875;
- Series X, in an amount per share of \$0.238875;
- Series Y, in an amount per share of \$0.238875;
- Series Z, in an amount per share of \$0.238875;

The Bank for the purposes of the Income Tax Act, Canada and any other applicable provincial legislation advises that the dividend declared for the quarter ending July 31, 2023 and all future dividends will be eligible dividends unless indicated otherwise.

By Order of the Board of Directors,
Doris E. Wignall
Corporate Secretary
July 15, 2023, Toronto, Ontario

Client File No. 2301-07315

COURT OF KING'S BENCH OF ALBERTA

IN THE MATTER OF THE "FUNDING ARRANGEMENT ACT, RESC. 198, c. 3-36, AS AMENDED," AND IN THE MATTER OF CYTHERA TECHNOLOGIES, INC., CYTHERA CANADA, LLC, CYTHERA CONSULTANTS CANADA, LLC AND CYTHERA CANADA TRS, LLC

APPLICATIONS OF CYTHERA TECHNOLOGIES, INC., CYTHERA CANADA, LLC, CYTHERA CONSULTANTS CANADA, LLC AND CYTHERA CANADA TRS, LLC UNDER SECTION 46 OF THE COMPANIES' CREDITORS ARRANGEMENT ACT, R.S.C. 1985, c. 3-36, AS AMENDED

NOTICE OF INITIAL RECOGNITION ORDER

PLEASE READ THIS NOTICE in its entirety as being published pursuant to an order of the Court of King's Bench of Alberta (the "Court") made on June 7, 2023 (the "Initial Recognition Order"). TAKE NOTICE that on June 7, 2023, Cytera Communications Canada, LLC and Cytera Canada TRS, LLC (collectively "Cytera Canada"), Cytera Technologies, Inc. ("CTI"), and Cytera Canada, LLC ("Cytera LLC"), filed voluntary petitions for relief under Chapter 11, title 11 of the United States Code (the "Chapter 11 Proceedings") in the United States Bankruptcy Court for the District of New Jersey (the "U.S. Bankruptcy Court"). In connection with the Chapter 11 Proceedings, CTI has been appointed as the foreign representative of the estate of Cytera Canada and Cytera LLC (the "Foreign Representative"). The Foreign Representative's address is Suite 900, 222 Prince of Wales Boulevard, Concord, CA 94520.

AND TAKE NOTICE that the Initial Recognition Order and the supplemental order granted by the Canadian Court on June 7, 2023 (together with the Initial Recognition Order, the "Recognition Order"), which are both filed by the Canadian Court under Part IV of the Companies' Creditors Arrangements Act, R.S.C. 1985, c. 3-36 (the "CCAA Recognition Proceedings") are being enforced in Alberta.

It is declared that the Chapter 11 Proceedings in respect of a foreign matter proceeding: (a) constitute a proceeding against Cytera Canada and Cytera LLC; (b) constitute a proceeding against the CCAA Recognition Proceedings; and (c) constitute a proceeding against the CCAA Recognition Proceedings.

AND TAKE NOTICE that in doing so, notice shall be given to the Bankruptcy Court in the Chapter 11 Proceedings a copy of the Initial Recognition Order and the supplemental order granted by the Canadian Court and any other orders that may be granted by the Canadian Court in the CCAA Recognition Proceedings and available at <https://www.ccbt.ca/initial-recognition-order>.

AND TAKE NOTICE that consent for the Foreign Representative is:

Goldhar WLG Kennedy LLP
Suite 1000, 125 King Avenue West, Calgary AB, T2P 4K9
Attention: Scott Gaudin
Email: scott.gaudin@goldhar.com

AND TAKE NOTICE that if you wish to receive copies of the Recognition Order or wish for further information in respect of the matter, you should do so by the date on which the Initial Recognition Order is filed.

Approved & Mailed Canada Inc.
Suite 1100, 250 King Avenue West, Calgary, AB, T2P 4K9
Phone: (403) 518-7311
Email: Canada@goldhar.com

DATED AT CALGARY, ALBERTA this 28th day of June, 2023.
Approved & Mailed Canada Inc.
Sally Lee as Secretary as Information Officer in the CCAA Recognition Proceedings, and also as the person responsible for the CCAA Recognition Proceedings.



Crews battle a wildfire north of Chibougamau, Que., last week. Westmore, which runs the Kiama gold mine in the province, had to shut down for a week due to smoky risk.

MINING

Climate factoring into mine site assessment

Wildfires pose operational risk, experts say

NATHAL KAHN

Risks due to the impacts of changing climate conditions could play a key role in assessing the value of mining projects in the industry, experts say, as more than a dozen Canadian miners were forced to temporarily suspend their operations in June due to the ongoing wildfires.

Analysts consider several factors ranging from environmental concerns to geopolitical issues alongside the financial feasibility of operating a mine before assessing the value of a project or a company. Risks linked to climate change, however, aren't usually measured.

While exact timelines are still being finalized, the integration is expected to take up to a couple years. The decision comes the week after WestJet opted to fold budget subsidiary Swoop's operations under its flagship banner. Both moves magnify the major consolidation of the Canadian aviation market that followed WestJet's acquisition of Sturtevant's main airline and vacation divisions last month.

Several miners including Rio Tinto and Toronto-based Westmore Gold Mines had to stop their activities earlier this month as Canada grappled with one of the worst starts to its wildfire season. Prime Minister Justin Trudeau attributed the increasing intensity of wildfires to climate change and warned the situation could worsen if steps aren't taken to reduce Canada's dependence on fossil fuels.

Climate change is the third-biggest threat to the mining industry behind geo-

political and environmental, social and governance (ESG) concerns, according to a survey conducted by EY last year. Westmore, which runs the Kiama gold mine in Quebec, had to shut down for a week and pull its staff out due to the potential risk from the smoke caused by the wildfires. Chief executive Warwick Morley-Jepson said it was the first time he has suspended the mine's operations in the past five years, but he doesn't expect it to be the last. "It's not only the weather. We do make provisions in our plans because of other interferences as well," he said. "If climate change is going to start to rear its head as something that happens very frequently, then certainly, we have to build something in those provisions."

A rise in the intensity of fires would also mean higher costs for the company, Jepson said, since it would have to reconsider how effective the firebreaks around the mine are. A failure in the electric-power supply due to the fire would also lead to additional costs. He said climate change is influencing the way miners run their business, but the extent of it is something that is hard to predict.

"Do we allocate two-day stoppages per annum to cater for climate change? I don't know, but it might not be a bad idea going forward," Jepson said. "At the moment, we have stoppages for various things, so do we include climate change causes as one of those? Maybe in time, it's certainly a consideration now."

The impacts from extreme weather would also add another layer of expense to ensure workers' well-being is monitored, Kent Kaufield, EY's chief sustainability officer in Canada, said. This would be an additional burden on an industry that's already finding it hard to attract workers.

Canada's mining industry is expected to have a shortage of about 80,000 to 120,000 workers by 2030, according to the non-profit Mining Industry Human Resources Council.

It's not certain if the temporary shutdowns due to this year's wildfires will hurt the miners' production targets. However, in 2022, flash floods caused Vancouver-based mining giant Teck Resources to miss its copper and steelmaking-coal production goals. And an unusual rainfall in April 2022 breached the Perko zinc mine in Burkina Faso, which used to be run by Vancouver-based Trellis Mining Corp.

Financial Post
nkahn@postmedia.com
Twitter: @nathalkahn

NOTICE OF FIRST MEETING OF CREDITORS (SUBSECTION 102(4) OF THE ACT)

In the matter of the bankruptcy of Douglas Lighting Controls Inc.

Notice is hereby given that the bankruptcy of Douglas Lighting Controls Inc., with the head office located at 3605 Gilmore Way, Burnaby, British Columbia, occurred on the 13th day of June, 2023 and that the First Meeting of Creditors will be held on June 27, 2023 at 9:00 am (Pacific Time) via video conference call. Instructions on how to join the meeting can be found at Douglas Lighting Controls Inc. - KPMG Canada Website: <https://kpmg.com/ca/en/home/services/advisory/deal-advisory/creditorlinks/douglas-lighting-controls-inc.html>

Dated at Vancouver, British Columbia this 20th day of June, 2023.

KPMG INC.
777 Dunsmuir, Vancouver,
BC V7Y 1K3
Email: douglascontrol@kpmg.ca



IN THE MATTER OF THE BANKRUPTCY OF 1760644 ONTARIO INC. C.O.B. CAPITAL ALARM OF THE CITY OF OTTAWA IN THE PROVINCE OF ONTARIO

NOTICE OF BANKRUPTCY AND FIRST MEETING OF CREDITORS
Notice is hereby given that the bankruptcy of the above noted, formerly operating at 1568 Merivale Rd. P.O. Box 735, Ottawa, ON, K2G 5Y7, occurred on June 13, 2023 and the first meeting of creditors will be held on June 29, 2023, 2:00 PM via Zoom and at the Trustee's office noted below.

For further instructions on how to obtain meeting ID and login information, please contact the Trustee at the information provided below.

DATED at Toronto, Ontario June 15, 2023.

Goldhar
Goldhar & Associates Ltd
Licensed Insolvency Trustee

1220 Eglinton Avenue West, Toronto, ON, M6C 2E3
Telephone No. 1-905-766-1300
Fax No. 905-361-0468 | email: info@goldhar.ca

This is **Exhibit "G"** referred to in the Affidavit of
Eric Koza Sworn before me this 30th day of June, 2023

[Handwritten Signature]

A Notary Public in and for the State of New Jersey

State of NEW JERSEY
County of MORRIS
Signed and sworn to (or affirmed) before me on 30 June 2023 by

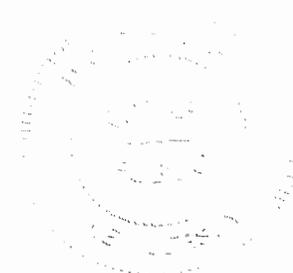
[Handwritten Signature] Eric Koza
(Name of individual making statement)

[Handwritten Signature]

Signature of notarial officer
Stamp

DAVID HELMAN
NOTARY PUBLIC
STATE OF NEW JERSEY
MY COMMISSION EXPIRES FEB. 13, 2027

DAVID HELMAN
Name of Notary Public
Notary Public, State of New Jersey Title of office
My commission expires FEBRUARY 13, 2027



**KIRKLAND & ELLIS LLP
KIRKLAND & ELLIS INTERNATIONAL LLP**

Edward O. Sassower, P.C. (admitted *pro hac vice*)
Christopher Marcus, P.C. (admitted *pro hac vice*)
Derek I. Hunter (admitted *pro hac vice*)
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wusatine@coleschotz.com
fyudkin@coleschotz.com

*Proposed Co-Counsel for Debtors and
Debtors in Possession*

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

<p>In re:</p> <p>CYXTERA TECHNOLOGIES, INC., <i>et al.</i>,</p> <p style="text-align: center;">Debtors.¹</p>	<p>Chapter 11</p> <p>Case No. 23-14853 (JKS)</p> <p>(Jointly Administered)</p>
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¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.



**CERTIFICATE OF NO OBJECTION WITH
RESPECT TO THE DEBTORS' MOTION FOR ENTRY
OF AN ORDER (I) APPROVING THE BIDDING PROCEDURES
AND AUCTION, (II) APPROVING STALKING HORSE BID PROTECTIONS,
(III) SCHEDULING BID DEADLINES AND AN AUCTION, (IV) APPROVING THE
FORM AND MANNER OF NOTICE THEREOF, (V) GRANTING RELATED RELIEF**

PLEASE TAKE NOTICE that, in connection with the *Debtors' Motion For Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. 95], the above-captioned debtors and debtors in possession hereby file a revised proposed form of *Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* (the "Revised Proposed Bidding Procedures Order").

PLEASE TAKE FURTHER NOTICE that a clean version of the Revised Proposed Bidding Procedures Order is attached hereto as Exhibit A and a blackline against the previously filed version is attached hereto as Exhibit B.

PLEASE TAKE FURTHER NOTICE that the objection deadline has passed, and the Debtors have resolved all formal and informal objections in connection with the relief requested in the Revised Proposed Bidding Procedures Order and respectfully request that the Court enter the Revised Proposed Bidding Procedures Order without a hearing.

[Remainder of page intentionally left blank]

Dated: June 27, 2023

/s/ Michael D. Sirota

COLE SCHOTZ P.C.

Michael D. Sirota, Esq.
Warren A. Usatine, Esq.
Felice R. Yudkin, Esq.
Court Plaza North, 25 Main Street
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derek.hunter@kirkland.com

*Proposed Co-Counsel for Debtors and
Debtors in Possession*

EXHIBIT A

Revised Proposed Bidding Procedures Order

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

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

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

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Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

**ORDER (I) APPROVING THE
BIDDING PROCEDURES AND AUCTION, (II) APPROVING
STALKING HORSE BID PROTECTIONS, (III) SCHEDULING**

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

BID DEADLINES AND AN AUCTION, (IV) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (V) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered three (3) through and including thirteen (13), is **ORDERED**.

(Page | 3)

Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

Upon the *Motion For Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* (the “Motion”),² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”) (a) authorizing and approving the proposed marketing, auction, and bidding procedures attached hereto as **Exhibit 1** to the Order (the “Bidding Procedures”), by which the Debtors will solicit and select the highest or otherwise best offer(s) for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”), (b) establishing certain dates and deadlines related thereto and scheduling an auction, if any, (the “Auction”), (c) approving the manner of notice of the Auction, as may be necessary, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

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and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures, which are fair, reasonable, and appropriate under the circumstances and designed to maximize the recovery on, and realizable value of the Debtors' enterprise, including with respect to the proposed procedures for providing Bid Protections as determined by the Debtors in an exercise of their business judgment in accordance with the Bidding Procedures.
3. The Debtors' proposed notice of the Motion and the Hearing was (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iii) adequate and sufficient under the circumstances of these chapter 11 cases, and no other or further notice is required. A reasonable opportunity to object or

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be heard regarding the relief granted by this Order has been afforded to all interested persons and entities.

4. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

I. Important Dates and Deadlines.

5. **Acceptable Bidder Deadline.** July 10, 2023, at 5:00 p.m. prevailing Eastern Time, is the deadline by which all non-binding written proposals (a “Proposal”) must be **actually received** by the parties specified in the Bidding Procedures.

6. **Final Bid Deadline.** In the event there is at least one Acceptable Bidder, July 31, 2023, at 5:00 p.m. prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures. In the event there are no Acceptable Bidders, July 19, 2023, at 5:00 p.m. prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures.

7. **Stalking Horse Bidders and Bid Protections.** The Debtors, upon entry of this Order, shall be authorized, but are not obligated or directed, in an exercise of their reasonable business judgment, with the consent of the Ad Hoc Group, and in consultation with the Committee, to select one or more Stalking Horse Bidders with respect to some or all of the New Equity Interests and/or Assets by no later than (i) in the event there is at least one Acceptable Bidder, July 24, 2023 at 5:00 p.m., prevailing Eastern Time, or (ii) in the event there are no Acceptable Bidders, July 16, 2023 at 5:00 p.m., prevailing Eastern Time, enter into a stalking horse agreement

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(the "Stalking Horse Agreement"), and subject to paragraphs 8 and 9, to provide such Stalking Horse Bidders with Bid Protections without further action or order by this Court.

8. In the event that the Debtors, with the consent of the Ad Hoc Group, and in consultation with the Committee, enter into a Stalking Horse Agreement with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court designating a Stalking Horse Bidder and authorizing entry into a Stalking Horse Agreement (the "Stalking Horse Notice") and serve the Stalking Horse Notice on the Stalking Horse Bidder, the Ad Hoc Group, the Committee, and the U.S. Trustee. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bid and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the amount and calculation thereof); (v) specify whether the Stalking Horse Bid includes the New Equity Interests or the Assets (and which Assets); (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse Notice within two business days of filing with the Court, (the "Notice Period"), the Debtors may submit an order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, without the need for further hearing. If a party timely files an objection to the Stalking

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Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period and as soon thereafter as the Court is available.

9. Upon entry of an order that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement (the “Stalking Horse Order”), the Debtors, with the consent of the Ad Hoc Group, and in consultation with the Committee, are authorized, but not directed, to incur and pay (a) the Break Up Fee in an amount not to exceed three percent of the proposed Purchase Price and (b) the Expense Reimbursement to each Stalking Horse Bidder subject to the terms of the Stalking Horse Agreement and the Stalking Horse Order.

10. Except as otherwise set forth in the Bidding Procedures, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

11. **Auction**. The date and time of the Auction, if needed, is (i) in the event there is at least one Acceptable Bidder, August 7, 2023, at 10:00 a.m. prevailing Eastern Time, or (ii) in the event there are no Acceptable Bidders, July 24, 2023, at 10:00 a.m. prevailing Eastern Time, which time may be extended by the Debtors in consultation with the Consultation Parties, upon written notice with the Court. The Auction will be held at the offices of co-counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022, or such other place as the Debtors determine in consultation with the Consultation Parties. Only the Debtors, the

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Consultation Parties, the Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine in their reasonable discretion, in each case, along with the representatives and advisors, shall be entitled to participate in the Auction, and only Qualified Bidders will be entitled to make Overbids (as defined in the Bidding Procedures) at the Auction; *provided, however*, that any party in interest may attend the Auction.

12. **Notice of Successful Bidder.** As soon as reasonably practicable upon conclusion of the Auction, the Debtors shall file a Notice of Successful Bidder.

II. Auction, Bidding Procedures, Auction Notice, and Related Relief.

13. The Bidding Procedures, substantially in the form attached hereto as **Exhibit 1**, are incorporated herein and are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Sale Transaction. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures. Notwithstanding anything to the contrary, the Debtors, with the consent of the Ad Hoc Group and in consultation with the Committee, may modify the Bidding Procedures as necessary or appropriate to maximize value for their estates.

14. Any deposit provided by a Stalking Horse Bidder or other Qualified Bidder shall be held in escrow by the Debtors or their agent and shall not become property of the Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement, the Bidding Procedures, or order of this Court, as applicable.

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15. The Auction Notice, substantially in the form attached hereto as **Exhibit 2**, is hereby approved. As soon as reasonably practicable following the entry of this Order, the Debtors will cause the Auction Notice to be served upon (a) the office of the U.S. Trustee; (b) the Ad Hoc Group; (c) the Committee; (d) the United States Attorney's Office for the District of New Jersey, (e) the Internal Revenue Service, (f) the attorneys general in the states where the Debtors conduct their business operations, (g) any Qualified Bidders, and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors shall also post notice of the date, time, and place of the Auction on the website of the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants LLC (the "Notice and Claims Agent"), at <https://www.kccllc.net/cyxtera>.

16. Pursuant to Local Rule 6004-2: (a) each bidder participating at the Auction shall be required to confirm that it has not engaged in any bad faith or collusion with respect to the bidding or the Sale Transaction, as set forth in the Bidding Procedures; (b) the Auction shall be conducted openly and all parties in interest will be permitted to attend; (c) the bidding at the Auction will be documented, recorded, or videotaped, and (d) the Court will consider whether to confirm the results of the Auction and whether to approve the Sale Transaction by no later than September 22, 2023.

III. Miscellaneous.

17. Nothing in this Order or the Bidding Procedures shall be deemed a waiver of any rights, remedies or defenses that any party (including the Debtors, the Ad Hoc Group, any Stalking Horse Bidder, if applicable, or any other prospective purchaser) has or may have under applicable bankruptcy and non-bankruptcy law, under any indemnity agreements, or related agreements or

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any letters of credit relating thereto, or any rights, remedies, or defenses of the Debtors with respect thereto, including seeking Bankruptcy Court relief with regard to the Auction, the Bidding Procedures, the Sale Transaction, and any related items (including, if necessary, to seek an extension of the Bid Deadline).

18. The Debtors may modify any of the dates and deadlines set forth herein in consultation with the Consultation Parties, *provided* that the Debtors will serve notice (email from counsel to the Debtors, Kirkland & Ellis LLP, to suffice) to any Qualified Bidder, Stalking Horse Bidder, the Ad Hoc Group, the Committee, and the U.S. Trustee, as applicable and appropriate, informing them of such modification. The Debtors, in consultation with the Consultation Parties, are further authorized, but not directed, to conduct multiple Sale Transactions and/or Auctions (as necessary) in substantial conformity with the Schedule and Bidding Procedures established through this Order.

19. The failure to include or reference a particular provision of the Bidding Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

20. In the event of any inconsistencies between this Order and the Motion and/or the Bidding Procedures, this Order shall govern in all respects.

21. Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's

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rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

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22. Nothing in the Motion, this Order or the Bidding Procedures waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

23. Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to and in compliance with, the requirements imposed on the Debtors under the terms of each interim and final order entered by the Court in respect of *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 70] (the "DIP Orders"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

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

25. Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

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26. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

27. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

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

Exhibit 1

Bidding Procedures

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,
Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

**BIDDING PROCEDURES FOR THE
SUBMISSION, RECEIPT, AND ANALYSIS OF BIDS IN
CONNECTION WITH THE SALE OF THE DEBTORS' SALE PACKAGE**

On June 4, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

The Debtors filed these chapter 11 cases after entering into a restructuring support agreement (the “Restructuring Support Agreement”) [Docket No. 20, Ex. B] with the support of certain of the Debtors’ lenders whose claims represent approximately 64 percent of the claims arising on account of obligations under that certain first lien credit agreement by and between Cyxtera DC Holdings, Inc., Cyxtera DC Parent Holdings, Inc., Cyxtera Communications, LLC, and Cyxtera Data Centers, Inc., the first lien lenders from time to time party thereto, and Citibank, N.A., as administrative agent and collateral agent (the claims thereunder, the “First Lien Claims”). The Restructuring Support Agreement contemplates two paths to a value-maximizing reorganization: (a) a standalone recapitalization of the Debtors’ balance sheet (the “Recapitalization Transaction”) and (b) the Sale Transaction (as defined herein). Specifically, the Restructuring Support Agreement contemplates that the Debtors will continue their Marketing Process, and if such process does not maximize value for the Debtors’ stakeholders, pursue the Recapitalization Transaction. Accordingly, the Recapitalization Transaction serves as an alternative restructuring proposal, by which the lenders party to the Restructuring Support Agreement have agreed to, among other things, receive their pro rata share of New Equity Interests and a new second-out take-back debt facility on behalf of their First Lien Claims and convert the DIP Facility into a first-out take-back debt facility at exit.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

On [], 2023, the Court entered an order (the “Bidding Procedures Order”),² approving, among other things, these bidding procedures (the “Bidding Procedures”). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit bids and conduct an auction (the “Auction”) for the sale or disposition (collectively, the “Sale,” and each, a “Sale Transaction”) of all or substantially all of the New Equity Interests and/or the Assets.

Copies of the Bidding Procedures Order or any other documents in the Debtors’ chapter 11 cases are available upon request to Kurtzman Carson Consultants LLC by calling (877) 726-6510 (U.S. / Canada) or (424) 236-7250 (International) or visiting the Debtors’ restructuring website at (<https://www.kccllc.net/cyxtera>).

I. Sale Package to be Auctioned.

The Debtors seek the highest or otherwise best offer(s) for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”).

II. Public Announcement of Auction.

As soon as practicable after entry of the Bidding Procedures Order, the Debtors shall (i) cause a notice of the Auction, the Bidding Procedures Order, and the Bidding Procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the “Auction Notice”) to be served on the parties that received notice of the Motion, (ii) post the Auction Notice on the website of the proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>, and (iii) publish the Auction Notice, with any modifications necessary for ease of publication, on one occasion in *The New York Times* (National Edition), and/or another national publication to provide notice to any other potential interested parties. The Auction Notice shall include a general description of the contents of the Sale Package.

III. Potential Bidder Requirements.

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence materials, a person or entity interested in purchasing the Sale Package or part of the Sale Package (a “Potential Bidder”) must deliver or have previously delivered to each of (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher Marcus, P.C. (christopher.marcus@kirkland.com), Derek I. Hunter (derek.hunter@kirkland.com); (ii) the Debtors’ proposed investment banker, Guggenheim Securities, LLC (“Guggenheim Securities”), 330 Madison Avenue, New York, New York, 10017, Attn: Ronen Bojmel

² Capitalized terms used but not defined herein have the meanings ascribed to them in the *Debtors’ Motion For Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. 95] (the “Motion”), or the Bidding Procedures Order, as applicable.

(Ronen.Bojmel@guggenheimpartners.com), Josh Mendelsohn
(Josh.Mendelsohn@guggenheimpartners.com), Andrew Goodman
(Andrew.Goodman@guggenheimpartners.com); (iii) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166, Attn: Scott Greenberg (sgreenberg@gibsondunn.com), Steven Domanowski (sdomanowski@gibsondunn.com) and Stephen D. Silverman (ssilverman@gibsondunn.com); and (iv) proposed counsel to the Official Committee of Unsecured Creditors (the “Committee”), Pachulski Stang Ziehl & Jones, LLP, 780 Third Avenue, 34th Floor, New York, NY 10017, Attn: Bradford J. Sandler (bsandler@pszjlaw.com), Robert J. Feinstein (rfeinstein@pszjlaw.com), Paul J. Labov (plabov@pszjlaw.com) any (collectively, the “Notice Parties”) the following preliminary documentation (collectively, the “Preliminary Bid Documents”):

- a. an executed confidentiality agreement (a “Confidentiality Agreement”) in form and substance acceptable to the Debtors;
- b. a statement of what portion of the New Equity Interests and/or the Assets that the Potential Bidder intends to acquire;
- c. sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the New Equity Interests or the Assets, the adequacy of which must be acceptable to the Debtors, in consultation with the Consultation Parties; and
- d. a statement detailing whether the Potential Bidder is partnering with or otherwise working with any other interested party in connection with the potential submission of a joint Bid, the identity of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable.

Within four business days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtors will determine, in consultation with the Consultation Parties,³ and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a Proposal. For the avoidance of doubt, any party that has already executed a Confidentiality Agreement and submitted a non-binding indication of interest prior to the Petition Date and, in the judgment of the Debtors, has provided adequate forms of the preliminary documentation requested above, shall automatically be authorized to conduct due diligence and submit a Proposal.

³ The term “Consultation Parties” shall mean the Committee and the Ad Hoc Group.

IV. Acceptable Bidder Requirements.

By no later than July 10, 2023, at 5:00 p.m., prevailing Eastern Time, Potential Bidders must deliver (unless previously delivered) to each of the Notice Parties a non-binding written proposal (a “Proposal”) containing all material terms, including, but not limited to:

- a. the identity and a description (including entity type, jurisdiction of formation or organization, credit rating, and regulators, if applicable) of the Potential Bidder;
- b. the proposed Purchase Price (as defined herein) in U.S. Dollars;
- c. to the extent the Proposal is for some or all of the New Equity Interests, a statement describing the proposed pro forma capital structure, including any post-emergence debt obligations, and equity ownership;
- d. to the extent the Proposal is for some or all of the New Equity Interests, the proposed treatment of DIP claims, First Lien Claims, general unsecured claims and equity interests, including detail on whether such claims are impaired or unimpaired and the proposed form of recovery, if applicable;
- e. to the extent the Proposal is for some or all of the New Equity Interests, the proposed terms of post-emergence debt obligations, if any, in the form of a term sheet detailing proposed key economic terms;
- f. proposed terms of any New Equity Interests offered, including details regarding shareholder and governance matters, to the extent applicable;
- g. a statement specifying the Potential Bidder’s intentions with respect to the Cyxtera’s lease portfolio, including anticipated lease rejections, novations, buyouts and/or renegotiations;
- h. a statement specifying any key assumptions and any variables to which the Potential Bidder’s valuation is sensitive, as well as any other information the Potential Bidder believes will assist in evaluation of the Proposal;
- i. a brief assessment of the Potential Bidder’s rationale for the Proposal and the Potential Bidder’s intentions with respect to the New Equity Interests and/or Assets, as applicable. The Proposal should also highlight any former involvement in similar sectors to the Debtors and any other support/relevant facts that support the basis for the Proposal;
- j. a statement regarding the level of review and, if necessary, approval that the Proposal has received within the Potential Bidder’s organization. The Proposal should also provide a list of any corporate, shareholder, regulatory, or other approvals required to complete the Sale Transaction and the timing to obtain such approvals as well as any other conditions or impediments to the consummation of the Sale Transaction;

- k. a detailed description of the intended sources of any financing required for the proposed Sale Transaction, as well as an indication of the timing and steps, if any, required to secure such financing, or a statement that the Potential Bidder has available all of the funds necessary to perform all obligations regarding the proposed Sale Transaction;
- l. a detailed list of due diligence topics, documents required to review, and other material diligence items, as well as timing in order to finalize a definitive written agreement; and
- m. a list of the names, and respective functions, of the Potential Bidder's due diligence team and any legal, financial, and other advisors the Potential Bidder has engaged or would plan to engage in connection with the Sale Transaction, including their contact information, and the names, phone numbers, and email addresses of the individuals prepared to answer any questions regarding the Proposal.

Within four business days after a Potential Bidder delivers the Proposal, the Debtors will determine, in consultation with the Consultation Parties, and notify each Potential Bidder whether such Potential Bidder has submitted an acceptable Proposal (any such Potential Bidder, an "Acceptable Bidder").

V. **Qualified Bid Requirements.**

To be eligible to participate in the Auction, a Potential Bidder must deliver to the Debtors and their advisors an irrevocable offer for the purchase of some or all of the New Equity Interests and/or the Assets (each, a "Bid"), and shall meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

- a. **Purchased Sale Package and Assumed Liabilities.** Each Bid must clearly state the following: (a) whether the bidder seeks to purchase some or all of the New Equity Interests or some or all of the Assets; and (b) if applicable, the liabilities and obligations to be assumed, including any debt and cure costs to be assumed.
- b. **Good Faith Deposit.** Each Bid must be accompanied by a cash deposit in the amount equal to ten percent of the aggregate purchase price of the Bid, to be held in an escrow account to be identified and established by the Debtors (the "Good Faith Deposit"); *provided* that the DIP Agent and the Prepetition Priority/1L Administrative Agents (together, the "Agents") (as defined in the Interim DIP Order, or any final order related thereto) shall not be required to submit a Good Faith Deposit. To the extent that a Bid is modified at or prior to the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals ten percent of the increased aggregate purchase price promptly and in no event later than one (1) business day following the conclusion of the Auction.
- c. **Purchase Price.** Each Bid must (a) clearly set forth the purchase price to be paid for the New Equity Interests and/or some or all of the Assets (the "Purchase Price"), (b) identify separately the cash and non-cash components of the Purchase Price, (c) indicate the allocation of the Purchase Price among the Sale Package and related

uses, if applicable; *provided* that, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation; and (d) describe its proposed post-emergence debt obligations and liquidity position for Reorganized Cyxtera, if applicable. The Purchase Price should be a single point value in U.S. Dollars on a cash-free, debt-free basis. Any Bid for substantially all of the New Equity Interests or Assets must also include a statement as to whether the Bid is conditioned on purchasing all of such or whether the Qualified Bid should be viewed as separate Bid for one or more sets of such.

- n. **Proposed Treatment of Claims.** Each Bid for some or all of the New Equity Interests should detail proposed treatment of each class of claims including DIP claims, First Lien Claims, general unsecured claims, and equity interests. This should include whether such claims are rendered impaired or unimpaired and detail the form of recovery provided, if applicable.
- d. **Proposed Terms of Any Post-Emergence Debt Obligations.** Each Bid for some or all of the New Equity Interests should include a term sheet, if applicable, detailing key economic terms of any proposed post-emergence debt obligations, including amount, security, tenor, interest rate, original issue discount, covenants and any other material terms or conditions.
- e. **Sources of Financing.** To the extent that the Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors' satisfaction that demonstrates that the Acceptable Bidder has received sufficient funding commitments to satisfy the Acceptable Bidder's obligations under the proposed Sale Transaction and other obligations under its Bid. Such funding commitments must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or committee approvals, and shall have covenants and conditions acceptable to the Debtors.
- f. **Same or Better Terms; Bid Documents.** Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the "Bid Documents"). The Bid Documents shall include, at a minimum: (a) a chapter 11 plan and/or a draft purchase agreement, the form of which will be provided to any Acceptable Bidder prior to the Bid Deadline (as defined herein), including the exhibits and schedules related thereto and any related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the Sale, along with copies that are marked to reflect any amendments and modifications from the Plan or purchase agreement provided, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures; (b) a schedule of contracts and leases to be rejected to the extent applicable to the Bid, (c) a statement from the Acceptable Bidder specifying what, if any, other materials, conditions, due diligence, documents, exhibits, schedules, and/or ancillary materials are integral to such Bid or the Debtors' consideration thereof, (d) any other material documents integral to such Bid, (e) a statement from the Acceptable

Bidder that (i) it is prepared to enter into the Sale Transaction upon conclusion of the Auction (or, if no Auction is held, the deadline by which all binding Bids must be actually received pursuant to the Bidding Procedures (the “Bid Deadline”)) and (ii) the Qualified Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the “Back-Up Bid”)) until the consummation of the Sale Transaction, and (f) a corporate governance term sheet, if applicable.

- g. **No Fees.** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid(s) is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized, with the consultation of the Consultation Parties, to provide the Stalking Horse Bid Protections (defined below) to one or more Stalking Horse Bidders in accordance with these Bidding Procedures; *provided, further*, that nothing in these Bidding Procedures shall limit, alter or impair the rights of any party to payment and reimbursement of expenses that are set forth in the DIP Orders, and parties entitled to payment or reimbursement of expenses under the DIP Orders shall be entitled to payment or reimbursement of expenses incurred in connection with these Bidding Procedures and the matters contemplated hereby.
- h. **Employee Obligations.** Each Bid must include a description of the Acceptable Bidder’s intentions with respect to the relevant members of the Debtors’ current management team and other employees, and a description of any contemplated incentive plan, to the extent applicable.
- i. **Contingencies; No Financing or Diligence Outs.** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline.
- j. **Identity & Corporate Authority.** Each Bid must (i) fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the New Equity Interests or the Assets), and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties, and (ii) include contact information for the specific person(s) and counsel whom the Debtors’ advisors should contact regarding such Bid. A Bid must also fully disclose any business relationships, affiliations, or agreements with the Debtors, any known, potential, prospective bidder or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.

- k. **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (i) has had an opportunity to conduct any and all due diligence prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, by the Debtors, Guggenheim Securities, LLC, or the Debtors' other advisors regarding the completeness of any information provided in connection therewith, except, solely with respect to the Debtors, as expressly stated in the Acceptable Bidder's proposed purchase agreement.
- l. **Authorization.** Each Bid must contain evidence that the Acceptable Bidder has obtained all necessary authorizations or approvals from its shareholders and/or its board of managers or directors, or any other internal and other approvals, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- m. **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable business judgment on a case-by-case basis, so long as a joint bid meets the Qualified Bid requirements and the applicable bidders otherwise comply with these Bidding Procedures.
- n. **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the "Adequate Assurance Information") to demonstrate, to the reasonable satisfaction of the Debtors that such Acceptable Bidder (a) has the financial wherewithal and ability to consummate Sale Transaction (the "Closing"), and (b) can provide adequate assurance of future performance in connection with the proposed transaction. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- o. **Acknowledgement of Compliance with Bidding Procedures, Bidding Order, Bankruptcy Code, and Non-Bankruptcy Law.** Each Bid must acknowledge its compliance in all respects with these Bidding Procedures, the Bidding Procedures Order, Bankruptcy Code and any applicable non-bankruptcy law.
- p. **No Collusion.** The Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale Transaction, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price; and (b) agree not to engage in any collusion with respect to any Bids, the Auction, or the Sale Transaction. For the avoidance of doubt, this requirement does not restrict Potential Bidder(s) from working with other Potential Bidder(s) with the Debtors' prior written consent (email from Guggenheim Securities shall suffice).

- q. **Good Faith Offer.** Each Bid must constitute a good faith, *bona fide* offer to consummate the Sale Transaction.
- r. **Back-Up Bid.** Each Bid shall provide that the Acceptable Bidder will serve as a Back-Up Bidder (as defined below) if the Acceptable Bidder's Bid is the next highest or otherwise best bid.
- s. **Irrevocable.** Each Bid must state that in the event such Bid is chosen as the Back-Up Bid (as defined below), it shall remain irrevocable until the Debtors and the Successful Bidder consummate the applicable Sale Transaction.
- t. **Regulatory Approvals and Covenants.** Each Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the applicable Sale Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty days following execution and delivery of the applicable purchase agreement and/or confirmation of the Debtors' chapter 11 plan (the "Plan"), those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible).
- u. **Expected Closing Date.** Each Bid must state the Acceptable Bidder's expected date of closing of the Sale Transaction.
- v. **Time Frame for Closing.** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors.
- w. **Adherence to Bidding Procedures.** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.
- x. **Consent to Jurisdiction.** The Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, and the Closing, as applicable.
- y. **Conditions to Closing.** Each Bid must identify with particularity each and every condition to closing.

Only Bids fulfilling all of the preceding requirements contained in this section, or otherwise in the Debtors' reasonable business judgment, with the consultation of the Consultation Parties, may be deemed to be "Qualified Bids," and only those parties submitting Qualified Bids may, in

the Debtors' reasonable business judgment, be deemed to be "Qualified Bidders"; *provided* that, notwithstanding anything to the contrary herein, any Bid submitted by any of the Agents or their respective designees, shall be a Qualified Bid.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Sale Package, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Sale Package with governmental laws, the truth, accuracy, or completeness of any documents related to the Sale Package, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Sale Package. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the New Equity Interests or the Assets, as applicable, except to the extent expressly provided in the Court's Sale Order. Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Sale Package or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Court's Sale Order.

In advance of the commencement of the Auction, as is reasonably practicable, the Debtors, with the consultation of the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction.

VI. Right to Credit Bid.

Any Qualified Bidder who has a valid, perfected, and unavoidable lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured.

VII. Obtaining Due Diligence Access.

Only Acceptable Bidders shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and additional non-public information regarding the Debtors. ***No Acceptable Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.*** Beginning on the date the Debtors determine that a party is an Acceptable Bidder, or as soon as reasonably practicable thereafter, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request.

Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The Debtors, with the assistance of their advisors, shall coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale Transaction. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

A. Communications with Acceptable Bidders (including Qualified Bidders).

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications, including any diligence requests, with Acceptable Bidders (including any Qualified Bidders) shall be through Guggenheim Securities.

B. Due Diligence from Acceptable Bidders (including Qualified Bidders).

Each Acceptable Bidder (including any Qualified Bidder) shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors and their respective advisors, regarding the ability of such Acceptable Bidder (including any Qualified Bidder) to consummate its contemplated transaction. Failure by an Acceptable Bidder (including any Qualified Bidder, other than a Stalking Horse Bidder, if any) to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, to determine that such bidder is no longer an Acceptable Bidder (including any Qualified Bidder, other than a Stalking Horse Bidder, if any) or that a bid made by such bidder is not a Qualified Bid.

The Debtors have designated Ronen Bojmel, Josh Mendelsohn, and Andrew Goodman of Guggenheim Securities to coordinate all reasonable requests for additional information and due diligence access. They can be reached at Ronen.Bojmel@guggenheimpartners.com; Josh.Mendelsohn@guggenheimpartners.com; and Andrew.Goodman@guggenheimpartners.com.

VIII. Bid Deadline.

Binding Bids must be submitted in writing to the aforementioned Notice Parties so as to be **actually received** no later than: (x) in the event there is at least one Acceptable Bidder, 5:00 p.m. (prevailing Eastern Time) on July 31, 2023 or (y) in the event there are no Acceptable Bidders, 5:00 p.m. (prevailing Eastern Time) on July 19, 2023.

The Debtors may extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment for all or certain Acceptable Bidders.

IX. Evaluation of Qualified Bids.

The Debtors shall, in consultation with the Consultation Parties, evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' business judgment, the highest or otherwise best Qualified Bid or combination of Qualified Bids for the New Equity Interests or the Assets, as applicable (the "Starting Bid"). The Debtors shall promptly provide to the Consultation Parties and the U.S. Trustee copies of all Bids received by the Debtors, including the Starting Bid, but in no event later than the next business day following receipt; *provided* that the Consultation Parties and the U.S. Trustee must treat such Bids and any related information as confidential and shall not publicly disclose such information without the written consent of the Debtors and the applicable bidder.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; (d) whether the Qualified Bid contemplates a Sale Transaction for the Debtors' New Equity Interests or a Sale Transaction for the Assets; (e) whether the Qualified Bid contemplates a Sale Transaction that would be consummated through a Plan or a sale pursuant to section 363 of the Bankruptcy Code; (f) the certainty of a Qualified Bid leading to a confirmed Plan and (g) the tax consequences of such Qualified Bid. Prior to commencing the Auction, the Debtors shall notify the Stalking Horse Bidder, if any, and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder, if any, and each Qualified Bidder.

X. Stalking Horse Bid Protections.

Pursuant to the Bidding Procedures Order, the Debtors may, with the consent of the Ad Hoc Group, and in consultation with the Committee, designate one or more Bidders to be a stalking horse Bidder (each a "Stalking Horse Bidder"), which if any, are entitled to certain Stalking Horse

Bid Protections (defined below) in the amounts set forth in, and in accordance with the terms of the Bidding Procedures Order. For the avoidance of doubt, except for the Stalking Horse Bidder, and as otherwise set forth herein, no other party submitting an offer, a Bid, or a Qualified Bid shall be entitled to any Expense Reimbursement, Break Up Fee, termination fee, or similar fee or payment.

In the event that the Debtors receive multiple Qualified Bids, at any time until (x) in the event there is at least one Acceptable Bidder, July 24, 2023, at 5:00 p.m. (prevailing Eastern Time), or (y) in the event there are no Acceptable Bidders, 5:00 p.m. (prevailing Eastern Time) on July 16, 2023, the Debtors shall be authorized, but not obligated, in their reasonable business judgment, with the consent of the Ad Hoc Group, and in consultation with the Committee, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder (x) agree to provide a Break Up Fee not to exceed three percent of the Purchase Price and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses of such Stalking Horse Bidder(s) the ("Stalking Horse Bid Protections").

In the event that the Debtors enter into a stalking horse agreement (the "Stalking Horse Agreement") with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court designating a Stalking Horse Bidder and authorizing entry into a Stalking Horse Agreement (the "Stalking Horse Notice") and serve the Stalking Horse Notice on the Stalking Horse Bidder, the U.S. Trustee, and the Consultation Parties. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder's parent company or sponsor); (ii) set forth the amount of the Bid submitted by the Stalking Horse Bidder and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Bid submitted by the Stalking Horse Bidder; (iv) specify any proposed Stalking Horse Bid Protections (including the amount and calculation thereof); (v) specify whether the Bid submitted by the Stalking Horse Bidder includes the New Equity Interests or the Assets (and which Assets); (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Stalking Horse Bid Protections. If there are no objections to the Stalking Horse Notice within two business days of filing with the Court, (the "Notice Period"), the Debtors may submit an order to the Court that incorporates any comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period and as soon thereafter as the Court is available.

Upon entry of an order that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement (the "Stalking Horse Order"), the Debtors are authorized, but not directed, to incur and pay (a) the Break Up Fee in an amount not to exceed three percent of the proposed Purchase Price and (b) the Expense Reimbursement to each Stalking Horse Bidder in accordance with the terms of such Stalking Horse Order and Stalking Horse Agreement.

Except as otherwise set forth herein, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any Expense Reimbursement, Break Up Fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with the Court any request for Expense Reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

XI. No Qualified Bids.

If any Bid is the only Qualified Bid received by the Bid Deadline, the Debtors may decide, in their reasonable business judgment, after consultation with the Consultation Parties, to designate such Bid as the Successful Bid (as defined below) as to the applicable Sale Package and pursue entry of an order approving a Sale Transaction with respect to such Sale Package. The Debtors shall promptly file notice of any cancellation of the Auction, where applicable, as the Successful Bid with the Court.

XII. Auction.

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for any particular Asset or portion of Sale Package by the Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment with respect to such Sale Package or portion of Sale Package. If the Debtors do not receive any Qualified Bid, the Debtors will not conduct the Auction. If one or more Qualified Bids (other than the Bid submitted by the Stalking Horse Bidder, if any) are received by the Bid Deadline with respect to the New Equity Interests or the Assets, then the Debtors shall conduct the Auction with respect to such New Equity Interests or Assets in accordance with the Auction Procedures (as defined below).

An Auction, if necessary shall commence on (x) in the event there is at least one Acceptable Bidder, August 7, 2023, at 10:00 a.m. (prevailing Eastern Time) or (y) in the event there are no Acceptable Bidders, July 24, 2023 at 10:00 a.m. (prevailing Eastern Time), or, in each case, such later time or other place as the Debtors determine in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the “Auction Procedures”):

- a. except as otherwise provided herein, only Qualified Bidders shall be entitled to bid at the Auction;
- b. the Qualified Bidders, including any Stalking Horse Bidders, if any, must appear in person or through duly-authorized representatives at the Auction;
- c. bidding shall begin with the Starting Bid;
- d. subsequent bids (each, an “Overbid”) may only be made at the Auction and shall be at least (i) a 2% increase in cash, cash equivalents, or other such consideration that the Debtors, in their reasonable business judgment, deem equivalent (including the right of a secured creditor to credit bid any remaining amount of its secured claims) over the previous bid *plus* (ii) in the event that the Debtors have entered into a Stalking Horse Agreement to which the Overbid relates, the aggregate

amount of Stalking Horse Bid Protections (including, for the avoidance of doubt, any Break Up Fees and/or Expense Reimbursements) under such Stalking Horse Agreement (a “Minimum Overbid”), and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid. The Debtors may, in their reasonable business judgment and in consultation with the Consultation Parties, announce increases or reductions to the Minimum Overbid at any time during the Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder may submit at the Auction must contain a Purchase Price in cash, cash equivalents, or such other consideration that the Debtors, in their reasonable business judgment deem equivalent (including the right of a secured creditor to credit bid any remaining amount of its secured claims) that exceeds the then existing highest Bid by at least the amount of the Minimum Overbid;

- e. at the commencement of the Auction, the Debtors may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit successive bid(s);
- f. each Qualified Bidder will be permitted a reasonable time to respond to previous bids at the Auction, as determined by the Debtors; *provided*, that, unless the Debtors determine otherwise, a failure to respond and submit successive bid(s) at the Auction will result in disqualification;
- g. during the course of the Auction, the Debtors shall, after submission of each Overbid, promptly inform each Qualified Bidder of the terms of the previous bids and inform each Qualified Bidder which Overbid(s) reflect, in the Debtors’ view the highest or otherwise best bid(s) with respect to the New Equity Interests or the Assets, as applicable;
- h. the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- i. each Qualified Bidder will be required to confirm on the record that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Sale Transaction. For the avoidance of doubt, (a) this requirements does not restrict Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors’ prior written consent;
- j. each Qualified Bidder will be required to confirm that its bid is a good faith, *bona fide* offer and it intends to consummate the Sale Transaction if selected as the Successful Bid in accordance with these Bidding Procedures (as may be modified in accordance herewith at the Auction);
- k. the Court and the Debtors will not consider bids made after the Auction has been closed;
- l. the Debtors, in their reasonable business judgment and in consultation with the Consultation Parties, may reject, at any time before entry of an order of the Court

approving a Successful Bid, any Bid that the Debtors determine is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale Transaction, or (iii) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders;

- m. the Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any Bid made by a Qualified Bidder during the Auction; and
- n. notwithstanding anything herein to the contrary at any time choose to adjourn the Auction by announcement at the Auction. The Debtors shall promptly file notice of such adjournment with the Court.

For the avoidance of doubt, nothing in the Bidding Procedures, including the Auction Procedures, will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors, in consultation with counsel).

Any Auction rules adopted by the Debtors will not modify any of the terms of the Stalking Horse Agreement or the rights of the Stalking Horse Bidder, if any, without the consent of the Stalking Horse Bidder, if any.

Except as otherwise determined by the Debtors only (i) the Debtors, (ii) the Consultation Parties, (iii) the Office of the United States Trustee, (iv) any other Qualified Bidders, and (v) the respective representatives and professionals of the foregoing parties shall be entitled to participate in the Auction, however, any party in interest may be permitted to attend the Auction.

XIII. Acceptance of the Successful Bid.

The Auction shall continue until (i) there is only one Qualified Bid or a combination of Qualified Bids that the Debtors determine, in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties and outlined below in further detail, and in consultation with the Consultation Parties, is the highest or otherwise best bid to purchase the New Equity Interests or Assets, as applicable (each, a "Successful Bid"), and (ii) the Debtors determine, in their reasonable business judgment, in consultation with the Consultation Parties, that further bidding is unlikely to result in a different Successful Bid or Successful Bids that would be reasonably acceptable to the Debtors, at which point, the Auction will be closed.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors in addition to any other factors that the Debtors deem appropriate: (a) the amount and nature of the total consideration, which includes but is not limited to, assumed liabilities (administrative liabilities, cure payments), and the amount of executory contracts and leased locations being assumed; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any

changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; and (d) the tax consequences of such Qualified Bid; and (e) any other consideration that may impact the Debtors' stakeholders.

Any Qualified Bidder that submits a Successful Bid will be deemed a "Successful Bidder" with respect to the New Equity Interests or Assets contemplated for purchase pursuant to such Successful Bid. The Debtors shall file notice of the Successful Bid and the Successful Bidder with the Court as soon as reasonably practicable after conclusion of the Auction. Following conclusion of the Auction and selection of a Successful Bidder, the Debtors shall present the results of the Auction at a hearing and shall seek (a) certain findings from the Court regarding the Auction, including, among other things, that (i) the Auction was conducted, and the Successful Bidder or Successful Bidders were selected, in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure, and (iii) consummation of the Successful Bid or Successful Bids will provide the highest or otherwise best value for the New Equity Interests or Assets, as applicable, and is in the best interests of the Debtors' estates, and (b) Court approval to enter into a binding purchase agreement with the Successful Bidder on the terms of the Successful Bid.

Within one (1) business day of the selection of the Successful Bidder, such Successful Bidder (including both the Stalking Horse Bidder, if any, and Back-Up Bidder, if applicable) shall make a cash deposit, in addition to its Good Faith Deposit, in an amount calculated on the basis of the increased aggregate purchase price such that the Successful Bidder's total cash deposit is equal to ten percent of the aggregate purchase price, submitted by wire transfer of immediately available funds to an escrow account to be identified and established by the Debtors pursuant to a customary and reasonable escrow agreement; *provided* that the Agents shall not be required to make any deposit. Each Successful Bidder and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts, instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made.

XIV. Designation of Back-Up Bidder.

The Back-Up Bid to purchase any applicable New Equity Interests or Assets (the "Back-Up Bidder") will be determined by the Debtors at the conclusion of the Auction, and will be announced at that time to all the Qualified Bidders participating in the Auction. The Debtors' selection of a Back-Up Bid shall be deemed final and the Debtors shall not accept any further bids or offers to submit a bid after such selection. The Debtors will be authorized, but not required, to consummate the Sale Transaction with the Back-Up Bidder without further order of the Court, so long as such Back-Up Bid shall have been approved in connection with the Court's approval of the Successful Bid, or subject to Court approval if not.

If for any reason a Successful Bidder fails to consummate the purchase of such New Equity Interests or Assets, as applicable, within the time permitted, then the Back-Up Bidder will automatically be deemed to have submitted the Successful Bid, and the Back-Up Bidder shall be deemed a Successful Bidder and shall be required to consummate any Sale Transaction with the Debtors as soon as is reasonably practicable without further order of the Court, upon 24 hours advance notice filed with the Court. To the extent any objections are raised and remain unresolved, the Court may schedule a hearing on an expedited basis to adjudicate such objection.

The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) forty-five (45) days after completion of the Auction, (ii) consummation of a Sale Transaction with one or more Successful Bidders at an Auction, and (iii) the release of such Back-Up Bid by the Debtors in writing (the “Back-Up Termination Date”). The Debtors shall return the Back-Up Bidder’s deposit owed within five (5) business days of the Back-Up Termination Date.

XV. Confirmation Hearing.

In the event a transaction is consummated through a Plan, a hearing before the Court to consider confirmation of the Plan (the “Confirmation Hearing”) will be held at a date and time consistent with the any order approving the Debtors’ disclosure statement and scheduling applicable dates and deadlines related thereto, including confirmation of the Plan. The Confirmation Hearing will be before the Honorable John K. Sherwood, United States Bankruptcy Judge for the Bankruptcy Court for the District of New Jersey at 50 Walnut Street, 3rd Floor, Newark, New Jersey 07102, and otherwise in accordance with any scheduling orders entered by the Court relating to confirmation of the Plan or approval of any disclosure statement related thereto.

At the Confirmation Hearing, the Debtors will present the Plan, which may incorporate the terms of the Successful Bid or Successful Bids, to the Court for confirmation.

XVI. Return of Good Faith Deposit.

The Good Faith Deposit(s) of the Successful Bidder or Successful Bidders, if any, will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’ estates and be credited to the portion of such Successful Bidder’s or Successful Bidders’ applicable Purchase Price.

If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable), if any, fails to consummate the Successful Bid or Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit(s) of such Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposits of any unsuccessful Qualified Bidders (except for any Back-Up Bidder or Back-Up Bidders and any Stalking Horse Bidders) will be returned within five business days after consummation of the applicable Sale Transaction or upon the permanent withdrawal of the applicable proposed Sale Transaction.

The Good Faith Deposit(s) of any Back-Up Bidder or Back-Up Bidders, if any, will be returned to such Back-Up Bidder or Back-Up Bidders no later than five (5) business days of the Back-Up Termination Date.

The return of any Good Faith Deposits of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders’ Plan or purchase agreement, as applicable. All such deposits shall be held in escrow and at no time shall be deemed property of the Debtors’ estates absent further order of the Court.

XVII. Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures in good faith, with the consent of the Ad Hoc Group, and in consultation with the Committee, to further the goal of attaining the highest or otherwise best offer, or impose, at or prior to the Auction, additional terms and conditions on the Sale. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders. Notwithstanding anything to the contrary herein, the Debtors may elect to consummate the Sale under section 363(f) of the Bankruptcy Code as opposed to pursuant to the Plan with the Successful Bidder or Successful Bidders.

XVIII. Consent to Jurisdiction.

All Qualified Bidders at the Auction will be deemed to have consented to the core jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Transaction hearing, or the construction and enforcement of any agreement or any other document relating to the Sale any Sale Transaction if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Court on an expedited basis.

XIX. Fiduciary Out.

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor to take any action or to refrain from taking any action related to any sale transaction or with respect to these Bidding Procedures, to the extent such Debtor, board of director, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Further, notwithstanding anything to the contrary in these Bidding Procedures or the Bidding Procedures Order, through the date of the Auction (if held), nothing in these Bidding Procedures or the Bidding Procedures Order shall diminish the right of the Debtors and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives to: (a) consider, respond to, and facilitate alternate proposals for sales or other restructuring transactions involving New Equity Interests or the Assets (each an "Alternate Proposal"); (b) provide access to non-public information concerning the Debtors to any entity or enter into confidentiality agreements or nondisclosure agreements with any entity with respect to Alternate Proposals; (c) maintain or continue discussions or negotiations with respect to Alternate Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any

inquiries, proposals, discussions, or negotiations of Alternate Proposals; and (e) enter into or continue discussions or negotiations with any person or entity regarding any Alternate Proposal.

XX. DIP Orders & Restructuring Support Agreement.

For the avoidance of doubt, nothing in these Bidding Procedures shall amend, modify or impair any provision of the DIP Orders or the Restructuring Support Agreement, or the rights of the DIP Agent, Consenting Stakeholders, or the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement), as applicable.

Exhibit 2

Auction Notice

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

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*Proposed Co-Counsel for Debtors and
Debtors in Possession*

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

NOTICE OF SALE BY AUCTION AND SALE HEARING

PLEASE TAKE NOTICE that on [], 2023, the United States Bankruptcy Court for the District of New Jersey (the "Court") entered the *Order (I) Approving the Bidding Procedures and*

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief [Docket No. []] (the “Bidding Procedures Order”)² in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”) consistent with the bidding procedures (the “Bidding Procedures”) approved by the Court pursuant to the Bidding Procedures Order. **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that the deadline by which all binding bids must be actually received pursuant to the Bidding Procedures is [], **2023, at 5:00 p.m. (prevailing Eastern Time).**

PLEASE TAKE FURTHER NOTICE that if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “Auction”) of the Assets **on [], 2023, at 10:00 a.m. (prevailing Eastern Time)** at the offices of co-counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022.

PLEASE TAKE FURTHER NOTICE that only the Debtors, the Consultation Parties, the Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine in their reasonable discretion, in each case, along with the representatives and advisors, shall be entitled to participate in the Auction, and only Qualified Bidders will be entitled to make Overbids (as defined in the Bidding Procedures) at the Auction; *provided, however*, that any party in interest may attend the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.** Copies of the Bidding Procedures, the Bidding Procedures Order, and any other related documents are available upon request to Kurtzman Carson Consultants LLC by calling (877) 726-6510 (U.S. / Canada) or (424) 236-7250 (International) or visiting the Debtors’ restructuring website at (<https://www.kccllc.net/cyxtera>).

² Capitalized terms used but not defined in this notice have the meanings given to them in the Bidding Procedures Order.

Dated: [____], 2023

/s/ DRAFT

COLE SCHOTZ P.C.

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*Proposed Co-Counsel for Debtors and
Debtors in Possession*

EXHIBIT B

Blackline

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

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

KIRKLAND & ELLIS LLP

KIRKLAND & ELLIS INTERNATIONAL LLP

Edward O. Sassower, P.C. (admitted pro hac vice
~~pending~~)

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Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

**ORDER (I) APPROVING THE
BIDDING PROCEDURES AND AUCTION, (II) APPROVING
STALKING HORSE BID PROTECTIONS, (III) SCHEDULING
BID DEADLINES AND AN AUCTION, (IV) APPROVING THE FORM AND
MANNER OF NOTICE THEREOF, AND (V) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through and including

~~twelve~~thirteen (13), is **ORDERED**.

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

Upon the *Motion For Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* (the “Motion”),² of the above-captioned debtors and debtors in possession (collectively, the “Debtors”), for entry of an order (this “Order”) (a) authorizing and approving the proposed marketing, auction, and bidding procedures attached hereto as **Exhibit 1** to the Order (the “Bidding Procedures”), by which the Debtors will solicit and select the highest or otherwise best offer(s) for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”), (b) establishing certain dates and deadlines related thereto and scheduling an auction, if any, (the “Auction”), (c) approving the manner of notice of the Auction, as may be necessary, and (d) granting related relief, all as more fully set forth in the Motion; and upon the First Day Declaration; and the Court having jurisdiction to consider the Motion and the relief requested therein pursuant to 28 U.S.C. §§ 157 and 1334 and the *Standing Order of Reference to the Bankruptcy Court Under Title 11* of the United States District Court for the District of New Jersey, entered July 23, 1984, and amended

² Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to them in the Motion or the Bidding Procedures, as applicable.

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

on September 18, 2012 (Simandle, C.J.); and this Court having found that venue of this proceeding and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the relief requested in the Motion is in the best interests of the Debtors' estates, their creditors, and other parties in interest; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need be provided; and this Court having reviewed the Motion and having heard the statements in support of the relief requested therein at a hearing before this Court (the "Hearing"); and this Court having determined that the legal and factual bases set forth in the Motion establish just cause for the relief granted herein; and upon all of the proceedings had before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY ORDERED THAT:**

1. The Motion is **GRANTED** as set forth herein.
2. The Debtors have articulated good and sufficient reasons for authorizing and approving the Bidding Procedures, which are fair, reasonable, and appropriate under the circumstances and designed to maximize the recovery on, and realizable value of the Debtors' enterprise, including with respect to the proposed procedures for providing Bid Protections as determined by the Debtors in an exercise of their business judgment in accordance with the Bidding Procedures.
3. The Debtors' proposed notice of the Motion and the Hearing was (i) appropriate and reasonably calculated to provide all interested parties with timely and proper notice, (ii) in compliance with all applicable requirements of the Bankruptcy Code, the Bankruptcy Rules, and the Local Rules, and (iii) adequate and sufficient under the circumstances of these

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
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chapter 11 cases, and no other or further notice is required. A reasonable opportunity to object or be heard regarding the relief granted by this Order has been afforded to all interested persons and entities.

4. All objections to the relief requested in the Motion that have not been withdrawn, waived, or settled prior to or at the Hearing are overruled.

I. Important Dates and Deadlines.

5. Acceptable Bidder Deadline. July 10, 2023, at 5:00 p.m. prevailing Eastern Time, is the deadline by which all non-binding written proposals (a “Proposal”) must be **actually received** by the parties specified in the Bidding Procedures.

6. ~~5.~~ Final Bid Deadline. In the event there is at least one Acceptable Bidder, July 31, 2023, at 5:00 p.m. prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures. In the event there are no Acceptable Bidders, July 19, 2023, at 5:00 p.m. prevailing Eastern Time, is the deadline by which all Qualified Bids must be **actually received** by the parties specified in the Bidding Procedures.

7. ~~6.~~ Stalking Horse Bidders and Bid Protections. The Debtors, upon entry of this Order, shall be authorized, but are not obligated or directed, in an exercise of their reasonable business judgment, with the consent of the Ad Hoc Group, and in consultation with the Committee, to select one or more Stalking Horse Bidders with respect to some or all of the New Equity Interests and/or Assets by no later than (i) in the event there is at least one Acceptable Bidder, July 24, 2023 at 5:00 p.m., prevailing Eastern Time, or (ii) in the event there are no

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*

Case No. 23-14853 (JKS)

Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

Acceptable Bidders. July 16, 2023 at 5:00 p.m., prevailing Eastern Time, enter into a stalking horse agreement (the “Stalking Horse Agreement”), and subject to paragraphs ~~7 and 8~~ and 9, to provide such Stalking Horse Bidders with Bid Protections without further action or order by this Court.

8. ~~7.~~ In the event that the Debtors, with the consent of the Ad Hoc Group, and in consultation with the Committee, enter into a Stalking Horse Agreement with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court designating a Stalking Horse Bidder and authorizing entry into a Stalking Horse Agreement (the “Stalking Horse Notice”) and serve the Stalking Horse Notice on the Stalking Horse Bidder, the Ad Hoc Group, the Committee, and the U.S. Trustee. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (ii) set forth the amount of the Stalking Horse Bid and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Stalking Horse Bid; (iv) specify any proposed Bid Protections (including the amount and calculation thereof); (v) specify whether the Stalking Horse Bid includes the New Equity Interests or the Assets (and which Assets); (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Bid Protections. If there are no objections to the Stalking Horse Notice within two business days of filing with the Court, (the “Notice Period”), the Debtors may submit an order to the Court that incorporates any

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

comments received during the Notice Period that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, without the need for further hearing.

If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period and as soon thereafter as the Court is available.

9. ~~8.~~ Upon entry of an order that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement (the “Stalking Horse Order”), the Debtors, with the consent of the Ad Hoc Group, and in consultation with the Committee, are authorized, but not directed, to incur and pay (a) the Break Up Fee in an amount not to exceed three percent of the proposed Purchase Price and (b) the Expense Reimbursement to each Stalking Horse Bidder subject to the terms of the Stalking Horse Agreement and the Stalking Horse Order.

10. ~~9.~~ Except as otherwise set forth in the Bidding Procedures, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any expense reimbursement, breakup fees, “topping,” termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with this Court any request for expense reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

11. ~~10.~~ **Auction.** The date and time of the Auction, if needed, is (i) in the event there is at least one Acceptable Bidder, August 7, 2023, at 10:00 a.m. prevailing Eastern Time, or (ii) in the event there are no Acceptable Bidders, July 24, 2023, at 10:00 a.m. prevailing Eastern Time, which time may be extended by the Debtors in ~~their sole discretion~~ consultation with the

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

Consultation Parties, upon written notice with the Court. The Auction will be held at the offices of ~~co-ee~~ counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022, or such other place as the Debtors determine in consultation with the Consultation Parties. Only the Debtors, the Consultation Parties, the Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine in their reasonable discretion, in each case, along with the representatives and advisors, shall be entitled to participate in the Auction, and only Qualified Bidders will be entitled to make Overbids (as defined in the Bidding Procedures) at the Auction; *provided, however*, that any party in interest may attend the Auction.

12. ~~11.~~ Notice of Successful Bidder. As soon as reasonably practicable upon conclusion of the Auction, the Debtors shall file a Notice of Successful Bidder.

II. Auction, Bidding Procedures, Auction Notice, and Related Relief.

13. ~~12.~~ The Bidding Procedures, substantially in the form attached hereto as Exhibit 1, are incorporated herein and are hereby approved in their entirety, and the Bidding Procedures shall govern the submission, receipt, and analysis of all Bids relating to any proposed Sale Transaction. Any party desiring to submit a Bid shall comply with the Bidding Procedures and this Order. The Debtors are authorized to take any and all actions necessary to implement the Bidding Procedures. Notwithstanding anything to the contrary, the Debtors, with the consent of the Ad Hoc Group and in consultation with the Committee, may modify the Bidding Procedures as necessary or appropriate to maximize value for their estates.

14. ~~13.~~ Any deposit provided by a Stalking Horse Bidder or other Qualified Bidder shall be held in escrow by the Debtors or their agent and shall not become property of the

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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*
Case No. 23-14853 (JKS)
Caption of Order: Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief

Debtors' bankruptcy estates unless and until released from escrow to the Debtors pursuant to the terms of the applicable escrow agreement, the Bidding Procedures, or order of this Court, as applicable.

15. ~~14.~~ The Auction Notice, substantially in the form attached hereto as **Exhibit 2**, is hereby approved. As soon as reasonably practicable following the entry of this Order, the Debtors will cause the Auction Notice to be served upon (a) the office of the U.S. Trustee; (b) the Ad Hoc Group; (c) the Committee; (d) the United States Attorney's Office for the District of New Jersey, (e) the Internal Revenue Service, (f) the attorneys general in the states where the Debtors conduct their business operations, (g) any Qualified Bidders, and (h) any party that has requested notice pursuant to Bankruptcy Rule 2002. The Debtors shall also post notice of the date, time, and place of the Auction on the website of the Debtors' proposed claims and noticing agent, Kurtzman Carson Consultants LLC (the "Notice and Claims Agent"), at <https://www.kccllc.net/cyxtera>.

16. ~~15.~~ Pursuant to Local Rule 6004-2: (a) each bidder participating at the Auction shall be required to confirm that it has not engaged in any bad faith or collusion with respect to the bidding or the Sale Transaction, as set forth in the Bidding Procedures; (b) the Auction shall be conducted openly and all parties in interest will be permitted to attend; (c) the bidding at the Auction will be documented, recorded, or videotaped, and (d) the Court will consider whether to confirm the results of the Auction and whether to approve the Sale Transaction by no later than September 22, 2023.

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III. Miscellaneous.

17. ~~16.~~ Nothing in this Order or the Bidding Procedures shall be deemed a waiver of any rights, remedies or defenses that any party (including the Debtors, the Ad Hoc Group, any Stalking Horse Bidder, if applicable, or any other prospective purchaser) has or may have under applicable bankruptcy and non-bankruptcy law, under any indemnity agreements, or related agreements or any letters of credit relating thereto, or any rights, remedies, or defenses of the Debtors with respect thereto, including seeking Bankruptcy Court relief with regard to the Auction, the Bidding Procedures, the Sale Transaction, and any related items (including, if necessary, to seek an extension of the Bid Deadline).

18. ~~17.~~ The Debtors may modify any of the dates and deadlines set forth herein in consultation with the Consultation Parties, *provided* that the Debtors will serve notice (email from counsel to the Debtors, Kirkland & Ellis LLP, to suffice) to any Qualified Bidder, Stalking Horse Bidder, the Ad Hoc Group, the Committee, and the U.S. Trustee, as applicable and appropriate, informing them of such modification. The Debtors, in consultation with the Consultation Parties, are further authorized, but not directed, to conduct multiple Sale Transactions and/or Auctions (as necessary) in substantial conformity with the Schedule and Bidding Procedures established through this Order.

19. ~~18.~~ The failure to include or reference a particular provision of the Bidding Procedures specifically in this Order shall not diminish or impair the effectiveness or enforceability of such a provision.

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20. ~~19.~~ In the event of any inconsistencies between this Order and the Motion and/or the Bidding Procedures, this Order shall govern in all respects.

21. ~~20.~~ Notwithstanding the relief granted in this Order and any actions taken pursuant to such relief, nothing in this Order shall be deemed: (a) an implication or admission as to the amount of, basis for, or validity of any particular claim against the Debtors under the Bankruptcy Code or other applicable nonbankruptcy law; (b) a waiver of the Debtors' or any other party in interest's rights to dispute any particular claim on any grounds; (c) a promise or requirement to pay any particular claim; (d) an implication, admission, or finding that any particular claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Order or the Motion; (e) a request or authorization to assume, adopt, or reject any agreement, contract, or lease pursuant to section 365 of the Bankruptcy Code; (f) an admission by the Debtors as to the validity, priority, enforceability or perfection of any lien on, security interest in, or other encumbrance on property of the Debtors' estates; (g) a waiver or limitation of the Debtors', or any other party in interest's, claims, causes of action, or other rights under the Bankruptcy Code or any other applicable law; (h) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (i) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the relief requested in the Motion are valid, and the rights of all parties in interest are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (j) a waiver of the obligation of any party in interest to file a proof of claim; or (k) otherwise affecting the Debtors' rights under section 365

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of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. If the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended and should not be construed as an admission as to the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

22. ~~21.~~ Nothing in the Motion, this Order or the Bidding Procedures waives or modifies the requirements of the Restructuring Support Agreement, including, without limitation, the consent and consultation rights contained therein.

23. ~~22.~~ Notwithstanding anything to the contrary contained in the Motion or this Order, any payment to be made, obligation incurred, or relief or authorization granted hereunder shall not be inconsistent with, and shall be subject to and in compliance with, the requirements imposed on the Debtors under the terms of each interim and final order entered by the Court in respect of *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to Obtain Postpetition Financing, (II) Authorizing the Debtors to Use Cash Collateral, (III) Granting Liens and Providing Superpriority Administrative Expense Claims, (IV) Granting Adequate Protection, (V) Modifying the Automatic Stay, (VI) Scheduling a Final Hearing, and (VII) Granting Related Relief* [Docket No. 70] (the "DIP Orders"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders.

24. ~~23.~~ The Debtors are authorized to take all actions necessary to effectuate the relief granted pursuant to this Order in accordance with the Motion.

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25. ~~24.~~ Notwithstanding Bankruptcy Rule 6004(h), to the extent applicable, this Order shall be effective and enforceable immediately upon entry hereof.

26. ~~25.~~ Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of Bankruptcy Rule 6004(a) and the Local Rules are satisfied by such notice.

27. ~~26.~~ The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

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

Exhibit 1

Bidding Procedures

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEW JERSEY

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

**BIDDING PROCEDURES FOR THE
SUBMISSION, RECEIPT, AND ANALYSIS OF BIDS IN
CONNECTION WITH THE SALE OF THE DEBTORS' SALE PACKAGE**

On June 4, 2023, the above-captioned debtors and debtors in possession (collectively, the “Debtors”) filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code, 11 U.S.C. §§ 101-1532 (the “Bankruptcy Code”), in the United States Bankruptcy Court for the District of New Jersey (the “Court”).

The Debtors filed these chapter 11 cases after entering into a restructuring support agreement (the “Restructuring Support Agreement”) [Docket No. 20, Ex. B] with the support of certain of the Debtors’ lenders whose claims represent approximately 64 percent of the claims arising on account of obligations under that certain first lien credit agreement by and between Cyxtera DC Holdings, Inc., Cyxtera DC Parent Holdings, Inc., Cyxtera Communications, LLC, and Cyxtera Data Centers, Inc., the first lien lenders from time to time party thereto, and Citibank, N.A., as administrative agent and collateral agent (the claims thereunder, the “First Lien Claims”). The Restructuring Support Agreement contemplates two paths to a value-maximizing reorganization: (a) a standalone recapitalization of the Debtors’ balance sheet (the “Recapitalization Transaction”) and (b) the Sale Transaction (as defined herein). Specifically, the Restructuring Support Agreement contemplates that the Debtors will continue their Marketing Process, and if such process does not maximize value for the Debtors’ stakeholders, pursue the Recapitalization Transaction. Accordingly, the Recapitalization Transaction serves as an alternative restructuring proposal, by which the lenders party to the Restructuring Support Agreement have agreed to, among other things, receive their pro rata share of New Equity Interests and a new second-out take-back debt facility on behalf of their First Lien Claims and convert the DIP Facility into a first-out take-back debt facility at exit.

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors’ proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.’s principal place of business and the Debtors’ service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

On [], 2023, the Court entered an order (the "Bidding Procedures Order")² approving, among other things, these bidding procedures (the "Bidding Procedures"). These Bidding Procedures set forth the process by which the Debtors are authorized to solicit bids and conduct an auction (the "Auction") for the sale or disposition (collectively, the "Sale," and each, a "Sale Transaction") of all or substantially all of the New Equity Interests and/or the Assets.

Copies of the Bidding Procedures Order or any other documents in the Debtors' chapter 11 cases are available upon request to Kurtzman Carson Consultants LLC by calling (877) 726-6510 (U.S. / Canada) or (424) 236-7250 (International) or visiting the Debtors' restructuring website at (<https://www.kccllc.net/cyxtera>).

I. Sale Package to be Auctioned.

The Debtors seek the highest or otherwise best offer(s) for the purchase of or investment in the equity interests (the "New Equity Interests") issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan ("Reorganized Cyxtera") and/or some or all of the Debtors' assets (the "Assets", and collectively, with the New Equity Interests, the "Sale Package").

II. Public Announcement of Auction.

As soon as practicable after entry of the Bidding Procedures Order, the Debtors shall (i) cause a notice of the Auction, the Bidding Procedures Order, and the Bidding Procedures, substantially in the form attached to the Bidding Procedures Order as Exhibit 2 (the "Auction Notice") to be served on the parties that received notice of the Motion, (ii) post the Auction Notice on the website of the proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>, and (iii) publish the Auction Notice, with any modifications necessary for ease of publication, on one occasion in *The New York Times* (National Edition), and/or another national publication to provide notice to any other potential interested parties. The Auction Notice shall include a general description of the contents of the Sale Package.

III. Potential Bidder Requirements.

To participate in the bidding process or otherwise be considered for any purpose hereunder, including to receive access to due diligence materials, a person or entity interested in purchasing the Sale Package or part of the Sale Package (a "Potential Bidder") must deliver or have previously delivered to each of (i) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn.: Christopher Marcus, P.C. (christopher.marcus@kirkland.com), Derek I. Hunter (derek.hunter@kirkland.com); (ii) the

² Capitalized terms used but not defined herein have the meanings ascribed to them in the *Debtors' Motion For Entry of an Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. 195] (the "Motion"), or the Bidding Procedures Order, as applicable.

Debtors' proposed investment banker, Guggenheim Securities, LLC ("Guggenheim Securities"), 330 Madison Avenue, New York, New York, 10017, Attn: Ronen Bojmel (Ronen.Bojmel@guggenheimpartners.com), Josh Mendelsohn (Josh.Mendelsohn@guggenheimpartners.com), Andrew Goodman (Andrew.Goodman@guggenheimpartners.com); (iii) counsel to the Ad Hoc Group, Gibson, Dunn & Crutcher LLP, 200 Park Ave, New York, NY 10166, Attn: Scott Greenberg (sgreenberg@gibsondunn.com), Steven Domanowski (sdomanowski@gibsondunn.com) and Stephen D. Silverman (ssilverman@gibsondunn.com); and (iv) ~~counsel to any statutorily appointed Committee~~ proposed counsel to the Official Committee of Unsecured Creditors (the "Committee"), Pachulski Stang Ziehl & Jones, LLP, 780 Third Avenue, 34th Floor, New York, NY 10017, Attn: Bradford J. Sandler (bsandler@pszjlaw.com), Robert J. Feinstein (rfeinstein@pszjlaw.com), Paul J. Labov (plabov@pszjlaw.com) any (collectively, the "Notice Parties") the following preliminary documentation (collectively, the "Preliminary Bid Documents"):

- a. an executed confidentiality agreement (a "Confidentiality Agreement") in form and substance acceptable to the Debtors;
- b. a statement of what portion of the New Equity Interests and/or the Assets that the Potential Bidder intends to acquire;
- c. sufficient information that the Potential Bidder has or can reasonably obtain the financial capacity to close a purchase of any portion, all, or substantially all of the New Equity Interests or the Assets, the adequacy of which must be acceptable to the Debtors, in consultation with the Consultation Parties; and
- d. a statement detailing whether the Potential Bidder is partnering with or otherwise working with any other interested party in connection with the potential submission of a joint Bid, the identity of any such party or parties, and a concise description of the nature of such partnership or joint Bid to the extent reasonably practicable.

Within four business days after a Potential Bidder delivers the Preliminary Bid Documents, the Debtors will determine, in consultation with the Consultation Parties,³ and notify each Potential Bidder whether such Potential Bidder has submitted adequate documents so that such Potential Bidder may proceed to conduct due diligence and submit a ~~bid (such Potential Bidder, an "Acceptable Bidder").~~ ~~The Debtors shall promptly inform the Consultation Parties of any entity that becomes an Acceptable Bidder~~ Proposal. For the avoidance of doubt, any party that has already executed a Confidentiality Agreement and submitted a non-binding indication of interest prior to the Petition Date and, in the judgment of the Debtors, has provided adequate forms of the preliminary documentation requested above, shall automatically be ~~deemed an Acceptable Bidder~~ authorized to conduct due diligence and submit a Proposal.

³ The term "Consultation Parties" shall mean ~~any official committee of unsecured creditors appointed in these chapter 11 cases (the "the Committee")~~ and the Ad Hoc Group.

IV. Acceptable Bidder Requirements.

By no later than July 10, 2023, at 5:00 p.m., prevailing Eastern Time, Potential Bidders must deliver (unless previously delivered) to each of the Notice Parties a non-binding written proposal (a "Proposal") containing all material terms, including, but not limited to:

- a. the identity and a description (including entity type, jurisdiction of formation or organization, credit rating, and regulators, if applicable) of the Potential Bidder;
- b. the proposed Purchase Price (as defined herein) in U.S. Dollars;
- c. to the extent the Proposal is for some or all of the New Equity Interests, a statement describing the proposed pro forma capital structure, including any post-emergence debt obligations, and equity ownership;
- d. to the extent the Proposal is for some or all of the New Equity Interests, the proposed treatment of DIP claims, First Lien Claims, general unsecured claims and equity interests, including detail on whether such claims are impaired or unimpaired and the proposed form of recovery, if applicable;
- e. to the extent the Proposal is for some or all of the New Equity Interests, the proposed terms of post-emergence debt obligations, if any, in the form of a term sheet detailing proposed key economic terms;
- f. proposed terms of any New Equity Interests offered, including details regarding shareholder and governance matters, to the extent applicable;
- g. a statement specifying the Potential Bidder's intentions with respect to the Cyxtera's lease portfolio, including anticipated lease rejections, novations, buyouts and/or renegotiations;
- h. a statement specifying any key assumptions and any variables to which the Potential Bidder's valuation is sensitive, as well as any other information the Potential Bidder believes will assist in evaluation of the Proposal;
- i. a brief assessment of the Potential Bidder's rationale for the Proposal and the Potential Bidder's intentions with respect to the New Equity Interests and/or Assets, as applicable. The Proposal should also highlight any former involvement in similar sectors to the Debtors and any other support/relevant facts that support the basis for the Proposal;

- j. a statement regarding the level of review and, if necessary, approval that the Proposal has received within the Potential Bidder's organization. The Proposal should also provide a list of any corporate, shareholder, regulatory, or other approvals required to complete the Sale Transaction and the timing to obtain such approvals as well as any other conditions or impediments to the consummation of the Sale Transaction;
- k. a detailed description of the intended sources of any financing required for the proposed Sale Transaction, as well as an indication of the timing and steps, if any, required to secure such financing, or a statement that the Potential Bidder has available all of the funds necessary to perform all obligations regarding the proposed Sale Transaction;
- l. a detailed list of due diligence topics, documents required to review, and other material diligence items, as well as timing in order to finalize a definitive written agreement; and
- m. a list of the names, and respective functions, of the Potential Bidder's due diligence team and any legal, financial, and other advisors the Potential Bidder has engaged or would plan to engage in connection with the Sale Transaction, including their contact information, and the names, phone numbers, and email addresses of the individuals prepared to answer any questions regarding the Proposal.

Within four business days after a Potential Bidder delivers the Proposal, the Debtors will determine, in consultation with the Consultation Parties, and notify each Potential Bidder whether such Potential Bidder has submitted an acceptable Proposal (any such Potential Bidder, an "Acceptable Bidder").

V. ~~IV.~~ **Qualified Bid Requirements.**

To be eligible to participate in the Auction, ~~an Acceptable~~ Potential Bidder must deliver to the Debtors and their advisors an irrevocable offer for the purchase of some or all of the New Equity Interests and/or the Assets (each, a "Bid"), and shall meet the following criteria, in each case, on or prior to the Bid Deadline (as defined below):

- a. **Purchased Sale Package and Assumed Liabilities.** Each Bid must clearly state the following: (a) whether the bidder seeks to purchase some or all of the New Equity Interests or some or all of the Assets; and (b) if applicable, the liabilities and obligations to be assumed, including any debt and cure costs to be assumed.
- b. **Good Faith Deposit.** Each Bid must be accompanied by a cash deposit in the amount equal to ten percent of the aggregate purchase price of the Bid, to be held in an escrow account to be identified and established by the Debtors (the "Good Faith Deposit"); *provided* that the DIP Agent and the Prepetition Priority/1L Administrative Agents (together, the "Agents") (as defined in the Interim DIP Order, or any final order related thereto) shall not be required to submit a Good Faith Deposit. To the extent that a Bid is modified at or prior to

the Auction, the applicable Acceptable Bidder must adjust its Good Faith Deposit so that it equals ten percent of the increased aggregate purchase price promptly and in no event later than one (1) business day following the conclusion of the Auction.

- c. **Purchase Price.** Each Bid must (a) clearly set forth the purchase price to be paid for the New Equity Interests and/or some or all of the Assets (the "Purchase Price"), (b) identify separately the cash and non-cash components of the Purchase Price, (c) indicate the allocation of the Purchase Price among the Sale Package and related uses, if applicable; *provided* that, for the avoidance of doubt, such allocation shall not prejudice the rights of any party in interest to contest such allocation; and (d) describe its proposed post-emergence debt obligations and liquidity position for Reorganized Cyxtera, if applicable. The Purchase Price should be a single point value in U.S. Dollars on a cash-free, debt-free basis. Any Bid for substantially all of the New Equity Interests or Assets must also include a statement as to whether the Bid is conditioned on purchasing all of such or whether the Qualified Bid should be viewed as separate Bid for one or more sets of such.
- n. Proposed Treatment of Claims. Each Bid for some or all of the New Equity Interests should detail proposed treatment of each class of claims including DIP claims, First Lien Claims, general unsecured claims, and equity interests. This should include whether such claims are rendered impaired or unimpaired and detail the form of recovery provided, if applicable.
- d. Proposed Terms of Any Post-Emergence Debt Obligations. Each Bid for some or all of the New Equity Interests should include a term sheet, if applicable, detailing key economic terms of any proposed post-emergence debt obligations, including amount, security, tenor, interest rate, original issue discount, covenants and any other material terms or conditions.
- e. ~~Sources of Financing.~~ To the extent that the Bid is not accompanied by evidence of the Acceptable Bidder's capacity to consummate the Sale Transaction set forth in its Bid with cash on hand, the Bid must include committed financing, documented to the Debtors' satisfaction that demonstrates that the Acceptable Bidder has received sufficient ~~debt and/or equity~~ funding commitments to satisfy the Acceptable Bidder's obligations under the proposed Sale Transaction and other obligations under its Bid. Such funding commitments ~~or other financing~~ must be unconditional and must not be subject to any internal approvals, syndication requirements, diligence, or ~~credit~~ committee approvals, and shall have covenants and conditions acceptable to the Debtors.
- f. ~~e. Same or Better Terms; Bid Documents.~~ Each Bid must include duly executed and non-contingent, where applicable, transaction documents necessary to effectuate the transactions contemplated in the Bid (the "Bid Documents"). The Bid Documents shall include, at a minimum: (a) a chapter 11 plan and/or a draft purchase agreement, the form of which will be provided to any Acceptable

Bidder prior to the Bid Deadline (as defined herein), including the exhibits and schedules related thereto and any related material documents integral to such Bid pursuant to which the Acceptable Bidder proposes to effectuate the Sale, along with copies that are marked to reflect any amendments and modifications from the Plan or purchase agreement provided, which amendments and modifications may not be materially more burdensome or otherwise inconsistent with these Bidding Procedures; (b) a schedule of contracts and leases to be rejected to the extent applicable to the Bid, (c) a statement from the Acceptable Bidder specifying what, if any, other materials, conditions, due diligence, documents, exhibits, schedules, and/or ancillary materials are integral to such Bid or the Debtors' consideration thereof, (d), any other material documents integral to such Bid, ~~and~~ (e) a statement from the Acceptable Bidder that (i) it is prepared to enter into the Sale Transaction, ~~no later than ten (10) business days after the~~ upon conclusion of the Auction, ~~subject to any necessary regulatory approvals, as specified by the Acceptable Bidder~~ (or, if no Auction is held, the deadline by which all binding Bids must be actually received pursuant to the Bidding Procedures (the "Bid Deadline") and (ii) the Qualified Bid will be irrevocable (whether or not such Qualified Bid is selected as the Successful Bid or next highest or otherwise best bid (the "Back-Up Bid")) until the consummation of the Sale Transaction, and (f) a corporate governance term sheet, if applicable.

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~~f.~~ **No Fees.** Each Acceptable Bidder presenting a Bid or Bids will bear its own costs and expenses (including legal fees) in connection with the proposed transaction, and by submitting its Bid(s) is agreeing to refrain from and waive any assertion or request for reimbursement on any basis, including under section 503(b) of the Bankruptcy Code; *provided* that the Debtors are authorized, with the consultation of the Consultation Parties, to provide the Stalking Horse Bid Protections (defined below) to one or more Stalking Horse Bidders in accordance with these Bidding Procedures; *provided, further*, that nothing in these Bidding Procedures shall limit, alter or impair the rights of any party to payment and reimbursement of expenses that are set forth in the DIP Orders, and parties entitled to payment or reimbursement of expenses under the DIP Orders shall be entitled to payment or reimbursement of expenses incurred in connection with these Bidding Procedures and the matters contemplated hereby.

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~~g.~~ **Employee Obligations.** Each Bid must include a description of the Acceptable Bidder's intentions with respect to the relevant members of the Debtors' current management team and other employees, and a description of any contemplated incentive plan, to the extent applicable.

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~~h.~~ **Contingencies; No Financing or Diligence Outs.** The Bid must not contain any contingencies as to the validity, effectiveness, or binding nature of the Bid, including, without limitation, contingencies for due diligence and inspection or financing of any kind (including any conditions pertaining to financial performance, conditions, or prospects) and all diligence must be completed before the Bid Deadline.

- j. ~~i.~~ **Identity & Corporate Authority.** Each Bid must (i) fully disclose the identity of each entity that will be participating in connection with such Bid (including any equity owners or sponsors, if the purchaser is an entity formed for the purpose of consummating the acquisition of the New Equity Interests or the Assets), and the complete terms of any such participation, along with sufficient evidence that the Acceptable Bidder is legally empowered, by power of attorney or otherwise, to complete the transactions on the terms contemplated by the parties, and (ii) include contract information for the specific person(s) and counsel whom the Debtors' advisors should contract regarding such Bid. A Bid must also fully disclose any business relationships, affiliations, or agreements with the Debtors, any known, potential, prospective bidder or Qualified Bidder (as defined herein), or any officer, director, or equity security holder of the Debtors.
- k. ~~j.~~ **As-Is, Where-Is.** Each Bid must include a written acknowledgement and representation that the Acceptable Bidder: (i) has had an opportunity to conduct any and all due diligence prior to making its offer; (ii) has relied solely upon its own independent review, investigation, and/or inspection of any documents and/or the assets in making its Bid; and (iii) did not rely upon any written or oral statements, representations, promises, warranties, or guaranties whatsoever, whether express, implied, by operation of law, or otherwise, by the Debtors, Guggenheim Securities, LLC, or the Debtors' other advisors regarding the completeness of any information provided in connection therewith, except, solely with respect to the Debtors, as expressly stated in the Acceptable Bidder's proposed purchase agreement.
- l. ~~k.~~ **Authorization.** Each Bid must contain evidence that the Acceptable Bidder has obtained all necessary authorizations or approvals from its shareholders and/or its board of managers or directors, or any other internal and other approvals, as applicable, with respect to the submission of its Bid and the consummation of the transactions contemplated in such Bid.
- m. ~~l.~~ **Joint Bids.** The Debtors will be authorized to approve joint Bids in their reasonable business judgment on a case-by-case basis, so long as a joint bid meets the Qualified Bid requirements and the applicable bidders otherwise comply with these Bidding Procedures.
- n. ~~m.~~ **Adequate Assurance Information.** Each Bid must be accompanied by sufficient and adequate financial and other information (the "Adequate Assurance Information") to demonstrate, to the reasonable satisfaction of the Debtors that such Acceptable Bidder (a) has the financial wherewithal and ability to consummate Sale Transaction (the "Closing"), and (b) can provide adequate assurance of future performance in connection with the proposed transaction. The Bid must also identify a contact person that parties may contact to obtain additional Adequate Assurance Information.
- o. ~~n.~~ **Acknowledgement of Compliance with Bidding Procedures, Bidding Order, Bankruptcy Code, and Non-Bankruptcy Law.** Each Bid must

acknowledge its compliance in all respects with these Bidding Procedures, the Bidding Procedures Order, Bankruptcy Code and any applicable non-bankruptcy law.

- p. ~~e.~~ **No Collusion.** The Acceptable Bidder must acknowledge in writing (a) that it has not engaged in any collusion with respect to any Bids or the Sale Transaction, specifying that it did not agree with any Acceptable Bidders or Potential Bidders to control price; and (b) agree not to engage in any collusion with respect to any Bids, the Auction, or the Sale Transaction. For the avoidance of doubt, this requirement does not restrict Potential Bidder(s) from working with other Potential Bidder(s) with the Debtors' prior written consent (email from Guggenheim Securities shall suffice).
- q. ~~p.~~ **Good Faith Offer.** Each Bid must constitute a good faith, *bona fide* offer to consummate the Sale Transaction.
- r. ~~q.~~ **Back-Up Bid.** Each Bid shall provide that the Acceptable Bidder will serve as a Back-Up Bidder (as defined below) if the Acceptable Bidder's Bid is the next highest or otherwise best bid.
- s. ~~r.~~ **Irrevocable.** Each Bid must state that in the event such Bid is chosen as the Back-Up Bid (as defined below), it shall remain irrevocable until the Debtors and the Successful Bidder consummate the applicable Sale Transaction.
- ~~r.~~ **Back-Up Bid.** ~~Each Bid shall provide that the Acceptable Bidder will serve as a Back-Up Bidder (as defined below) if the Acceptable Bidder's Bid is the next highest or otherwise best bid.~~
- t. ~~s.~~ **Regulatory Approvals and Covenants.** Each Bid must set forth each regulatory and third-party approval required for the Acceptable Bidder to consummate the applicable Sale Transaction, if any, and the time period within which the Acceptable Bidder expects to receive such regulatory and third-party approvals (and in the case that receipt of any such regulatory or third-party approval is expected to take more than thirty days following execution and delivery of the applicable purchase agreement and/or confirmation of the Debtors' chapter 11 plan (the "Plan"), those actions the Acceptable Bidder will take to ensure receipt of such approvals as promptly as possible).
- u. ~~t.~~ **Expected Closing Date.** Each Bid must state the Acceptable Bidder's expected date of closing of the Sale Transaction.
- v. ~~u.~~ **Time Frame for Closing.** A Bid by an Acceptable Bidder must be reasonably likely (based on antitrust or other regulatory issues, experience, and other considerations) to be consummated, if selected as the Successful Bid (as defined herein), within a time frame acceptable to the Debtors.
- w. ~~v.~~ **Adherence to Bidding Procedures.** By submitting its Bid, each Acceptable Bidder is agreeing to abide by and honor the terms of these Bidding Procedures

and agrees not to submit a Bid or seek to reopen the Auction after conclusion of the Auction.

x. ~~w.~~ **Consent to Jurisdiction.** The Acceptable Bidder must submit to the jurisdiction of the Court and waive any right to a jury trial in connection with any disputes relating to the Debtors' qualification of Bids, to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, and the Closing, as applicable.

y. ~~x.~~ **Conditions to Closing.** Each Bid must identify with particularity each and every condition to closing.

Only Bids fulfilling all of the preceding requirements contained in this section, or otherwise in the Debtors' reasonable business judgment, with the consultation of the ~~Ad-Hoc Group and the Committee~~ Consultation Parties, may be deemed to be "Qualified Bids," and only those parties submitting Qualified Bids may, in the Debtors' reasonable business judgment, be deemed to be "Qualified Bidders"; *provided* that, notwithstanding anything to the contrary herein, any Bid submitted by any of the Agents or their respective designees, shall be a Qualified Bid.

Neither the Debtors nor any of their advisors are making or have at any time made any warranties or representations of any kind or character, express or implied, with respect to the Sale Package, including, but not limited to, any warranties or representations as to operating history or projections, valuation, governmental approvals, the compliance of the Sale Package with governmental laws, the truth, accuracy, or completeness of any documents related to the Sale Package, or any other information provided by or on behalf of the Debtors to a bidder, or any other matter or thing regarding the Sale Package. All bidders must acknowledge and agree that upon closing the Debtors shall sell and transfer to the Successful Bidder and the Successful Bidder shall accept the New Equity Interests or the Assets, as applicable, except to the extent expressly provided in the Court's Sale Order. Neither the Debtors nor any of their advisors will be liable for or bound by any express or implied warranties, guaranties, statements, representations, or information pertaining to the Sale Package or relating thereto that the Debtors, any advisor, or agent representing or purporting to represent the Debtors to whomever might have made or furnished, directly or indirectly, orally or in writing, unless (with respect to the Debtors only) specifically set forth in the Court's Sale Order.

In advance of the commencement of the Auction, as is reasonably practicable, the Debtors, with the consultation of the Consultation Parties, shall determine which Acceptable Bidders are Qualified Bidders and will notify the Acceptable Bidders whether Bids submitted constitute Qualified Bids, which will enable such Qualified Bidders to participate in the Auction. Any Bid that is not deemed a Qualified Bid shall not be considered by the Debtors; *provided* that if the Debtors receive a Bid prior to the Bid Deadline that does not satisfy the requirements of a Qualified Bid, the Debtors may provide the Acceptable Bidder with the opportunity to remedy any deficiencies prior to the Auction.

VI. ~~V.~~ **Right to Credit Bid.**

Any Qualified Bidder who has a valid ~~and~~, perfected, and unavoidable lien on any Assets of the Debtors' estates (a "Secured Creditor") shall have the right to credit bid all or a portion of the value of such Secured Creditor's claims within the meaning of section 363(k) of the Bankruptcy Code; *provided* that a Secured Creditor shall have the right to credit bid its claim only with respect to the collateral by which such Secured Creditor is secured.

VII. ~~VI.~~ **Obtaining Due Diligence Access.**

Only Acceptable Bidders shall be eligible to receive due diligence information, access to the Debtors' electronic data room, and additional non-public information regarding the Debtors. *No Acceptable Bidder will be permitted to conduct any due diligence without entry into a Confidentiality Agreement.* Beginning on the date the Debtors determine that a party is an Acceptable Bidder, or as soon as reasonably practicable thereafter, the Debtors will provide such Acceptable Bidder with access to an electronic data room and reasonable due diligence information, as requested by such Acceptable Bidder, as soon as reasonably practicable after such request.

Acceptable Bidders will not, directly or indirectly, contact or initiate or engage in discussions in respect of matters relating to the Debtors or a potential transaction with any customer, supplier, or other contractual counterparty of the Debtors without the prior written consent of the Debtors. The due diligence period will end on the Bid Deadline and subsequent to the Bid Deadline the Debtors shall have no obligation to furnish any due diligence information.

In connection with the provision of due diligence information to Acceptable Bidders, the Debtors shall not furnish any confidential information relating to the Debtors or a potential transaction to any person except an Acceptable Bidder or such Acceptable Bidder's duly authorized representatives to the extent provided in an applicable Confidentiality Agreement.

The Debtors ~~and~~, with the assistance of their advisors, shall coordinate all reasonable requests for additional information and due diligence access from Acceptable Bidders; *provided* that the Debtors may decline to provide such information to Acceptable Bidders who, in the Debtors' reasonable business judgment have not established, or who have raised doubt, that such Acceptable Bidders intend in good faith to, or have the capacity to, consummate a Sale Transaction. For any bidder who is a competitor or customer of the Debtors or is affiliated with any competitors or customers of the Debtors, the Debtors reserve the right to withhold or modify any diligence materials that the Debtors determine are business-sensitive or otherwise inappropriate for disclosure to such bidder.

A. Communications with Acceptable Bidders (including Qualified Bidders).

Notwithstanding anything to the contrary in these Bidding Procedures, all substantive direct communications, including any diligence requests, with Acceptable Bidders (including any Qualified Bidders) shall be through Guggenheim Securities.

B. Due Diligence from Acceptable Bidders (including Qualified Bidders).

Each Acceptable Bidder (including any Qualified Bidder) shall comply with all reasonable requests for additional information and due diligence access requested by the Debtors or their advisors and their respective advisors, regarding the ability of such Acceptable Bidder (including any Qualified Bidder) to consummate its contemplated transaction. Failure by an Acceptable Bidder (including any Qualified Bidder, other than a Stalking Horse Bidder, if any) to comply with such reasonable requests for additional information and due diligence access may be a basis for the Debtors, to determine that such bidder is no longer an Acceptable Bidder (including any Qualified Bidder, other than a Stalking Horse Bidder, if any) or that a bid made by such bidder is not a Qualified Bid.

The Debtors have designated Ronen Bojmel, Josh Mendelsohn, and Andrew Goodman of Guggenheim Securities to coordinate all reasonable requests for additional information and due diligence access. They can be reached at Ronen.Bojmel@guggenheimpartners.com; Josh.Mendelsohn@guggenheimpartners.com; and Andrew.Goodman@guggenheimpartners.com.

VIII. ~~VII.~~ Bid Deadline.

Binding Bids must be submitted in writing to the aforementioned Notice Parties so as to be **actually received** no later than: (x) in the event there is at least one Acceptable Bidder, 5:00 p.m. (prevailing Eastern Time) on July 31, 2023 or (y) in the event there are no Acceptable Bidders, 5:00 p.m. (prevailing Eastern Time) on July 19, 2023.

The Debtors may extend the Bid Deadline for any reason whatsoever, in their reasonable business judgment for all or certain Acceptable Bidders.

IX. ~~VIII.~~ Evaluation of Qualified Bids.

The Debtors shall, in consultation with the ~~Ad-Hoc-Group~~ Consultation Parties, evaluate Qualified Bids and identify the Qualified Bid that is, in the Debtors' business judgment, the highest or otherwise best Qualified Bid or combination of Qualified Bids for the New Equity Interests or the Assets, as applicable (the "Starting Bid"). The Debtors shall promptly provide to the Consultation Parties and the U.S. Trustee copies of all Bids received by the Debtors, including the Starting Bid, but in no event later than the next business day following receipt; *provided* that the Consultation Parties and the U.S. Trustee must treat such Bids and any related information as confidential and shall not publicly disclose such information without the written consent of the Debtors and the applicable bidder.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors, in addition to any other factors that the Debtors deem appropriate: (a) the amount and nature of the total consideration; (b) the likelihood of the Qualified Bidder's ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors' estates from the transaction contemplated by the Bid Documents; (d) whether the Qualified Bid contemplates a Sale Transaction for the Debtors' New Equity Interests or a Sale Transaction for the Assets; (e) whether the Qualified Bid contemplates a Sale Transaction that would be

consummated through a Plan or a sale pursuant to section 363 of the Bankruptcy Code; (f) the certainty of a Qualified Bid leading to a confirmed Plan and (g) the tax consequences of such Qualified Bid. Prior to commencing the Auction, the Debtors shall notify the Stalking Horse Bidder, if any, and all Qualified Bidders as to which Qualified Bid is the Starting Bid for the Auction with respect to the applicable assets. At such time, the Debtors shall also distribute copies of the Starting Bid to the Stalking Horse Bidder, if any, and each Qualified Bidder.

X. ~~IX~~ Stalking Horse Bid Protections.

Pursuant to the Bidding Procedures Order, the Debtors may, with the consent of the Ad Hoc Group, and in consultation with the Committee, designate one or more Bidders to be a stalking horse Bidder (each a “Stalking Horse Bidder”), which if any, are entitled to certain Stalking Horse Bid Protections (defined below) in the amounts set forth in, and in accordance with the terms of the Bidding Procedures Order. For the avoidance of doubt, except for the Stalking Horse Bidder, and as otherwise set forth herein, no other party submitting an offer, a Bid, or a Qualified Bid shall be entitled to any Expense Reimbursement, Break Up Fee, termination fee, or similar fee or payment.

In the event that the Debtors receive multiple Qualified Bids, at any time until (x) in the event there is at least one Acceptable Bidder, July 16, 2023, at 5:00 p.m. (prevailing Eastern Time), or (y) in the event there are no Acceptable Bidders, 5:00 p.m. (prevailing Eastern Time) on July 16, 2023, the Debtors shall be authorized, but not obligated, in their reasonable business judgment, with the consent of the Ad Hoc Group, and in consultation with the Committee, to (a) select one or more Acceptable Bidders to act as the Stalking Horse Bidder in connection with the Auction, and (b) in connection with any stalking horse agreement with a Stalking Horse Bidder (x) agree to provide a Break Up Fee not to exceed three percent of the Purchase Price and (y) agree to reimburse the reasonable and documented out of pocket fees and expenses of such Stalking Horse Bidder(s) the (“Stalking Horse Bid Protections”).

In the event that the Debtors enter into a stalking horse agreement (the “Stalking Horse Agreement”) with one or more Stalking Horse Bidders, within two business days of entry, the Debtors shall file a notice and proposed form of order with the Court designating a Stalking Horse Bidder and authorizing entry into a Stalking Horse Agreement (the “Stalking Horse Notice”) and serve the Stalking Horse Notice on the Stalking Horse Bidder, the U.S. Trustee, and the Consultation Parties. The Stalking Horse Notice shall: (i) set forth the identity of the Stalking Horse Bidder (and if the Stalking Horse Bidder is a newly formed entity, then the Stalking Horse Bidder’s parent company or sponsor); (ii) set forth the amount of the Bid submitted by the Stalking Horse Bidder and what portion (if any) is cash; (iii) state whether the Stalking Horse Bidder has any connection to the Debtors other than those that arise from the Bid submitted by the Stalking Horse Bidder; (iv) specify any proposed Stalking Horse Bid Protections (including the amount and calculation thereof); (v) specify whether the Bid submitted by the Stalking Horse Bidder includes the New Equity Interests or the Assets (and which Assets); (vi) attach the Stalking Horse Agreement, including all exhibits, schedules and attachments thereto; and (vii) set forth the deadline to object to the Stalking Horse Bidder designation and any Stalking Horse Bid Protections. If there are no objections to the Stalking Horse Notice within two business days of filing with the Court, (the “Notice Period”), the Debtors may submit an order to the Court that incorporates any comments received during the Notice Period that

authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement, without the need for further hearing. If a party timely files an objection to the Stalking Horse Notice, the Court shall hold a hearing after the expiration of the Notice Period and as soon thereafter as the Court is available.

Upon entry of an order that authorizes the Debtors to designate a Stalking Horse Bidder and to enter into a Stalking Horse Agreement (the "Stalking Horse Order"), the Debtors are authorized, but not directed, to incur and pay (a) the Break Up Fee in an amount not to exceed three percent of the proposed Purchase Price and (b) the Expense Reimbursement to each Stalking Horse Bidder in accordance with the terms of such Stalking Horse Order and Stalking Horse Agreement.

Except as otherwise set forth herein, no person or entity, other than a Stalking Horse Bidder, shall be entitled to any Expense Reimbursement, Break Up Fees, "topping," termination, or other similar fee or payment, and by submitting a bid, such person or entity is deemed to have waived their right to request or to file with the Court any request for Expense Reimbursement or any fee of any nature, whether by virtue of Bankruptcy Code section 503(b) or otherwise.

XI. ~~X~~-No Qualified Bids.

If any Bid is the only Qualified Bid received by the Bid Deadline, the Debtors may decide, in their reasonable business judgment, after consultation with the Consultation Parties, to designate such Bid as the Successful Bid (as defined below) as to the applicable Sale Package and pursue entry of an order approving a Sale Transaction with respect to such Sale Package. The Debtors shall promptly file notice of any cancellation of the Auction, where applicable, as the Successful Bid with the Court.

XII. ~~XI~~-Auction.

Other than as expressly set forth herein, if the Debtors receive more than one Qualified Bid for any particular Asset or portion of Sale Package by the Bid Deadline, the Debtors shall conduct the Auction to determine the Successful Bidder in their reasonable business judgment with respect to such Sale Package or portion of Sale Package. If the Debtors do not receive any Qualified Bid, the Debtors will not conduct the Auction. If one or more Qualified Bids (other than the Bid submitted by the Stalking Horse Bidder, if any) are received by the Bid Deadline with respect to the New Equity Interests or the Assets, then the Debtors shall conduct the Auction with respect to such New Equity Interests or Assets in accordance with the Auction Procedures (as defined below).

An Auction, if necessary shall commence on (x) in the event there is at least one Acceptable Bidder, August 7, 2023, at 10:00 a.m. (prevailing Eastern Time) or (y) in the event there are no Acceptable Bidders, July 24, 2023, at 10:00 a.m. (prevailing Eastern Time), or in each case, such later time or other place as the Debtors determine in consultation with the Consultation Parties.

The Auction will be conducted in accordance with the following procedures (the "Auction Procedures"):

- a. except as otherwise provided herein, only Qualified Bidders shall be entitled to bid at the Auction;
- b. the Qualified Bidders, including any Stalking Horse Bidders, if any, must appear in person or through duly-authorized representatives at the Auction;
- c. bidding shall begin with the Starting Bid;
- d. subsequent bids (each, an "Overbid") may only be made at the Auction and shall be at least (i) a 2% increase in cash, cash equivalents, or other such consideration that the Debtors, in their reasonable business judgment, deem equivalent (including the right of a secured creditor to credit bid any remaining amount of its secured claims) over the previous bid *plus* (ii) in the event that the Debtors have entered into a Stalking Horse Agreement to which the Overbid relates, the aggregate amount of Stalking Horse Bid Protections (including, for the avoidance of doubt, any Break Up Fees and/or Expense Reimbursements) under such Stalking Horse Agreement (a "Minimum Overbid"), and each successive Overbid shall exceed the then-existing Overbid by an incremental amount that is not less than the Minimum Overbid. The Debtors may, in their reasonable business judgment and in consultation with the ~~Ad-Hoc Group~~ Consultation Parties, announce increases or reductions to the Minimum Overbid at any time during the Auction. For the avoidance of doubt, each successive Bid that a Qualified Bidder may submit at the Auction must contain a Purchase Price in cash, cash equivalents, or such other consideration that the Debtors, in their reasonable business judgment deem equivalent (including the right of a secured creditor to credit bid any remaining amount of its secured claims) that exceeds the then existing highest Bid by at least the amount of the Minimum Overbid;
- e. at the commencement of the Auction, the Debtors may announce procedural and related rules governing the Auction, including time periods available to all Qualified Bidders to submit successive bid(s);
- f. each Qualified Bidder will be permitted a reasonable time to respond to previous bids at the Auction, as determined by the Debtors; *provided*, that, unless the Debtors determine otherwise, a failure to respond and submit successive bid(s) at the Auction will result in disqualification;
- g. during the course of the Auction, the Debtors shall, after submission of each Overbid, promptly inform each Qualified Bidder of the terms of the previous bids and inform each Qualified Bidder which Overbid(s) reflect, in the Debtors' view the highest or otherwise best bid(s) with respect to the New Equity Interests or the Assets, as applicable;

- h. the Auction will be transcribed to ensure an accurate recording of the bidding at the Auction;
- i. each Qualified Bidder will be required to confirm on the record that it has not engaged, and will not engage, in any collusion with respect to the bidding or any Sale Transaction. For the avoidance of doubt, (a) this requirements does not restrict Qualified Bidder(s) from working with other Qualified Bidder(s) with the Debtors' prior written consent;
- j. each Qualified Bidder will be required to confirm that its bid is a good faith, *bona fide* offer and it intends to consummate the Sale Transaction if selected as the Successful Bid in accordance with these Bidding Procedures (as may be modified in accordance herewith at the Auction);
- k. the Court and the Debtors will not consider bids made after the Auction has been closed;
- l. the Debtors, in their reasonable business judgment and in consultation with the ~~Ad Hoc Group~~ Consultation Parties, may reject, at any time before entry of an order of the Court approving a Successful Bid, any Bid that the Debtors determine is (i) inadequate or insufficient, (ii) not in conformity with the requirements of the Bankruptcy Code, the Bidding Procedures, or the terms and conditions of the Sale Transaction, or (iii) contrary to the best interests of the Debtors, their estates, their creditors, and other stakeholders;
- m. the Debtors have the right to request any additional information that will allow the Debtors to make a reasonable determination as to a Qualified Bidder's financial and other capabilities to consummate the transactions contemplated by their proposal and any further information that the Debtors believe is reasonably necessary to clarify and evaluate any Bid made by a Qualified Bidder during the Auction; and
- n. notwithstanding anything herein to the contrary at any time choose to adjourn the Auction by announcement at the Auction. The Debtors shall promptly file notice of such adjournment with the Court.

For the avoidance of doubt, nothing in the Bidding Procedures, including the Auction Procedures, will prevent the Debtors from exercising their respective fiduciary duties under applicable law (as reasonably determined in good faith by the Debtors, in consultation with counsel).

Any Auction rules adopted by the Debtors will not modify any of the terms of the Stalking Horse Agreement or the rights of the Stalking Horse Bidder, if any, without the consent of the Stalking Horse Bidder, if any.

Except as otherwise determined by the Debtors only (i) the Debtors, (ii) the Consultation Parties, (iii) the Office of the United States Trustee, (iv) any other Qualified Bidders, and (v) the respective representatives and professionals of the foregoing parties shall be

entitled to participate in the Auction, however, any party in interest may be permitted to attend the Auction.

XIII. ~~XII.~~ Acceptance of the Successful Bid.

The Auction shall continue until (i) there is only one Qualified Bid or a combination of Qualified Bids that the Debtors determine, in their reasonable business judgment and in a manner consistent with the exercise of their fiduciary duties and outlined below in further detail, and in consultation with the Consultation Parties, is the highest or otherwise best bid to purchase the New Equity Interests or Assets, as applicable (each, a “Successful Bid”), and (ii) the Debtors determine, in their reasonable business judgment, in consultation with the Consultation Parties, that further bidding is unlikely to result in a different Successful Bid or Successful Bids that would be reasonably acceptable to the Debtors, at which point, the Auction will be closed.

When determining the highest or otherwise best Qualified Bid, as compared to other Qualified Bids, the Debtors may consider the following factors in addition to any other factors that the Debtors deem appropriate: (a) the amount and nature of the total consideration, which includes but is not limited to, assumed liabilities (administrative liabilities, cure payments), and the amount of executory contracts and leased locations being assumed; (b) the likelihood of the Qualified Bidder’s ability to close a transaction and the timing thereof; (c) the net economic effect of any changes to the value to be received by each of the Debtors’ estates from the transaction contemplated by the Bid Documents; and (d) the tax consequences of such Qualified Bid; and (e) any other consideration that may impact the Debtors’ stakeholders.

Any Qualified Bidder that submits a Successful Bid will be deemed a “Successful Bidder” with respect to the New Equity Interests or Assets contemplated for purchase pursuant to such Successful Bid. The Debtors shall file notice of the Successful Bid and the Successful Bidder with the Court as soon as reasonably practicable after conclusion of the Auction. Following conclusion of the Auction and selection of a Successful Bidder, the Debtors shall present the results of the Auction at a hearing and shall seek (a) certain findings from the Court regarding the Auction, including, among other things, that (i) the Auction was conducted, and the Successful Bidder or Successful Bidders were selected, in accordance with these Bidding Procedures, (ii) the Auction was fair in substance and procedure, and (iii) consummation of the Successful Bid or Successful Bids will provide the highest or otherwise best value for the New Equity Interests or Assets, as applicable, and is in the best interests of the Debtors’ estates, and (b) Court approval to enter into a binding purchase agreement with the Successful Bidder on the terms of the Successful Bid.

Within one (1) business day of the selection of the Successful Bidder, such Successful Bidder (including both the Stalking Horse Bidder, if any, and Back-Up Bidder, if applicable) shall make a cash deposit, in addition to its Good Faith Deposit, in an amount calculated on the basis of the increased aggregate purchase price such that the Successful Bidder’s total cash deposit is equal to ten percent of the aggregate purchase price, submitted by wire transfer of immediately available funds to an escrow account to be identified and established by the Debtors pursuant to a customary and reasonable escrow agreement; *provided* that the Agents shall not be required to make any deposit. Each Successful Bidder and the Debtors shall, as soon as commercially reasonable and practicable, complete and sign all agreements, contracts,

instruments, or other documents evidencing and containing the terms upon which each such Successful Bid was made.

XIV. ~~XIII.~~ Designation of Back-Up Bidder.

The Back-Up Bid to purchase any applicable New Equity Interests or Assets (the “Back-Up Bidder”) will be determined by the Debtors at the conclusion of the Auction, and will be announced at that time to all the Qualified Bidders participating in the Auction. The Debtors’ selection of a Back-Up Bid shall be deemed final and the Debtors shall not accept any further bids or offers to submit a bid after such selection. The Debtors will be authorized, but not required, to consummate the Sale Transaction with the Back-Up Bidder without further order of the Court, so long as such Back-Up Bid shall have been approved in connection with the Court’s approval of the Successful Bid, or subject to Court approval if not.

If for any reason a Successful Bidder fails to consummate the purchase of such New Equity Interests or Assets, as applicable, within the time permitted, then the Back-Up Bidder will automatically be deemed to have submitted the Successful Bid, and the Back-Up Bidder shall be deemed a Successful Bidder and shall be required to consummate any Sale Transaction with the Debtors as soon as is reasonably practicable without further order of the Court, upon 24 hours advance notice filed with the Court. To the extent any objections are raised and remain unresolved, the Court may schedule a hearing on an expedited basis to adjudicate such objection.

The Back-Up Bid shall remain open and irrevocable until the earliest to occur of (i) forty-five (45) days after completion of the Auction, (ii) consummation of a Sale Transaction with one or more Successful Bidders at an Auction, and (iii) the release of such Back-Up Bid by the Debtors in writing (the “Back-Up Termination Date”). The Debtors shall return the Back-Up Bidder’s deposit owed within five (5) business days of the Back-Up Termination Date.

XV. ~~XIV.~~ Confirmation Hearing.

In the event a transaction is consummated through a Plan, a hearing before the Court to consider confirmation of the Plan (the “Confirmation Hearing”) will be held at a date and time consistent with the any order approving the Debtors’ disclosure statement and scheduling applicable dates and deadlines related thereto, including confirmation of the Plan. The Confirmation Hearing will be before the Honorable John K. Sherwood, United States Bankruptcy Judge for the Bankruptcy Court for the District of New Jersey at 50 Walnut Street, 3rd Floor, Newark, New Jersey 07102, and otherwise in accordance with any scheduling orders entered by the Court relating to confirmation of the Plan or approval of any disclosure statement related thereto.

At the Confirmation Hearing, the Debtors will present the Plan, which may incorporate the terms of the Successful Bid or Successful Bids, to the Court for confirmation.

XVI. ~~XV.~~ Return of Good Faith Deposit.

The Good Faith Deposit(s) of the Successful Bidder or Successful Bidders, if any, will, upon consummation of the Successful Bid or Successful Bids, become property of the Debtors’

estates and be credited to the portion of such Successful Bidder's or Successful Bidders' applicable Purchase Price.

If the Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable), if any, fails to consummate the Successful Bid or Successful Bids (or Back-Up Bid or Back-Up Bids, if applicable), then the Good Faith Deposit(s) of such Successful Bidder or Successful Bidders (or Back-Up Bidder or Back-Up Bidders, if applicable) will be irrevocably forfeited to the Debtors and may be retained by the Debtors as liquidated damages, in addition to any and all rights, remedies, or causes of action that may be available to the Debtors.

The Good Faith Deposits of any unsuccessful Qualified Bidders (except for any Back-Up Bidder or Back-Up Bidders and any Stalking Horse Bidders) will be returned within five business days after consummation of the applicable Sale Transaction or upon the permanent withdrawal of the applicable proposed Sale Transaction.

The Good Faith Deposit(s) of any Back-Up Bidder or Back-Up Bidders, if any, will be returned to such Back-Up Bidder or Back-Up Bidders no later than five (5) business days of the Back-Up Termination Date.

The return of any Good Faith Deposits of any Stalking Horse Bidders will be subject to the terms of such Stalking Horse Bidders' Plan or purchase agreement, as applicable. All such deposits shall be held in escrow and at no time shall be deemed property of the Debtors' estates absent further order of the Court.

XVII. ~~XVI.~~ Reservation of Rights.

The Debtors reserve their rights to modify these Bidding Procedures in good faith, with the consent of the Ad Hoc Group, and in consultation with the Committee, to further the goal of attaining the highest or otherwise best offer, or impose, at or prior to the Auction, additional terms and conditions on the Sale. The Debtors shall provide notice of any such modification to any Qualified Bidder, including any Stalking Horse Bidders. Notwithstanding anything to the contrary herein, the Debtors may elect to consummate the Sale under section 363(f) of the Bankruptcy Code as opposed to pursuant to the Plan with the Successful Bidder or Successful Bidders.

XVIII. ~~XVII.~~ Consent to Jurisdiction.

All Qualified Bidders at the Auction will be deemed to have consented to the core jurisdiction of the Court and waived any right to a jury trial in connection with any disputes relating to the Auction, the Sale, the Sale Transaction(s) and the construction and enforcement of these Bidding Procedures, any written indications of interest, Preliminary Bid Documents, the Bids, the Bid Documents, and any and all other agreements entered into in connection with any proposed Sale Transaction, as applicable, and consented to the entry of a final order or judgment in any way related to these Bidding Procedures, the bid process, the Auction, the Sale Transaction hearing, or the construction and enforcement of any agreement or any other document relating to the Sale any Sale Transaction if it is determined that the Court would lack Article III jurisdiction to enter such a final order or judgment absent the consent of the parties.

Any parties raising a dispute relating to these Bidding Procedures must request that such dispute be heard by the Court on an expedited basis.

XIX. ~~XVIII.~~ Fiduciary Out.

Notwithstanding anything to the contrary in these Bidding Procedures, nothing in these Bidding Procedures or the Bidding Procedures Order shall require a Debtor or the board of directors, board of managers, or similar governing body of a Debtor to take any action or to refrain from taking any action related to any sale transaction or with respect to these Bidding Procedures, to the extent such Debtor, board of director, board of managers, or such similar governing body reasonably determines in good faith, in consultation with counsel, that taking or failing to take such action, as applicable, would be inconsistent with applicable law or its fiduciary obligations under applicable law.

Further, notwithstanding anything to the contrary in these Bidding Procedures or the Bidding Procedures Order, through the date of the Auction (if held), nothing in these Bidding Procedures or the Bidding Procedures Order shall diminish the right of the Debtors and their respective directors, officers, employees, investment bankers, attorneys, accountants, consultants, and other advisors or representatives to: (a) consider, respond to, and facilitate alternate proposals for sales or other restructuring transactions involving New Equity Interests or the Assets (each an "Alternate Proposal"); (b) provide access to non-public information concerning the Debtors to any entity or enter into confidentiality agreements or nondisclosure agreements with any entity with respect to ~~Alternative~~ Proposals; (c) maintain or continue discussions or negotiations with respect to Alternate Proposals; (d) otherwise cooperate with, assist, participate in, or facilitate any inquiries, proposals, discussions, or negotiations of Alternate Proposals; and (e) enter into or continue discussions or negotiations with any person or entity regarding any Alternate Proposal.

XX. ~~XIX.~~ DIP Orders & Restructuring Support Agreement.

For the avoidance of doubt, nothing in these Bidding Procedures shall amend, modify or impair any provision of the DIP Orders or the Restructuring Support Agreement, or the rights of the DIP Agent, Consenting Stakeholders, or the Required Consenting Term Lenders (as defined in the Restructuring Support Agreement), as applicable.

Exhibit 2

Auction Notice

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*Proposed Co-Counsel for Debtors and
Debtors in Possession*

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al.*,

Debtors.¹

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

NOTICE OF SALE BY AUCTION AND SALE HEARING

¹ A complete list of each of the Debtors in these chapter 11 cases may be obtained on the website of the Debtors' proposed claims and noticing agent at <https://www.kccllc.net/cyxtera>. The location of Debtor Cyxtera Technologies, Inc.'s principal place of business and the Debtors' service address in these chapter 11 cases is: 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134.

PLEASE TAKE NOTICE that on [], 2023, the United States Bankruptcy Court for the District of New Jersey (the “Court”) entered the *Order (I) Approving the Bidding Procedures and Auction, (II) Approving Stalking Horse Bid Protections, (III) Scheduling Bid Deadlines and an Auction, (IV) Approving the Form and Manner of Notice Thereof, and (V) Granting Related Relief* [Docket No. []] (the “Bidding Procedures Order”)² in the chapter 11 cases of the above-captioned debtors and debtors in possession (collectively, the “Debtors”).

PLEASE TAKE FURTHER NOTICE that the Debtors are soliciting offers for the purchase of or investment in the equity interests (the “New Equity Interests”) issued by reorganized Cyxtera Technologies, Inc., or any successor or assign thereto, by merger, consolidation, or otherwise, on and after the effective date of a chapter 11 plan (“Reorganized Cyxtera”) and/or some or all of the Debtors’ assets (the “Assets”, and collectively, with the New Equity Interests, the “Sale Package”) consistent with the bidding procedures (the “Bidding Procedures”) approved by the Court pursuant to the Bidding Procedures Order. **All interested bidders should carefully read the Bidding Procedures and Bidding Procedures Order.** To the extent that there are any inconsistencies between this notice and the Bidding Procedures or Bidding Procedures Order, the Bidding Procedures or Bidding Procedures Order, as applicable, shall govern in all respects.

PLEASE TAKE FURTHER NOTICE that the deadline by which all binding bids must be actually received pursuant to the Bidding Procedures is ~~July 16~~[], 2023, at 5:00 p.m. (**prevailing Eastern Time**).

PLEASE TAKE FURTHER NOTICE that if the Debtors receive qualified competing bids within the requirements and time frame specified by the Bidding Procedures, the Debtors will conduct an auction (the “Auction”) of the Assets **on ~~July 24~~[], 2023, at 10:00 a.m. (prevailing Eastern Time)** at the offices of co-counsel to the Debtors: Kirkland & Ellis LLP, 601 Lexington Avenue, New York, NY 10022.

PLEASE TAKE FURTHER NOTICE that only the Debtors, the Consultation Parties, the Qualified Bidders, the U.S. Trustee, and any other parties as the Debtors may determine in their reasonable discretion, in each case, along with the representatives and advisors, shall be entitled to participate in the Auction, and only Qualified Bidders will be entitled to make Overbids (as defined in the Bidding Procedures) at the Auction; *provided, however*, that any party in interest may attend the Auction. **All interested or potentially affected parties should carefully read the Bidding Procedures and the Bidding Procedures Order.** Copies of the Bidding Procedures, the Bidding Procedures Order, and any other related documents are available upon request to Kurtzman Carson Consultants LLC by calling (877) 726-6510 (U.S. / Canada) or (424) 236-7250 (International) or visiting the Debtors’ restructuring website at (<https://www.kccllc.net/cyxtera>).

² Capitalized terms used but not defined in this notice have the meanings given to them in the Bidding Procedures Order.

Dated: [], 2023

/s/ DRAFT

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