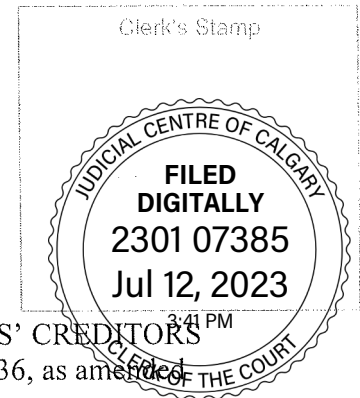


CERTIFIED

by the Court Clerk as a true copy of the
document digitally filed on Jul 12, 2023

E. Wheaton

COURT FILE NO. 2301-07385
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 **ORDER – RECOGNITION OF FOREIGN ORDERS**

ADDRESS FOR
SERVICE AND
CONTACT
INFORMATION
OF PARTY
FILING THIS
DOCUMENT
Gowling WLG (Canada) LLP
1600, 421 – 7th Avenue S.W.
Calgary, AB T2P 4K9
Telephone (403) 298-1946
File No. A170537
Attention: Tom Cumming/Sam Gabor/Stephen Kroeger

**DATE ON WHICH ORDER WAS
PRONOUNCED:** July 12, 2023

**NAME OF JUSTICE WHO MADE THIS
ORDER:** The Honourable Mr. Justice B. Nixon

**LOCATION AT WHICH ORDER WAS
MADE:** Calgary, Alberta

UPON THE APPLICATION made by Cyxtera Technologies, Inc. in its capacity as the foreign representative (the “**Foreign Representative**”) of Cyxtera Canada, LLC, Cyxtera Communications Canada, ULC and Cyxtera Canada TRS, ULC (collectively the “**Debtors**”) in their proceedings commenced by voluntary petitions for relief under Chapter 11 of title 11 of the

United States Bankruptcy Code, 11 U.S.C. §§ 101-1532 (the “**Bankruptcy Code**”) filed on June 4, 2023 in the United State Bankruptcy Court of New Jersey (the “**Foreign Proceedings**”), for the following Order under Part IV of the *Companies’ Creditors Arrangement Act*, R.S.C. 1985, c. C-36, as amended (the “**CCAA**”);

AND UPON reading the Application, the Affidavit of Eric Koza sworn June 6, 2023, the Affidavit of Eric Koza #2 sworn June 30, 2023 (the “**Koza Affidavit #2**”), the Secretarial Affidavit of Kristy DeLure sworn June 7, 2023, the Secretarial Affidavit of Kristy DeLure sworn June 30, 2023, the first report of Alvarez and Marsal Canada Inc. (in such capacity, the “**Information Officer**”), in its capacity as information officer dated June 30, 2023 (the “**First Information Officer Report**”) each filed; and

AND UPON hearing the submissions of counsel for the Foreign Representative, counsel for the Information Officer, and such other counsel that appeared on the application, no one else appearing although duly served as appears from the affidavit of service of Kristy DeLure sworn July 12, 2023;

IT IS HEREBY ORDERED AND DECLARED THAT:

1. The time for service of the notice of this application and supporting materials is hereby abridged and declared good and sufficient and validated so that this application is properly returnable today and further service thereof is hereby dispensed with.

RECOGNITION OF FOREIGN ORDERS

2. The following orders (collectively, the “**Foreign Orders**”) of United States Bankruptcy Court of the District of New Jersey made in the Foreign Proceedings, each as defined in the Koza Affidavit #2, are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- (a) Bidding Procedures Order, a copy of which is attached hereto as **Schedule “A”**;
- (b) Final Consolidated Creditor List Order, a copy of which is attached hereto as **Schedule “B”**;

- (c) Final Hedging Order, a copy of which is attached hereto as **Schedule “C”**;
- (d) Second Interim Cash Management Order, a copy of which is attached hereto as **Schedule “D”**;
- (e) Final Utility Adequate Assurance Order, a copy of which is attached hereto as **Schedule “E”**;
- (f) Final Critical Vendor Order, a copy of which is attached hereto as **Schedule “F”**;
- (g) Final Customer and Partner Program Order, a copy of which is attached hereto as **Schedule “G”**;
- (h) Final Employee Compensation Order, a copy of which is attached hereto as **Schedule “H”**;
- (i) Final Insurance Maintenance Order, a copy of which is attached hereto as **Schedule “I”**; and
- (j) Final Tax Payment Order, a copy of which is attached hereto as **Schedule “J”**.

GENERAL

3. The account of the Foreign Representative’s and Debtors’ legal counsel, Gowling WLG (Canada) LLP, for its professional fees, costs and disbursements, as set out in the Koza Affidavit #2, is hereby approved without the necessity of a formal assessment of its accounts.

4. The account of the Information Officer, for its professional fees, costs and disbursements, as set out in the First Information Officer Report, is hereby approved without the necessity of a formal assessment of its accounts.

5. The account of McMillan LLP, as legal counsel for the Information Officer, for its professional fees, costs and disbursements, as set out in the First Information Officer Report, is hereby approved without the necessity of a formal assessment of its accounts.


6. This Court requests the aid and recognition of any court, tribunal, regulatory or administrative body having jurisdiction in Canada or globally, to give effect to this Order and to assist the Debtors, the Foreign Representative, the Information Officer, and their respective agents in carrying out the terms of this Order. All courts, tribunals, regulatory and administrative bodies

are hereby respectfully requested to make such orders and to provide such assistance to the Debtors, the Foreign Representative, and the Information Officer, the latter as an officer of this Court, as may be necessary or desirable to give effect to this Order, or to assist the Debtors, the Foreign Representative, and the Information Officer and their respective agents in carrying out the terms of this Order.

7. Each of the Debtors, the Foreign Representative and the Information Officer be at liberty and is hereby authorized and empowered to apply to any court, tribunal, regulatory or administrative body, wherever located, for the recognition of this Order and for assistance in carrying out the terms of this Order.

8. Any interested party may apply to this Court to vary or amend this Order or seek other relief on not less than seven (7) days notice to the Debtors, the Foreign Representative, the Information Officer, Gowling WLG (Canada) LLP as counsel to the Debtors and the Foreign Representative, McMillan LLP as counsel to the Information Officer, Goodmans LLP as Canadian counsel to the DIP/First Lien Group (as defined in the Initial Recognition Order – Foreign Main Proceeding in these CCAA proceedings dated June 7, 2023), and to any other party or parties likely to be affected by the order sought, or upon such other notice, if any, as this Court may order.

9. This Order shall be effective as of 12:01 A.M. MST on the date of this Order.


Justice of the Court of King's Bench of Alberta

SCHEDULE "A"

**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



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

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.

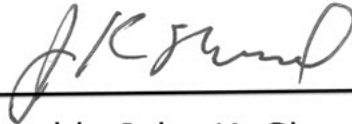


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BID DEADLINES AND AN AUCTION, (IV) APPROVING THE FORM AND MANNER OF NOTICE THEREOF, AND (V) GRANTING RELATED RELIEF

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

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

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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

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

Case No. 23-14853 (JKS)

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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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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

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

Case No. 23-14853 (JKS)

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

Case No. 23-14853 (JKS)

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

Case No. 23-14853 (JKS)

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

Case No. 23-14853 (JKS)

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

Case No. 23-14853 (JKS)

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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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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

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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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

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*

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Debtors in Possession*

SCHEDULE “B”

**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



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

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' 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.



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**FINAL ORDER (I) AUTHORIZING THE DEBTORS
TO (A) FILE A CONSOLIDATED LIST OF THE DEBTORS'
30 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 relief set forth on the following pages, numbered three (3) through seven (7), is

ORDERED.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) File a Consolidated List of the Debtors' 30 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

Upon the *Debtors' Motion for Entry of Interim and Final Order (I) Authorizing the Debtors to (A) File a Consolidated List of the Debtors' 30 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 "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") (a) authorizing the Debtors to (i) file a consolidated list of the Debtors' 30 largest unsecured creditors in lieu of filing separate creditors lists for each Debtor, (ii) file a consolidated list of creditors in lieu of submitting a separate mailing matrix for each Debtor, and (iii) redact certain personally identifiable information; (b) waiving the requirement to file a list of equity holders and provide notices directly to equity security holders; and (c) 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 and the

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

(Page | 4)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) File a Consolidated List of the Debtors' 30 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

Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; 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** on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, pursuant to section 105(a) of the Bankruptcy Code, Bankruptcy Rule 1007(d), and Local Rule 1007-1 to submit a consolidated Creditor Matrix; *provided* that if any of these chapter 11 cases converts to a case under chapter 7 of the Bankruptcy Code, each applicable Debtor shall file its own creditor mailing matrix within fourteen (14) days of any such conversion.
3. The Debtors are authorized to submit a single consolidated list of their thirty (30) largest unsecured creditors in lieu of a separate list for each Debtor.
4. The Debtors are authorized, on a final basis, to file one Consolidated Creditor Matrix for all Debtors.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) File a Consolidated List of the Debtors' 30 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

5. The Debtors are authorized, on a final basis, pursuant to section 107(c) of the Bankruptcy Code, to redact on the Creditor Matrix, Schedules and Statements, or other documents filed with the Court including, (a) the home and email addresses, and other Personal Data other than names, of individuals who are United States citizens located in the United States and (b) the names, home and email addresses, and other Personal Data of any natural person whose personally identifiable information has been provided to an organization with an establishment in the United Kingdom or a European Economic Area member state. The Debtors shall provide an unredacted version of the Consolidated Creditor Matrix, Schedules and Statements, and any other filings redacted pursuant to this Final Order to (a) the Court; (b) the U.S. Trustee; (c) Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group; (d) counsel to any official committee of unsecured creditors appointed in these chapter 11 cases; (e) any party in interest upon a request to the Debtors (email is sufficient) or to the Court that is reasonably related to these chapter 11 cases, subject to the restrictions of the UK GDPR and EU GDPR; *provided* that any receiving party shall not transfer or otherwise provide such unredacted document to any person or entity not party to the request; and (f) KCC, the Debtors' Claims and Noticing Agent. The Debtors shall inform the U.S. Trustee promptly after denying any request for an unredacted document pursuant to this Final Order. Nothing herein precludes a party in interest's right to file a motion requesting that the Court unseal the information redacted by this Final Order. The Debtors shall file a redacted

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|-------------------|---|
| Debtors: | CYXTERA TECHNOLOGIES, INC., <i>et al.</i> |
| Case No. | 23-14853 (JKS) |
| Caption of Order: | Final Order (I) Authorizing the Debtors to (A) File a Consolidated List of the Debtors' 30 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 |

version of the Consolidated Creditor Matrix with the Court as well as post it on the website of KCC, the Notice and Claims Agent.

6. The Debtors shall cause the Consolidated Creditor Matrix to be made available in readable electronic format (or in non-electronic format) upon reasonable request by parties in interest.

7. The requirement under Bankruptcy Rule 1007(a)(3) to file an Equity List for Debtor Cyxtera Technologies, Inc. is waived.

8. Any requirement that Debtor Cyxtera Technologies, Inc. provide notice directly to equity security holders under Bankruptcy Rule 2002(d) is waived, and the Debtors are authorized to serve the notices required under Bankruptcy Rule 2002(d) on the registered holders of the Debtors' equity securities.

9. The Debtors, through KCC, are authorized, on a final basis, to serve all pleadings and papers, including the Notice of Commencement, on all parties listed on the Consolidated Creditor Matrix (including via email if available).

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

11. Notice of the Motion as provided therein shall be deemed good and sufficient notice of such Motion and the requirements of the Bankruptcy Rules and the Local Rules are satisfied by such notice.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) File a Consolidated List of the Debtors' 30 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

12. 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.

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

SCHEDULE “C”

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

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

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Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

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' claims and noticing agent at <https://www.kccellc.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.

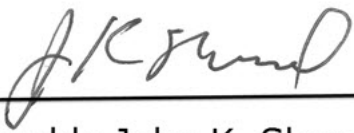


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**FINAL ORDER (I) AUTHORIZING THE
DEBTORS TO (A) CONTINUE TO PERFORM UNDER
EXISTING HEDGING CONTRACTS, (B) ENTER INTO NEW
HEDGING CONTRACTS, (C) GRANT SUPERPRIORITY CLAIMS,
PROVIDE OTHER CREDIT SUPPORT, AND HONOR OBLIGATIONS
UNDER HEDGING CONTRACTS, AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through eight (8), is **ORDERED**.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief* (the "Motion")² of the above-captioned debtors and debtors-in-possession (collectively, the "Debtors"), for entry of a final order (this "Final Order"), (a) authorizing, but not directing, the Debtors to (i) continue to perform under existing prepetition Hedging Contracts, including paying any prepetition amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, (ii) enter into and perform under new Hedging Contracts, including paying any amounts owed thereunder, and, as necessary, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder in the ordinary course of business, and (iii) grant superpriority claims and provide other Credit Support as may be necessary; and (b) 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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found sufficient cause exists for the relief

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief

set forth herein; 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** on a final basis as set forth herein.
2. Pursuant to sections 105 and 363 of the Bankruptcy Code, the Debtors are authorized, but not directed, to (a) continue to perform under existing Hedging Contracts, including paying any prepetition amounts owed thereunder, as necessary in the ordinary course of business, adjusting, modifying, terminating, and otherwise engaging in transactions thereunder, and (b) enter into, guarantee, and perform under new Hedging Contracts, all without further order of the Court; *provided, however*, that the Debtors shall consult with the Ad Hoc First Lien Group and the Official Committee of Unsecured Creditors (the "Committee") prior to entering into new Hedging Contracts; *provided further*, the Debtors shall provide three (3) business days' advance notice to, and opportunity to object by, the Committee prior to paying any prepetition amounts that exceed \$150,000; *provided further*, that if the Committee objects to such payment, the Debtors shall not make such payment without further order of the Court or agreement of the parties.

3. Pursuant to section 364(c) of the Bankruptcy Code, and subject to the consent of the Ad Hoc First Lien Group and the Committee, the Debtors are authorized, but not directed, to

(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief

grant superpriority claims and provide other Credit Support under (a) existing prepetition Hedging Contracts that remain in force and the terms of which are amended to the satisfaction of the Debtor party thereto and (b) postpetition Hedging Contracts, without further order of the Court; *provided*, *however*, that any such claims shall be subject and junior to any claims, including adequate protection claims, cash collateral and/or claims for postpetition financing, granted in connection with any interim or final order approving the use of such cash collateral and/or the Debtors' entry into any postpetition financing facilities or credit agreements; *provided further*, *however*, that any superpriority claim granted with respect to postpetition Hedging Contracts shall be subordinate to the Superpriority Claims as defined in *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing Certain Debtors to Continue Selling, Contributing, and Servicing Receivables and Related Rights Pursuant to the Receivables Program, (II) Modifying the Automatic Stay, (III) Scheduling a Final Hearing, and (IV) Granting Related Relief* [Docket No. 21].

4. Nothing herein or in the Motion shall constitute an assumption, adoption, or rejection by the Debtors of any executory contract or agreement between the Debtors and any third party, or to require the Debtors to make any of the payments authorized herein.

5. Nothing herein or in the Motion shall be construed (a) to limit, or in any way affect, the Debtors' ability to dispute any claim under a Hedging Contract, or (b) as a waiver by any of the Debtors of their rights to contest any invoice or other claim under a Hedging Contract under applicable law.

6. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final Order shall be deemed: (a) an implication or

(Page | 6)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief

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 Final Order or the Motion or any order granting the relief requested by 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. Any payment made pursuant to this Final 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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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief

7. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

8. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

9. Notwithstanding anything to the contrary contained in the Motion or this Final 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 (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (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.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Continue to Perform Under Existing Hedging Contracts, (B) Enter into New Hedging Contracts, (C) Grant Superpriority Claims, Provide Other Credit Support, and Honor Obligations Under Hedging Contracts, and (II) Granting Related Relief

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

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

12. 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.

13. 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.

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

15. Nothing herein or in the Motion shall affect any termination of that certain Master Energy Sales Agreement, including any and all transaction confirmations ancillary thereto, between MP2 Energy LLC d/b/a Shell Energy Solutions (“MP2”) and Cyxtera Technologies, Inc., and the rights of MP2 to assert any claims arising therefrom, and any claims or defenses the Debtors may have with respect thereto, are expressly reserved.

SCHEDULE “D”

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

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

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Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹



**Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey**

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' 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.

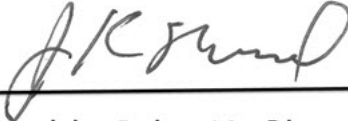


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SECOND INTERIM ORDER
(I) AUTHORIZING THE DEBTORS TO
(A) CONTINUE USING THE CASH MANAGEMENT SYSTEM,
(B) HONOR CERTAIN PREPETITION OBLIGATIONS RELATED
THERE TO, (C) MAINTAIN EXISTING DEBTOR BANK ACCOUNTS,
BUSINESS FORMS, AND BOOKS AND RECORDS, AND (D) CONTINUE
INTERCOMPANY TRANSACTIONS AND (II) GRANTING RELATED RELIEF

The relief set forth on the following pages, numbered three (3) through sixteen (16), is
ORDERED.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Second Interim Order (I) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Debtor Bank Accounts, Business Forms, and Books and Records, and (D) Continue Intercompany Transactions and (II) Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Debtor Bank Accounts, Business Forms, and Books and Records, and (D) Continue Intercompany Transactions and (II) Granting Related Relief* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of an interim order (this "Second Interim Order") (a) authorizing, but not directing, the Debtors to (i) continue using the Cash Management System, (ii) honor certain prepetition obligations related thereto, (iii) maintain existing Debtor Bank Accounts, Business Forms, and Books and Records, and (iv) continue Intercompany Transactions and funding consistent with the Debtors' historical practices; (c) scheduling a final hearing to consider approval of the Motion on a final basis; and (c) 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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that the Debtors' notice of the Motion was appropriate under the circumstances and no other notice need

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

(Page | 4)

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

Case No. 23-14853 (JKS)

Caption of Order: Second Interim Order (I) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Debtor Bank Accounts, Business Forms, and Books and Records, and (D) Continue Intercompany Transactions and (II) Granting Related Relief

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** on an interim basis as set forth herein.
2. The Final Hearing on the Motion will be held on **July 19, 2023, at 10:00 a.m. (Eastern Time)**. Objections, if any, that relate to the Motion shall be filed and served so as to be actually received by the Debtors’ proposed counsel on or before **July 12, 2023, at 4:00 p.m. (Eastern Time)**. If no objections are filed to the Motion, the Court may enter an order approving the relief requested in the Motion on a final basis without further notice or hearing.
3. The Debtors are authorized, on an interim basis, but not directed, to: (a) continue using the Cash Management System, substantially as identified on **Exhibit 1** attached hereto and honor any prepetition obligations related to the use thereof; (b) use, in their present form, all preprinted correspondence and Business Forms (including letterhead) without reference to the Debtors’ status as debtors in possession and continue using, in their present form, the Books and Records; (c) continue to perform Intercompany Transactions in the ordinary course of business and on the same terms and consistent with past practice (including with respect to transaction amounts); *provided* that the Debtors are not authorized to undertake any Intercompany Transactions or incur any Intercompany Claims prohibited or restricted by the terms of the

(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Second Interim Order (I) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Debtor Bank Accounts, Business Forms, and Books and Records, and (D) Continue Intercompany Transactions and (II) Granting Related Relief

DIP Orders (as defined herein); *provided further* that the Debtors are authorized to continue to perform Intercompany Transactions in connection with the Receivables Program; (d) maintain all of their existing Debtor Bank Accounts, including, but not limited to, the Debtor Bank Accounts identified on Exhibit C, in the names and with the account numbers existing immediately before the Petition Date, without the need to comply with certain guidelines relating to bank accounts set forth in the U.S. Trustee Guidelines (to the extent applicable); (e) treat the Debtor Bank Accounts for all purposes as debtor in possession accounts; (f) deposit funds in and withdraw funds from the Debtor Bank Accounts in the ordinary course and by all means, including checks, wire transfers, ACH transfers, and other debits or electronic means; and (g) pay the Bank Fees, including any prepetition amounts, and any ordinary course Bank Fees incurred in connection with the Debtor Bank Accounts, and to otherwise perform their obligations under the documents governing the Debtor Bank Accounts. Notwithstanding the foregoing, once the Debtors' existing checks have been used, the Debtors shall, when reordering checks, require the designation "Debtors in Possession" and the corresponding bankruptcy case number on all checks. Further, within fourteen (14) days of the entry of this Second Interim Order, the Debtors will update any electronically produced checks to reflect their status as debtors-in-possession and to include the corresponding bankruptcy number.

4. The Cash Management Banks are authorized to continue to maintain, service, and administer the Debtor Bank Accounts as accounts of the Debtors as debtors in possession, without interruption and in the ordinary course of business consistent with historical practices, and to

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

Case No. 23-14853 (JKS)

Caption of Order: Second Interim Order (I) Authorizing the Debtors to (A) Continue Using the Cash Management System, (B) Honor Certain Prepetition Obligations Related Thereto, (C) Maintain Existing Debtor Bank Accounts, Business Forms, and Books and Records, and (D) Continue Intercompany Transactions and (II) Granting Related Relief

receive, process, honor, and pay, to the extent of available funds, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Debtor Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Second Interim Order.

5. The Cash Management Banks are authorized to debit the Debtors' accounts in the ordinary course of business, consistent with historical practices, without the need for further order of this Court for: (a) all checks drawn on the Debtors' accounts which are cashed at such Cash Management Bank's counters or exchanged for cashier's checks by the payees thereof prior to the Petition Date; (b) all checks or other items deposited in one of Debtors' accounts with such Cash Management Bank prior to the Petition Date which have been dishonored or returned unpaid for any reason, together with any fees and costs in connection therewith, to the same extent the Debtor was responsible for such items prior to the Petition Date; and (c) all undisputed prepetition amounts outstanding as of the date hereof, if any, owed to any Cash Management Bank as service charges for the maintenance of the Cash Management System.

6. Any existing deposit agreements between or among the Debtors, the Cash Management Banks, and other parties shall continue to govern the postpetition cash management relationship between the Debtors and the Cash Management Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, shall remain in full force and effect unless otherwise ordered by the Court, and the Debtors and the Cash

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

Case No. 23-14853 (JKS)

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Management Banks may, without further order of this Court, agree to and implement changes to the Cash Management System and cash management procedures in the ordinary course of business, consistent with historical practices, including, without limitation, the opening and closing of bank accounts, but in all events subject to the terms and conditions of this Second Interim Order; *provided* that the Debtors shall not make any material changes to the Cash Management System without obtaining the prior written consent of the Ad Hoc First Lien Group.

7. If any Debtor Bank Accounts existing as of the Petition Date are not in compliance with section 345(b) of the Bankruptcy Code or the U.S. Trustee Guidelines, the Debtors shall have until a date that is thirty (30) days from the entry of this Second Interim Order or such longer time as agreed with the U.S. Trustee, without prejudice to seeking additional extensions, to either come into compliance with section 345(b) of the Bankruptcy Code and any of the U.S. Trustee's requirements or guidelines; *provided* that nothing herein shall prevent the Debtors or the U.S. Trustee from seeking further relief from the Court to the extent that an agreement cannot be reached. The U.S. Trustee's and the Debtors' rights to seek further relief from this Court on notice in the event that the aforementioned Cash Management Banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully reserved. The Debtors may obtain a further extension of the thirty (30) day period referenced above by written stipulation with the U.S. Trustee and filing such stipulation on the Court's docket without the need for further Court order.

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

Case No. 23-14853 (JKS)

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8. For the Cash Management Banks at which the Debtors hold Debtor Bank Accounts that are party to a Uniform Depository Agreement with the U.S. Trustee for the District of New Jersey, within fifteen (15) days of the date of entry of this Second Interim Order, the Debtors shall (a) contact such bank, (b) provide such bank with each of the Debtors' employer identification numbers, and (c) identify each of their Debtor Bank Accounts held at such bank as being held by a debtor in possession in the Debtors' bankruptcy cases.

9. For banks at which the Debtors hold accounts that are not party to a Uniform Depository Agreement with the U.S. Trustee, the Debtors shall use their good-faith efforts to cause the banks to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee within thirty (30) days of the date of this Second Interim Order. The U.S. Trustee's rights to seek further relief from this Court on notice in the event the aforementioned banks are unwilling to execute a Uniform Depository Agreement in a form prescribed by the U.S. Trustee are fully preserved. The Cash Management Banks are authorized to continue to maintain, service, and administer the Debtor Bank Accounts as accounts of the Debtors as debtors in possession, without interruption, consistent with historical practices and in the ordinary course, and to receive, process, honor, and pay, to the extent of available funds and consistent with the DIP Orders and any orders in connection to the Receivables Program, any and all checks, drafts, wires, credit card payments, and ACH transfers issued and drawn on the Debtor Bank Accounts after the Petition Date by the holders or makers thereof, as the case may be. Those certain existing deposit agreements between the Debtors and the Cash Management Banks shall continue to govern the postpetition cash

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

Case No. 23-14853 (JKS)

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management relationship between the Debtors and the Cash Management Banks, and all of the provisions of such agreements, including, without limitation, the termination and fee provisions, and any provisions relating to offset or charge-back rights with respect to return items, shall remain in full force and effect.

10. Subject to the terms hereof, the Debtors are authorized, but not directed, in the ordinary course of business consistent with historical practices, to implement changes to the Cash Management System and procedures in the ordinary course of business, including, without limitation, opening any new bank accounts or closing any existing Debtor Bank Accounts and entering into any ancillary agreements, including deposit account control agreements, related to the foregoing, as they may deem necessary and appropriate; *provided* that the Debtors shall not make any material changes to the Cash Management System without obtaining the prior written consent of the Ad Hoc First Lien Group; *provided further* that the Debtors provide reasonable prior notice, but in no event less than five (5) days, to the U.S. Trustee for the District of New Jersey, any committee appointed in these chapter 11 cases, and counsel to the Ad Hoc First Lien Group of the opening or closing of such Debtor Bank Accounts or entry into a deposit control agreement. Any new bank account opened by the Debtors shall be established at an institution that is (a) a party to a Uniform Depository Agreement with the U.S. Trustee for the District of New Jersey or is willing to immediately execute a Uniform Depository Agreement, and (b) bound by the terms of this Second Interim Order. The Debtors shall give notice to the U.S. Trustee for the District of New Jersey within fifteen (15) days after opening any new bank account or closing any existing

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

Case No. 23-14853 (JKS)

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Debtor Bank Accounts. The relief granted in this Second Interim Order is extended to any new bank account opened by the Debtors in the ordinary course of business after the date hereof, which account shall be deemed a “Debtor Bank Account,” and to the bank at which such account is opened, which bank shall be deemed a “Cash Management Bank.”

11. All banks maintaining any of the Debtor Bank Accounts that are provided with notice of this Second Interim Order shall not honor or pay any bank payments drawn on the listed Debtor Bank Accounts or otherwise issued before the Petition Date for which the Debtors specifically issue timely stop payment orders in accordance with the documents governing such Debtor Bank Accounts.

12. The Cash Management Banks are authorized, without further order of this Court, to deduct any applicable fees from the applicable Debtor Bank Accounts in the ordinary course of business consistent with historical practices, and the automatic stay is modified to the extent necessary to allow the Cash Management Banks to effectuate such setoffs.

13. The Cash Management Banks are authorized, without further order of this Court, to charge back to the appropriate accounts of the Debtors any amounts resulting from returned checks or other returned items, including returned items that result from ACH transactions, wire transfers, or other electronic transfers of any kind, regardless of whether such returned items were deposited or transferred prepetition or postpetition and regardless of whether the returned items relate to prepetition or postpetition items or transfers; *provided* that, should such a charge back occur, the Debtors must provide written notice to the Ad Hoc First Lien Group (email is sufficient)

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

Case No. 23-14853 (JKS)

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within one (1) business day, providing reasonable information relating to the charge back and detailing the resultant fees and expenses, if any, incurred as a result.

14. Subject to the terms set forth herein, any bank, including the Cash Management Banks, may rely upon the representations of the Debtors with respect to whether any check, draft, wire, or other transfer drawn or issued by the Debtors prior to the Petition Date should be honored pursuant to any order of this Court, and no bank that honors a prepetition check or other item drawn on any account that is the subject of this Second Interim Order (a) at the direction of the Debtors, (b) in a good-faith belief that this Court has authorized such prepetition check or item to be honored, or (c) as a result of a mistake made despite implementation of reasonable customary handling procedures, shall be deemed to be nor shall be liable to the Debtors, their estates, or any other party on account of such prepetition check or other item being honored postpetition, or otherwise deemed to be in violation of this Second Interim Order.

15. Any banks, including the Cash Management Banks, are further authorized to honor the Debtors' directions with respect to the opening and closing of any Debtor Bank Account and accept and hold, or invest, the Debtors' funds in accordance with the Debtors' instructions; *provided* that the Cash Management Banks shall not have any liability to any party for relying on such representations to the extent such reliance otherwise complies with applicable law.

16. The Debtors are authorized, but not directed, to issue Credit Cards pursuant to the Credit Card Programs, subject to any terms and conditions thereof, and to pay any amount due and owing thereunder in the ordinary course of business on a postpetition basis, including, without

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

Case No. 23-14853 (JKS)

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limitation, making payments on account of charges that were made under the Credit Card Programs both prior to and after the Petition Date, subject to the limitations of this Second Interim Order and any other applicable interim and/or final orders of this Court.

17. The Debtors are authorized, but not directed, to enter into, engage in, and satisfy any payments in connection with the Intercompany Transactions, including those related to transfers to/from the Receivables Accounts and the Receivables Program Cash Collateral Account for cash collateralization and Intercompany Transactions with non-Debtor affiliates, and to take any actions related thereto, in each case on the same terms as (including with respect to amount), in the ordinary course and consistent with past practice.

18. The Debtors are authorized, but not directed, to continue engaging in Intercompany Transactions (including with respect to “netting” or setoffs) in connection with the Cash Management System in the ordinary course of business on a postpetition basis, including transfers to/from the Receivables Accounts and the Receivables Program Cash Collateral Account for cash collateralization and Intercompany Transactions with non-Debtor affiliates, in a manner consistent with the Debtors’ past practice. For the avoidance of doubt, the Debtors are also authorized to continue Intercompany Transactions arising from or related to the operation of their business, including Intercompany Transactions with non-Debtor affiliates to the extent ordinary course and consistent with past practice (including with respect to amount).

19. The Debtors shall maintain accurate and detailed records of all Intercompany Transactions and the payment of Intercompany Claims, to the same extent maintained by the

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

Case No. 23-14853 (JKS)

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Debtors before the Petition Date, so that all transactions may be readily traced, ascertained, and recorded properly on applicable intercompany accounts (if any) and distinguished between prepetition and postpetition transactions for the purposes of determining administrative expense status. The Debtors shall promptly provide access to such Books and Records to the Ad Hoc First Lien Group upon reasonable request.

20. All postpetition payments from a Debtor to another Debtor or non-Debtor under any postpetition Intercompany Transactions authorized hereunder that result in an Intercompany Claim are hereby accorded administrative expense status under section 503(b) of the Bankruptcy Code; *provided* that any such administrative expense status claim shall be junior and subordinate to the Carve Out and approved superpriority administrative expense claims provided for in any order, including the DIP Orders and any order approving the Receivables Program.

21. Nothing contained in the Motion or this Second Interim Order shall be construed to (a) create or perfect, in favor of any person or entity, any interest in cash of a Debtor that did not exist as of the Petition Date or (b) alter or impair the validity, priority, enforceability, or perfection of any security interest or lien or setoff right, in favor of any person or entity, that existed as of the Petition Date.

22. Notwithstanding the relief granted in this Second Interim Order and any actions taken pursuant to such relief, nothing in this Second Interim 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

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Case No. 23-14853 (JKS)

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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 Second Interim Order or the Motion or any order granting the relief requested by 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. Any payment made pursuant to this Second Interim 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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Debtors: CYXTERA TECHNOLOGIES, INC., *et al.*

Case No. 23-14853 (JKS)

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23. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Second Interim Order.

24. Notwithstanding anything to the contrary contained in the Motion or this Second Interim 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 (a) *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "DIP Orders"), including compliance with any budget or cash flow forecast in connection therewith and any other terms and conditions thereof and (b) the Receivables Program. Nothing herein is intended to modify, alter, or waive, in any way, any terms, provisions, requirements, or restrictions of the DIP Orders or any order in connection with the Receivables Program.

25. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized

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to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Second Interim Order.

26. Nothing in this Second Interim Order authorizes the Debtors to accelerate any payments not otherwise due.

27. The requirements set forth in Bankruptcy Rule 6003(b) are satisfied by the contents of the Motion or otherwise deemed waived.

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

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

30. 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.

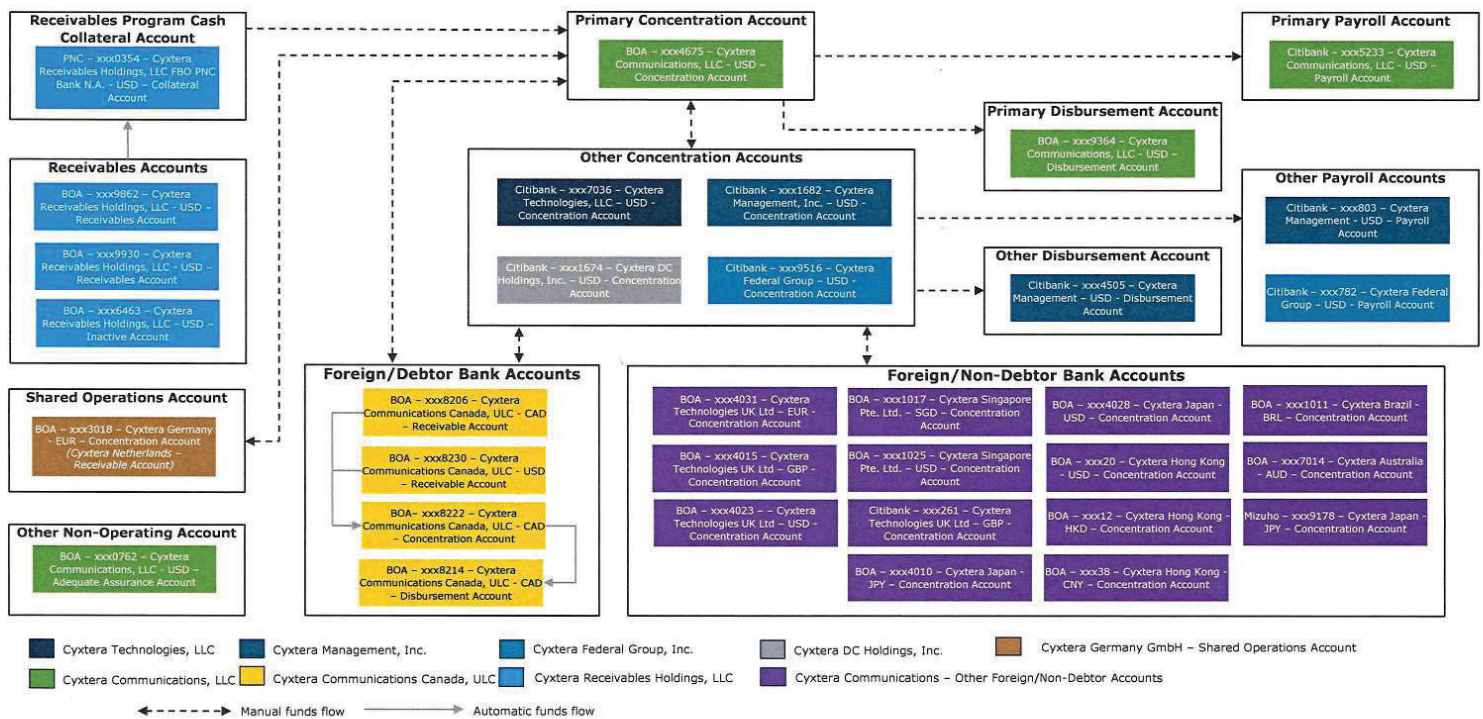
31. The requirement set forth in Local Rule 9013-1(a)(3) that any motion be accompanied by a memorandum of law is hereby deemed satisfied by the contents of the Motion or otherwise waived.

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

Exhibit 1

Cash Management System Schematic

Cyxtera – Illustrative Cash Management Schematic



SCHEDULE “E”

**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



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

Chapter 11

Case No. 23-14853 (JKS)

(Jointly Administered)

**FINAL ORDER (I) APPROVING THE DEBTORS'
PROPOSED ADEQUATE ASSURANCE OF PAYMENT
FOR FUTURE UTILITY SERVICES, (II) PROHIBITING UTILITY**

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.

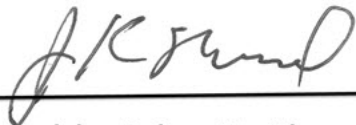


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**COMPANIES FROM ALTERING, REFUSING, OR DISCONTINUING SERVICES,
(III) APPROVING THE DEBTORS' PROPOSED PROCEDURES FOR RESOLVING
ADEQUATE ASSURANCE REQUESTS, AND (IV) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through fifteen (15),
is **ORDERED**.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* (the "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") (a) approving the Debtors' proposed adequate assurance of payment for future utility services, (b) prohibiting Utility Providers from altering, refusing, or discontinuing services, (c) approving the Adequate Assurance Procedures, 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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sufficient cause exists for the relief set forth herein; 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

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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

Case No. 23-14853 (JKS)

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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** on a final basis as set forth herein.
2. Subject to the Adequate Assurance Procedures for resolving Adequate Assurance Requests, the Adequate Assurance Deposit, together with the Debtors' ability to pay for future Utility Services in the ordinary course of business, shall constitute adequate assurance of future payment as required by section 366 of the Bankruptcy Code.
3. The following Adequate Assurance Procedures are hereby approved:
 - a. Within twenty (20) days of the entry of the Interim Order, the Debtors will deposit the Adequate Assurance Deposit of \$5.3 million, which is calculated in the manner set forth in paragraph 12 of the Motion, in the newly created, segregated, interest-bearing Adequate Assurance Account.
 - b. Each Utility Provider shall be entitled to the funds in the Adequate Assurance Account in the amount set forth for such Utility Provider in the column labeled "Proposed Adequate Assurance" on the Utility Services List, attached to the Motion as Exhibit C.
 - c. If an amount relating to Utility Services provided postpetition by any Utility Provider is unpaid, and remains unpaid beyond any applicable grace period, such Utility Provider may request a disbursement from the Adequate Assurance Account up to the amount applicable to each such Utility Provider by giving notice to: (i) the Debtors, Cyxtera Technologies, Inc., 2333 Ponce de Leon Boulevard, Ste. 900, Coral Gables, Florida 33134, Attn: Terry Blattel; (ii) proposed counsel to the Debtors, Kirkland & Ellis LLP, 601 Lexington Avenue, New York, New York 10022, Attn: Edward O. Sassower (edward.sassower@kirkland.com), Christopher Marcus

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief

(christopher.marcus@kirkland.com), and Derek I. Hunter (derek.hunter@kirkland.com); (iii) proposed co-counsel to the Debtors, Cole Schotz P.C., Court Plaza North, 25 Main Street, Hackensack, New Jersey 07601, Attn: Michael D. Sirota, Esq. (msirota@coleschotz.com), Warren A. Usatine, Esq. (wusatine@coleschotz.com), and Felice Yudkin (fyudkin@coleschotz.com); (iv) counsel to the Ad Hoc First Lien Group, Gibson, Dunn & Crutcher LLP, 200 Park Avenue, New York, New York 10166, Attn: Scott Greenberg (sgreenberg@gibsondunn.com) and, Steven Domanowski (sdomanowski@gibsondunn.com); (v) 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: Robert J. Feinstein (rfeinstein@pszjlaw.com), Bradford J. Sandler (bsandler@pszjlaw.com), and Paul J. Labov (plabov@pszjlaw.com); and (vi) the Office of The United States Trustee for the District of New Jersey, One Newark Center, 1085 Raymond Boulevard, Suite 2100, Newark, New Jersey, 07102, Attn: Dave Gerardi, Esq. (David.Gerardi@usdoj.gov); (collectively, the "Notice Parties"). Should the Debtors receive such a notice, they shall provide a copy of said notice to the Ad Hoc First Lien Group (email is sufficient) within one (1) business day of receipt. The Debtors shall honor such request within five business days after the date the request is received by the Debtors, subject to the ability of the Debtors and any such requesting Utility Provider to resolve any dispute regarding such request without further order of the Court. To the extent any Utility Provider receives a disbursement from the Adequate Assurance Account, the Debtors shall replenish the Adequate Assurance Account in the amount disbursed.

- d. Any Utility Provider desiring additional assurances of payment in the form of deposits, prepayments, or otherwise must serve an Adequate Assurance Request on the Notice Parties. Should the Debtors receive such a request, they shall provide a copy of said notice to the Ad Hoc First Lien Group (email is sufficient) within one (1) business day of receipt. An Adequate Assurance Request may be made at any time.
- e. Any Adequate Assurance Request must: (i) be in writing; (ii) identify the location for which the Utility Services are provided; (iii) summarize the Debtors' payment history relevant to the affected account(s), including any security deposits; (iv) provide evidence that the Debtors have a direct obligation to the Utility Provider; (v) certify that the Utility Provider does

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

Case No. 23-14853 (JKS)

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not already hold a deposit equal to or greater than two weeks of Utility Services; and (vi) explain why the Utility Provider believes the Proposed Adequate Assurance is not sufficient adequate assurance of future payment.

- f. Unless a Utility Provider files and serves an Adequate Assurance Request, the Utility Provider shall be (i) deemed to have received "satisfactory" adequate assurance of payment in compliance with section 366 of the Bankruptcy Code and (ii) forbidden from discontinuing, altering, or refusing Utility Services to, or discriminating against, the Debtors on account of any unpaid prepetition charges, or requiring additional assurance of payment other than the Proposed Adequate Assurance.
- g. Upon the Debtors' receipt of an Adequate Assurance Request, the Debtors shall promptly negotiate with the Utility Provider to resolve the Utility Provider's Adequate Assurance Request.
- h. The Debtors may, without further order from the Court, resolve any Adequate Assurance Request by mutual agreement with a Utility Provider and the Debtors may, in connection with any such agreement, provide a Utility Provider with additional adequate assurance of payment, including, but not limited to, cash deposits, prepayments, or other forms of security if the Debtors believe that such adequate assurance is reasonable; *provided, however* that (i) the Debtors shall maintain a summary record of such agreements and their respective terms, and such summary record and the agreements themselves shall be available to the Notice Parties upon request, and (ii) the Debtors shall consult with the Ad Hoc First Lien Group prior to resolving any material Adequate Assurance Request pursuant to the aforementioned clause.
- i. If the Debtors and the Utility Provider are unable to reach a consensual resolution within fourteen days of receipt of an Adequate Assurance Request, or if a Utility Provider was omitted from the Utility Services List and wishes to dispute that they received adequate assurance of future payment as required by section 366 of the Bankruptcy Code as provided by this Final Order, the Debtors will request a hearing before the Court at the next regularly-scheduled omnibus hearing to determine the adequacy of assurance of payment with respect to that particular Utility Provider (a "Determination Hearing") pursuant to section 366(c)(3) of the Bankruptcy Code.

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- j. At all times prior to resolution of such dispute at a Determination Hearing and the entry of any Court order as a result thereof, the relevant Utility Provider shall be prohibited from altering, refusing, or discontinuing service to the Debtors on account of: (i) unpaid charges for prepetition services; (ii) a pending Adequate Assurance Request; or (iii) any objections filed in response to the Proposed Adequate Assurance.

4. The Utility Providers are prohibited from requiring additional adequate assurance of payment other than pursuant to the Adequate Assurance Procedures.

5. Absent further order of the Court, all Utility Providers are prohibited from altering, refusing, or discontinuing services on account of any unpaid prepetition charges, the commencement of these chapter 11 cases, or any perceived inadequacy of the Proposed Adequate Assurance.

6. The Debtors are authorized to cause the Adequate Assurance Deposit to be held in a newly created, segregated, interest-bearing account during the pendency of these chapter 11 cases.

7. The Debtors are authorized, but not directed, to add or remove such parties from the Utility Services List; *provided, however*, that the Debtors shall provide notice of any such addition or removal to the Notice Parties; *provided, further*, that, if a Utility Provider is removed from the Utility Services List, the Debtors shall provide the applicable Utility Provider with two weeks' notice thereof and the opportunity to respond to such removal. To the extent that there is any dispute as to the postpetition amounts owed to a Utility Provider or such Utility Provider's removal, such Utility Provider shall not be removed from the Utility Services List, and no funds

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shall be removed from the Adequate Assurance Deposit, until such dispute has been resolved. To the extent the Debtor and the Utility Provider are unable to reach a consensual resolution within fourteen (14) days of the Debtors' receipt of notice of such dispute, the Debtors shall request a hearing before this Court at the next omnibus hearing date or such other date that the Debtors and the Utility Provider may agree.

8. For any Utility Provider that is subsequently added to the Utility Services List, the Debtors shall serve such Utility Provider a copy of this Final Order, including the Adequate Assurance Procedures, and provide such Utility Provider two weeks' notice to object to the inclusion of such Utility Provider on the Utility Services List. If an objection is received, to the extent the Debtors and the Utility Provider are unable to reach a consensual resolution within fourteen (14) days of the Debtors' receipt of such objection, the Debtors shall request a hearing before this Court at the next omnibus hearing date or such other date that the Debtor and the Utility Provider may agree. The terms of this Final Order and the Adequate Assurance Procedures shall apply to any subsequently identified Utility Provider. The Debtors shall supplement Exhibit C to the Motion with the names of any subsequently identified Utility Provider and file the same with the Court.

9. To the extent that the Debtors become delinquent with respect to a Utility Provider's account after the Petition Date, such Utility Provider shall be permitted to file a written notice of delinquency with the Court (a "Delinquency Notice") and serve such Delinquency Notice on the Debtors. Such Delinquency Notice must set forth the amount of the delinquency with

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enough detail for the Debtors and other parties-in-interest to determine the amount owing, by account number, and the dates services were provided. If such delinquency is not cured, and none of the Debtors have objected to the Delinquency Notice within ten (10) days of receipt, the Debtors will be required to remit to the respective Utility Provider from the Adequate Assurance Account the amount of postpetition charges claimed as delinquent. The Debtors will further be required to ensure that the Adequate Assurance Deposit is replenished, by the amount disbursed, after payment of the delinquent balance. If an objection is filed to the Delinquency Notice, the Debtors will request that this Court schedule a hearing to resolve the dispute.

10. The relief granted herein is for all Utility Providers providing Utility Services to the Debtors and is not limited to those parties or entities listed on the Utility Services List.

11. Any landlord or third party that pays directly for Utility Services for the benefit of the Debtors pursuant to a nonresidential real property lease, and has been provided notice of the relief provided by this Final Order, must continue paying for such Utility Services in the ordinary course of business and may not cease, reduce, delay, or otherwise interfere with the payment or delivery of such Utility Services, regardless of any nonpayment, deferral, or waiver of rent, or any defaults with respect to the applicable lease; *provided* that a landlord or third party may cease payments on account of Utility Services following the effective date of any rejection of the applicable lease pursuant to section 365 of the Bankruptcy Code, if any.

12. Pursuant to the Adequate Assurance Procedures, upon the Debtors' termination of Utility Services, the Debtors may, in their discretion and without further order of this Court, reduce

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the Adequate Assurance Deposit by an amount not exceeding, for each of the Utility Services being discontinued, the lesser of (i) the estimated two-week utility expense for such Utility Services or (ii) the amount of the Adequate Assurance Deposit then attributable to the applicable Utility Provider. If there are no outstanding disputes, then upon the effective date of a plan in these chapter 11 cases, the Adequate Assurance Deposit shall be returned to the Debtors, less any amount owed on account of unpaid, postpetition Utility Services, by no later than five (5) business days following the date upon which the plan becomes effective.

13. The Debtors' service of the Motion upon the Utility Services List shall not constitute an admission or concession that any such entity is a "utility" within the meaning of section 366 of the Bankruptcy Code, and the Debtors reserve all rights and defenses with respect thereto.

14. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of any prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

15. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final 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'

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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 Final Order or the Motion or any order granting the relief requested by 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. Any payment made pursuant to this Final 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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Caption of Order: Final Order (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies from Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief

16. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

17. Notwithstanding anything to the contrary in any other order of this Court, including any order authorizing debtor in possession financing or use of cash collateral, the interests of any party, including but not limited to the Debtors' post-petition or pre-petition lenders, in, or lien on, the Adequate Assurance Deposit shall be subordinate to the Utility Providers' interest in any Adequate Assurance Deposit until such time as the Adequate Assurance Deposit is returned to the Debtors pursuant to this Final Order, or as otherwise ordered by the Court.

18. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

19. Notwithstanding anything to the contrary contained in the Motion or this Final 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 (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related*

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Relief (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.

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

21. The hearing as to the Motion is continued with respect to the *Objection of Certain Utility Companies to the Debtors' Motion for Entry of Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* [Docket No. 108] and the *Joinder of Public Service Electric and Gas Company to the Objection of Certain Utility Companies to the Debtors' Interim and Final Orders (I) Approving the Debtors' Proposed Adequate Assurance of Payment for Future Utility Services, (II) Prohibiting Utility Companies From Altering, Refusing, or Discontinuing Services, (III) Approving the Debtors' Proposed Procedures for Resolving Adequate Assurance Requests, and (IV) Granting Related Relief* [Docket No. 120] (together, the "Utilities Objections," and the utility companies who filed such objections, the "Objecting Utilities"). The Objecting Utilities will continue to be bound by the Interim Order until the earlier of (a) an agreement is reached between the Debtors and the Objecting Utilities, following which agreement the Objecting Utilities

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shall become bound by the Final Order subject to any terms agreed to between the Objecting Utilities and the Debtors, or (b) entry of a further order of the Court with respect to the Utility Objections. The Debtors and the Objecting Utilities may agree to resolve the Utility Objections without further order of the Court. If the Debtors and the Objecting Utilities are unable to resolve the Utility Objections, they will request that the Utility Objections be heard at the hearing currently scheduled before the Court on July 19, 2023 at 10:00 a.m., prevailing Eastern Time (subject to further continuation as may be agreed between the Debtors and the Objecting Utilities).

22. The hearing as to the Motion is continued with respect to Calpine Energy Solutions LLC ("Calpine"). Calpine will continue to be bound by the Interim Order until the earlier of (a) an agreement is reached between the Debtors and Calpine, following which agreement Calpine shall become bound by the Final Order subject to any terms agreed to between Calpine and the Debtors, or (b) entry of a further order of the Court with respect to Calpine. The Debtors and Calpine may agree to a resolution without further order of the Court. If the Debtors and Calpine are unable to reach a resolution, they will request that Calpine be heard at the hearing currently scheduled before the Court on July 19, 2023 at 10:00 a.m., prevailing Eastern Time (subject to further continuation as may be agreed between the Debtors and Calpine).

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

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

Case No. 23-14853 (JKS)

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24. 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.

25. 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.

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

SCHEDULE “F”

**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



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

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' 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.



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

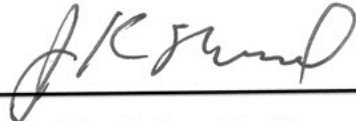
Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing 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

**FINAL ORDER (I) AUTHORIZING 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 relief set forth on the following pages, numbered three (3) through ten (10), is
ORDERED.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

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

Case No. 23-14853 (JKS)

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Upon the *Debtors' Motion Seeking Entry of Interim and Final Orders (I) Authorizing 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 "Motion")² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order") (a) authorizing the Debtors to pay, in the ordinary course of business, prepetition amounts owing on account of (i) Critical Vendor Claims in an aggregate amount of up to \$2.9 million on an interim basis and \$6.4 million on a final basis, (ii) Foreign Vendors Claims in an aggregate amount up to \$1.0 million on an interim basis and \$1.5 million on a final basis, (iii) 503(b)(9) Claims in an aggregate amount up to \$0.8 million on an interim basis and \$2.8 million on a final basis, and (iv) Lien Claims in an aggregate amount up to \$7.4 million on an interim basis and \$21 million on a final basis, (b) granting administrative expense priority to all undisputed obligations on account of goods ordered by the Debtors prior to the date hereof that will not be delivered until after the Petition Date and authorizing the Debtors to satisfy such obligations in the ordinary course of business, (c) 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

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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

Case No. 23-14853 (JKS)

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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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found sufficient cause exists for the relief set forth herein; 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** on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, in consultation with the Ad Hoc First Lien Group and the Official Committee of Unsecured Creditors (the "Committee") and in the reasonable exercise of their business judgment, to honor, pay all or part of, and otherwise satisfy and discharge, on a case-by-case basis; (i) the Critical Vendor Claims in an aggregate amount not to exceed \$6.4 million on a final basis (ii) the Foreign Vendors Claims in an aggregate amount not to exceed \$1.5 million on a final basis; (iii) the 503(b)(9) Claims in an aggregate amount not to exceed \$2.8 million on a final basis; and (iv) the Lien Claims in an aggregate amount not to exceed \$21 million on a final basis, absent further order of the Court, *provided*, the Debtors shall provide three (3) business days' advance notice to, and opportunity to object by, the Committee prior to

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

Case No. 23-14853 (JKS)

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making any payment; *provided* that if the Committee objects to a payment, the Debtors shall not make such payment without further order of the Court or agreement of the parties.

3. All undisputed obligations related to the Outstanding Orders are granted administrative expense priority in accordance with section 503(b)(1)(A) of the Bankruptcy Code; *provided* however that the Debtors can terminate any outstanding orders prior to delivery and any canceled orders are not afforded administrative priority.

4. The Debtors are authorized, but not directed, to pay all undisputed amounts relating to the Outstanding Orders in the ordinary course of business consistent with the parties' customary practices in effect prior to the Petition Date.

5. As a condition to receiving payment hereunder, the Debtors at their discretion may require, by written agreement, such parties to continue supplying goods or services to the Debtors in accordance with Customary Trade Terms. The Debtors reserve the right to require more favorable trade terms with any party as a condition to payment of any prepetition claim.

6. If any party accepts payment hereunder for a prepetition obligation of the Debtors premised on compliance with the above, and thereafter fails to comply with the Customary Trade Terms, or other such terms as agreed to by the Debtors, then: (a) any payment on account of a prepetition claim received by such party shall be deemed, in the Debtors' reasonable discretion, an improper postpetition transfer and, therefore, immediately recoverable by the Debtors in cash upon written request by the Debtors; (b) upon recovery by the Debtors, any prepetition claim of such party shall be reinstated as if the payment had not been made; and (c) if there exists an

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing 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

outstanding postpetition balance due from the Debtors to such party, the Debtors may elect to recharacterize and apply any payment made pursuant to the relief requested by the Motion to such outstanding postpetition balance and such supplier or vendor will be required to repay to the Debtors such paid amounts that exceed the postpetition obligations then outstanding, without the right of any setoffs, claims, provisions for payment of any claims, or otherwise.

7. Any Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, or Lien Claimant that accepts payment from the Debtors on account of all or a portion of such party's claim pursuant to this Final Order shall be deemed to (a) agree to the terms and provisions of this Final Order and (b) have waived, to the extent so paid, Critical Vendor Claims, Foreign Vendor Claims, 503(b)(9) Claims, or Lien Claims of any type, kind, or priority (including any reclamation claim), against the Debtors, their assets, and properties. Notwithstanding anything to the contrary herein, prior to making any payment pursuant to this Final Order, the Debtors shall provide such Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, or Lien Claimant with a copy of this Final Order (unless previously provided to such Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, or Lien Claimant).

8. Nothing herein shall impair or prejudice the Debtors' ability to contest, in their reasonable discretion, the extent, perfection, priority, validity, or amounts of any claims held by any Critical Vendor, Foreign Vendor, 503(b)(9) Claimant, or Lien Claimant. The Debtors do not concede that any claims satisfied pursuant to this Final Order are valid, and the Debtors expressly

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing 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

reserve all rights to contest the extent, validity, or perfection, or to seek the avoidance of all such liens or the priority, of such claims.

9. Notwithstanding anything to the contrary contained in the Motion or this Final 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 (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (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.

10. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final 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

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing 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

claim is an administrative expense claim, other priority claim or otherwise of a type specified or defined in this Final Order or the Motion or any order granting the relief requested by 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. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

11. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing 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

that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

12. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

13. The Debtors shall maintain a matrix/schedule of amounts directly or indirectly paid, subject to the terms and conditions of this Final Order, including the following information: (a) the names of the payee; (b) the amount of the payment; (c) the category or type of payment; and (d) the payment due. The Debtors shall provide a copy of such matrix/schedule to the U.S. Trustee, Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group of the Debtors' prepetition term loan facilities, Davis Polk & Wardwell LLP, as counsel to the Prepetition First Lien Administrative Agent, and Pachulski Stang Ziehl & Jones LLP, as proposed counsel to the Committee, upon request but in any event every thirty (30) days beginning upon entry of this Final Order.

14. Nothing herein shall impair or prejudice the rights of the U.S. Trustee and the statutory committee appointed in these chapter 11 cases, which are expressly reserved, to object to any payment made pursuant to this Final Order to an insider (as such term is defined in section 101(3) of the Bankruptcy Code), or an affiliate of an insider to the Debtors. To the extent

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing 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 Debtors intend to make a payment pursuant to this Final Order to an insider or an affiliate of an insider of the Debtors, the Debtors shall provide three (3) business days' advance notice to, and opportunity to object by, the U.S. Trustee and the Committee; *provided* that if any party objects to the payment, the Debtors shall not make such payment without further order of the Court.

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

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

17. 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.

18. 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.

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

SCHEDULE “G”

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

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

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

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

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' claims and noticing agent at <https://www.kccellc.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.

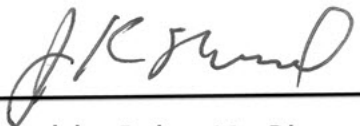


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**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO (A) MAINTAIN AND
ADMINISTER THEIR CUSTOMER AND PARTNER
PROGRAMS AND (B) HONOR CERTAIN PREPETITION OBLIGATIONS
RELATED THERETO AND (II) AND GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through seven (7), is
ORDERED.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the 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 "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors") for entry of a final order (this "Final Order"), (i) authorizing the Debtors to (a) maintain and administer the Customer and Partner Programs in the ordinary course of business and (b) honor certain undisputed prepetition obligations related thereto, and (ii) 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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found that sufficient cause exists for the relief set forth herein, 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

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

before the Court and after due deliberation and sufficient cause appearing therefor **IT IS HEREBY**

ORDERED THAT:

1. The Motion is **GRANTED** on a final basis as set forth herein.
2. The Debtors are authorized, but not directed to continue to administer the Customer and Partner Programs (including, but not limited to, those discussed in the Motion) currently in effect and honor any undisputed prepetition obligations related to the Customer and Partner Programs, in each case in the ordinary course of business, consistent with prepetition practices, and to modify, replace, or terminate any Customer and Partner Program in the ordinary course of business; *provided*, that if the Debtors modify the Customer and Partner Programs, the Debtors shall provide notice of such modification or termination to the Ad Hoc First Lien Group, PNC Bank, N.A., the U.S. Trustee for the District of New Jersey, and the Official Committee of Unsecured Creditors within five (5) days.
3. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.
4. Notwithstanding anything to the contrary contained in the Motion or this Final 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

(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

respect of *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (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.

5. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final 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 Final Order or the Motion or any order granting the relief requested by 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;

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

(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. Any payment made pursuant to this Final 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.

6. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

7. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

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

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Maintain and Administer Their Customer and Partner Programs and (B) Honor Certain Prepetition Obligations Related Thereto and (II) and Granting Related Relief

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

10. 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.

11. 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.

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

SCHEDULE “H”



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

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

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

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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)

**FINAL ORDER (I) AUTHORIZING
THE DEBTORS TO (A) PAY PREPETITION WAGES, SALARIES, OTHER
COMPENSATION, AND REIMBURSABLE EXPENSES AND (B) CONTINUE
EMPLOYEE BENEFITS PROGRAMS, AND (II) GRANTING RELATED RELIEF**


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.



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The relief set forth on the following pages, numbered three (3) through nine (9), is
ORDERED.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") (a) authorizing the Debtors to (i) pay undisputed prepetition wages, salaries, other compensation, and reimbursable expenses and (ii) continue employee benefits programs, in each case in the ordinary course of business, including payment of certain undisputed prepetition obligations related thereto, and (b) 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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found sufficient cause exists for the relief set forth herein; 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

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related 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** on a final basis as set forth herein.
2. The Debtors are hereby authorized, but not directed, to: (a) continue, modify, change, and/or discontinue the Compensation and Benefits in the ordinary course of business, in accordance with the Debtors' prepetition policies and practices without the need for further Court approval, subject to applicable law and the terms of this Final Order, (b) honor and pay any prepetition amounts outstanding under or related to the Compensation and Benefits as and when such obligations are due, in their business judgment during these chapter 11 cases and without the need for further Court approval, subject to applicable law and the terms of this Final Order, and (c) pay in the ordinary course of business any costs and expenses incidental to payment of the Compensation and Benefits obligations, including the Unpaid Payroll Processing Fees, and all administrative and processing costs, *provided, however*, that the Debtors shall not make any payments in excess of the limits set forth in section 507(a)(4) and (a)(5) of the Bankruptcy Code.
3. The Debtors shall provide seven (7) days' notice to Gibson, Dunn & Crutcher LLP, as counsel to the Ad Hoc First Lien Group, the U.S. Trustee for the District of New Jersey, and Pachulski Stang Ziehl & Jones LLP, as counsel to the Official Committee of Unsecured Creditors (the "Committee"), of any non-ordinary course changes or modifications to the programs and policies for their Employees and any new Employee compensation or Employee obligations; *provided, however*, no such non-ordinary course changes or modifications shall be made without

(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

consulting with the Ad Hoc First Lien Group or the Committee; *provided further* that the Debtors shall seek Court approval, upon motion and notice, if any modifications to the Compensation and Benefits obligations implicate any provision of section 503(c) of the Bankruptcy Code.

4. Pursuant to section 362(d) of the Bankruptcy Code, the automatic stay is modified solely to the extent necessary to allow Employees to proceed with their claims under the Workers' Compensation Program in the appropriate judicial or administrative forum, and Employees are authorized to so proceed. The Debtors are authorized, but not directed, to continue the Workers' Compensation Program and pay all prepetition amounts relating thereto in the ordinary course of business, consistent with prepetition practice. The modification of the automatic stay set forth in this paragraph pertains solely to claims under the Workers' Compensation Program.

5. Nothing contained herein is intended or should be construed to create an administrative priority claim on account of the Compensation and Benefits obligations.

6. The Debtors are authorized, but not directed, to pay and honor all claims and obligations, if any, whether arising prepetition or postpetition, on account of the Non-Insider Severance Program; *provided* that the Debtors shall not make any severance payments to the Debtors' Independent Contractors or any Insiders (as that term is defined in section 101(31) of the Bankruptcy Code) without further order of this Court.

7. Nothing herein shall be deemed to authorize the Debtors to cash out unpaid Paid Leave Benefits except upon termination of an Employee, if applicable nonbankruptcy law requires such payment.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

8. Notwithstanding anything to the contrary contained in the Motion or this Final 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 (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (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.

9. The Debtors are authorized to forward any unpaid amounts on account of Payroll Deductions or Payroll Taxes to the appropriate third-party recipients or taxing authorities, as applicable, in the ordinary course of business, consistent with prepetition practice.

10. The Debtors shall not make any non-ordinary course bonus, incentive, or severance payments to any Insider (as such term is defined in section 101(31) of the Bankruptcy Code) without consulting with the Ad Hoc First Lien Group and the Committee and further order of this Court; *provided that*, for the avoidance of doubt, nothing in the Motion or this Final Order shall be construed as approving any payment pursuant to section 503(c) of the Bankruptcy Code, and a separate motion will be filed for any requests that are governed by section 503(c) of the Bankruptcy

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

Code; *provided, further*, that nothing herein shall prejudice the Debtors' ability to seek approval for such relief pursuant to section 503(c) of the Bankruptcy Code at a later time. Nothing in the Motion or this Final Order shall constitute a determination by the Court as to whether any individual seeking payment pursuant to the Final Order is or is not an "insider" as that term is defined in section 101(31) of the Bankruptcy Code.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

12. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final 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 of a type specified or defined in this Final 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, rights under the

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

Bankruptcy Code or any other applicable law; (h) a concession by the Debtors that any liens (contractual, common law, statutory, or otherwise) that may be satisfied pursuant to the Motion are valid, and the rights of all parties are expressly reserved to contest the extent, validity, or perfection or seek avoidance of all such liens; (i) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code; (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. Any payment made pursuant to this Final 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.

13. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

14. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

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

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

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Debtors to (A) Pay Prepetition Wages, Salaries, Other Compensation, and Reimbursable Expenses and (B) Continue Employee Benefits Programs, and (II) Granting Related Relief

17. 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.

18. 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.

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

SCHEDULE "I"

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

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

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Proposed Co-Counsel for Debtors and Debtors in Possession

In re:

CYXTERA TECHNOLOGIES, INC., *et al*

Debtors.¹



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

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' 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.

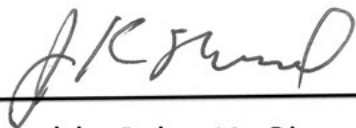


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**FINAL ORDER (I) AUTHORIZING THE DEBTORS
TO (A) MAINTAIN INSURANCE AND SURETY COVERAGE
ENTERED INTO PREPETITION AND PAY RELATED PREPETITION
OBLIGATIONS, AND (B) RENEW, SUPPLEMENT, MODIFY, OR PURCHASE
INSURANCE AND SURETY COVERAGE, AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through eight (8), is
ORDERED.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the 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

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the 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 "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") (a) authorizing the Debtors to (i) maintain coverage under the Insurance Policies and the Surety Bonds (as applicable) and pay related prepetition obligations and (ii) renew, supplement, modify, or purchase insurance and surety coverage in the ordinary course of business and (b) 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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found sufficient cause exists for the relief set forth herein; 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

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the 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

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** on a final basis as set forth herein.
2. The Debtors are authorized to continue and maintain the Insurance Policies, including, but not limited to, the Insurance Policies identified on Exhibit C to the Motion, and, in their sole discretion, pay any related prepetition or postpetition amounts or obligations thereto in the ordinary course of business consistent with prepetition practice, including, but not limited to, the Premiums, Insurance Deductibles, Brokers Fees, and any other related expenses. The Debtors shall serve a copy of the Motion and this Final Order on each Insurance Carrier listed on Exhibit C to the Motion within two (2) business days after the date this Final Order is entered.
3. The Debtors are authorized to honor the terms of the Financing Agreements and pay premiums thereunder.
4. The Debtors are authorized to continue and maintain their Surety Bond Program as applicable, including, in their sole discretion: (a) maintaining new Surety Bonds and paying any related postpetition amounts or obligations thereto in the ordinary course of business consistent with prepetition practice, including surety premiums and bond fees as they come due; (b) entering into or acquiring additional bonding capacity, as necessary, in the ordinary course of business consistent with prepetition practice; (c) cancelling, revising, and/or supplementing the Surety Bonds; (d) renewing, supplementing, and/or cancelling letters of credit or other forms of collateral as may be necessary; (e) paying Brokers Fees; (f) providing collateral and complying with

(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the 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

collateral and indemnity requirements in the ordinary course of business; and (g) executing other agreements in connection with the Surety Bond Program, *provided however*, the Debtors shall provide three (3) business days' advance notice to, and opportunity to object by, the Committee prior to making any modifications to the Surety Bonds or Surety Bond Program as described in paragraphs 4(a) to 4(g); provided that if the Committee objects to any modification of the Surety Bonds or Surety Bond Program, the Debtors shall not make such modification without further order of the Court or agreement of the parties.

5. The Debtors are authorized, in their sole discretion, to renew, amend, supplement, extend, or purchase existing or additional insurance policies and surety bonds in the ordinary course of business consistent with prepetition practice on a postpetition basis, as well as replace any of the Brokers as may be necessary.

6. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

7. The Debtors are authorized to honor any amounts owed on account of any Insurance Policy Audits that take place in the ordinary course of business consistent with prepetition practice.

8. Notwithstanding anything to the contrary contained in the Motion or this Final 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 (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and*

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the 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

Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief (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.

9. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final 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 Final Order or the Motion or any order granting the relief requested by 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

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the 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

(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. Any payment made pursuant to this Final Order is not intended and should not be construed as an admission as the validity of any particular claim or a waiver of the Debtors' rights to subsequently dispute such claim.

10. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

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

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

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the 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

14. 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.

15. 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.

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

SCHEDULE “J”



Order Filed on June 29, 2023
by Clerk
U.S. Bankruptcy Court
District of New Jersey

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

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

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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' claims and noticing agent at <https://www.kccellc.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.

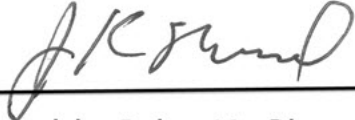


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**FINAL ORDER (I) AUTHORIZING THE PAYMENT
OF CERTAIN TAXES AND FEES AND (II) GRANTING RELATED RELIEF**

The relief set forth on the following pages, numbered three (3) through eight (8), is
ORDERED.

DATED: June 29, 2023



Honorable John K. Sherwood
United States Bankruptcy Court

(Page | 3)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief

Upon the *Debtors' Motion for Entry of Interim and Final Orders (I) Authorizing the Payment of Certain Taxes and Fees and (II) Granting Related Relief* (the "Motion"),² of the above-captioned debtors and debtors in possession (collectively, the "Debtors"), for entry of a final order (this "Final Order") (a) authorizing, but not directing, the Debtors to (i) negotiate, remit, and pay (or use tax credits to offset) Taxes and Fees in the ordinary course of business that are payable or become payable during these chapter 11 cases (including any obligations subsequently determined upon audit or otherwise to be owed for periods prior to the Petition Date) and (ii) undertake the Tax Planning Activities and (b) 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 and the Motion in this district is proper pursuant to 28 U.S.C. §§ 1408 and 1409; and this Court having found sufficient cause exists for the relief set forth herein; 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; 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

² Capitalized terms used but not otherwise defined herein have the meaning ascribed to them in the Motion.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Payment of Certain Taxes and Fees and
(II) Granting Related Relief

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** on a final basis as set forth herein.
2. The Debtors are authorized, but not directed, to: (a) negotiate, pay, and remit (or use tax credits to offset), or otherwise satisfy Taxes and Fees (including corresponding Assessments) that arose or accrued prior to the Petition Date and that will become due and owing in the ordinary course of business during the pendency of these chapter 11 cases at such time when Taxes and Fees are payable in accordance with applicable law; and (b) negotiate, pay and remit (or use tax credits to offset) Taxes and Fees that arise or accrue in the ordinary course of business on a postpetition basis—including, for the avoidance of doubt, posting collateral or a letter of credit in connection with any dispute related to the Audits or Assessments or paying any Taxes and Fees arising as a result of the Audits or Assessments; *provided, however*, the Debtors shall provide three (3) business days' advance notice to, and opportunity to object by, the Official Committee of Unsecured Creditors (the "Committee") prior to paying any Taxes and Fees (and corresponding Assessments) that exceed \$150,000.

3. Notwithstanding anything to the contrary herein or in the Motion, in the event the Debtors make a payment with respect to any Taxes and Fees for the prepetition portion of any "straddle" period amount, and this Court subsequently determines such amount was not entitled to priority or administrative treatment under section 507(a)(8) or 503(b)(1)(B) of the Bankruptcy Code, the Debtors may (but shall not be required to) seek an order from the Court requiring a return of such amounts, and the payment of such amount shall, upon order of the Court, be refunded to the Debtors.

(Page | 5)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Payment of Certain Taxes and Fees and
(II) Granting Related Relief

4. Notwithstanding the relief granted herein or any actions taken hereunder, nothing contained in this Final Order shall create any rights in favor of, or enhance the status of any claim held by, any of the Authorities.

5. Nothing in this Final Order authorizes the Debtors to accelerate any payments not otherwise due.

6. To the extent that the Debtors have overpaid any Taxes and Fees, the Debtors are authorized to seek a refund or credit.

7. The Debtors are authorized, in consultation with the Ad Hoc First Lien Group and the Committee, to undertake certain typical activities related to tax planning, including: (a) converting Debtor entities from one form to another (*e.g.*, converting an entity from a corporation to a limited liability company) via conversion, merger, or otherwise (“Entity Conversions”); (b) making certain tax elections (including with respect to the tax classification of Debtor entities) (“Entity Classification Elections”); (c) changing the position of Debtor entities within the Debtors’ corporate structure (“Entity Movements”); and (d) modifying or resolving intercompany claims and moving assets or liabilities among Debtor entities if doing so will not alter the substantive rights of the Debtors’ stakeholders in these chapter 11 cases (“Asset and Liability Movements” and, together with the Entity Conversions, Entity Classification Elections, and Entity Movements, the “Tax Planning Activities”); *provided*, that the Debtors shall provide three (3) business days’ advance notice to, and opportunity to object by, the Committee prior to making any Asset and Liability Movements.

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Payment of Certain Taxes and Fees and
(II) Granting Related Relief

8. The Debtors' rights to contest the validity or priority of any Taxes and Fees on any grounds they deem appropriate are reserved and extend to the payment of Taxes and Fees relating to Audits that have been completed, are in progress, or arise from prepetition periods.

9. Notwithstanding the relief granted in this Final Order and any actions taken pursuant to such relief, nothing in this Final 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 Final Order or the Motion or any order granting the relief requested by 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

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Payment of Certain Taxes and Fees and
(II) Granting Related Relief

affecting the Debtors' rights under section 365 of the Bankruptcy Code to assume or reject any executory contract or unexpired lease. Any payment made pursuant to this Final 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.

10. The Debtors are authorized, but not directed, to issue postpetition checks, or to effect postpetition fund transfer requests, in replacement of any checks or fund transfer requests that are dishonored as a consequence of these chapter 11 cases with respect to prepetition amounts owed in connection with the relief granted herein and to the extent authorized by this Final Order.

11. The banks and financial institutions on which checks were drawn or electronic payment requests made in payment of the prepetition obligations approved herein are authorized to receive, process, honor, and pay all such checks and electronic payment requests when presented for payment, and all such banks and financial institutions are authorized to rely on the Debtors' designation of any particular check or electronic payment request as approved by this Final Order.

12. Notwithstanding anything to the contrary contained in the Motion or this Final 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 (A) Obtain Postpetition Financing and (B) Utilize Cash Collateral, (II) Granting Liens and Superpriority Administrative Expense Claims, (III) Granting Adequate Protections, (IV) Modifying the Automatic Stay, (V) Scheduling a Final Hearing, and (VI) Granting Related Relief* (the "DIP Orders"), including compliance with any budget or cash flow forecast in

(Page | 8)

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

Case No. 23-14853 (JKS)

Caption of Order: Final Order (I) Authorizing the Payment of Certain Taxes and Fees and
(II) Granting Related Relief

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.

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

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

15. 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.

16. 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.

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