

Clerk's Stamp

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 **APPLICATION**

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. A171290

**Attention: Tom Cumming/Sam Gabor/Stephen Kroeger**

**NOTICE TO THE RESPONDENT(S)**

This application is made against you. You are a respondent.

You have the right to state your side of this matter before the Court.

To do so, you must be in Court when the application is heard as shown below:

Date: January 25, 2023  
Time: 2:00 P.M. (Mountain Time)  
Where: Calgary Court Centre  
Via Webex: See attached Appendix "A"  
<https://albertacourts.webex.com/meet/virtual.courtroom01>  
Before: The Honourable Justice Nixon

Go to the end of this document to see what you can do and when you must do it.

**Application and remedy sought:**

1. In the recognition proceedings of the Applicant, Cyxtera Technologies, Inc. ("**CTI**"), in its capacity as foreign representative (in such capacity, the "**Foreign Representative**") of Cyxtera Canada LLC ("**Cyxtera LLC**"), Cyxtera Communications Canada, ULC ("**Communications ULC**") and Cyxtera Canada TRS, ULC ("**TRS ULC**", and with Communications ULC, "**Cyxtera Canada**", and with Cyxtera LLC, the "**Canadian Debtors**") under Part IV of the *Companies' Creditors Arrangement Act*, RSC 1985, c C-36, as amended (the "**CCAA**", and such proceedings, the "**Recognition Proceedings**"), relating to the cases commenced by CTI, the Canadian Debtors and certain affiliated corporations (such affiliated corporations, together with CTI and the Canadian Debtors, the "**Debtors**") under chapter 11 of title 11 of the United States *Bankruptcy Code* (the "**US Bankruptcy Code**", and such cases, the "**Chapter 11 Cases**") before the United States Bankruptcy Court for the District of New Jersey (the "**US Bankruptcy Court**"), CIT and the Canadian Debtors make this application for an Order (the "**Recognition Order**"), substantially in the form attached hereto as **Schedule "A"**:

- (a) recognizing and giving effect in Canada to the following Orders of the US Bankruptcy Court:
  - (i) an Order of the US Bankruptcy Court entered on January 8, 2024 approving the assumption of certain executory contracts and/or unexpired leases in connection with the sale of certain assets by Cyxtera Canada (the "**Supplemental Assignment of Acquired Agreements Order**");
  - (ii) a seventh interim Order entered on December 11, 2023 (i) authorizing the Debtors to (A) continue using the cash management system, (B) honour

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 “**Seventh Interim Cash Management Order**”);

- (b) approving the professional fees, costs and disbursements of Gowling WLG (Canada) LLP (“**Gowling**”) for the period up to and including December 31, 2023;
- (c) approving the professional fees and disbursements of Alvarez & Marsal Canada Inc. as information officer in these proceedings (the “**Information Officer**”) for the period of November 1, 2023, up to and including December 31, 2023;
- (d) approving the professional fees and disbursements of McMillan LLP (“**McMillan**”) as counsel for the Information Officer for the period of November 1, 2023, up to and including December 31, 2023; and
- (e) granting such further and other relief as this Honourable Court may deem appropriate.

**The grounds for this application are:**

2. CTI is a US corporation incorporated pursuant to the laws of Delaware with its main office in Coral Gables, Florida and its registered office in Wilmington, Delaware. CTI is the ultimate parent corporation of a group of companies operating under the tradename “Cyxtera” that are incorporated in the US, Canada, United Kingdom, Germany, Australia, Japan, the Netherlands, Hong Kong, Singapore and the Cayman Islands and certain of which are debtors in the Chapter 11 Proceedings (CTI, together with the Debtors and their affiliates being collectively referred to as “**Cyxtera**” or the “**Cyxtera Group**”).

3. Cyxtera LLC is a US limited liability corporation incorporated pursuant to the laws of Delaware with its registered office in Wilmington Delaware, whose sole activity is to hold all of the shares in the capital of Communications ULC.

4. Communications ULC is an Alberta unlimited liability corporation incorporated pursuant to the laws of Alberta. Communications ULC's registered office is in Calgary, Alberta and it is extra-provincially registered and carries on business in British Columbia, Ontario, and Québec, where its data centers are located.

5. TRS ULC is an Alberta unlimited liability corporation incorporated pursuant to the laws of Alberta and with its registered office in Calgary, Alberta. Although TRS ULC does not have operations, it is extra-provincially registered in British Columbia, Ontario, and Québec. Communications ULC is the sole shareholder of TRS ULC.

6. On June 4, 2023 (the "**Petition Date**"), sixteen (16) Cyxtera entities, including CTI and the other Debtors, filed voluntary petitions for relief under Chapter 11 of the US Bankruptcy Code in the US Bankruptcy Court, commencing the Chapter 11 Cases, whereupon an automatic stay of proceedings against the Debtors came into effect under the Bankruptcy Code. Up to January 12, 2024, the Debtors operated their business and managed their properties as debtors-in-possession within the Chapter 11 Cases.

7. The Debtors entered into an asset purchase agreement dated as of October 31, 2023 (the "**Brookfield APA**") between Phoenix Data Center Holdings LLC (together with its designees, "**Brookfield**") and CTI, the Canadian Debtors and the other Debtors (the "**Brookfield Transaction**") with respect to substantially all of the Debtors' assets. On November 17, 2023 the US Bankruptcy Court granted a confirmation order confirming the Debtors' fourth amended joint plan of reorganization under the US Bankruptcy Code filed November 13, 2023 (as amended, the "**Plan**") and approving the Brookfield Transaction (the "**Confirmation Order**").

8. On November 21, 2023, this Honourable Court granted an order which, among other things, recognized and gave full effect to the Confirmation Order in Canada.

9. Pursuant to an asset purchase agreement dated October 30, 2023 (the "**Cologix APA**"), Cologix Canada, Inc. ("**Cologix**") agreed to purchase certain assets (the "**Cologix Transaction**") from Communications ULC (the "**Cologix Assets**"). On November 17, 2023, the US Bankruptcy

Court granted a Canada Sale order approving the Cologix Transaction (the “**Canada Sale Order**”).

10. On November 21, 2023, this Honourable Court granted an order which, among other things, recognized and gave full effect to the Canada Sale Order in Canada (the “**Cologix Recognition Order**”).

11. On December 1, 2023, Communications ULC closed the Cologix Transaction. Thereafter, on December 7, 2023, Gowling delivered the Cologix Closing Certificates and Specified Assets Certificate to Brookfield and Cologix, whereupon the vesting of all assets relating to the Vancouver and Montreal data centres in Cologix free and clear of all encumbrances pursuant to the Cologix Recognition Order, with the effect that those assets and the Cologix APA became Excluded Assets (as such term is defined in the Brookfield APA) under the Cologix Recognition Order became effective. Gowling thereafter served the Cologix Certificates on the Service List and KCC served the Cologix Certificates on the contract counterparties.

12. On January 12, 2024, the Brookfield Transaction closed and on January 12, 2024, Gowling delivered the Closing Certificate under the Brookfield Transaction to Brookfield, whereupon the vesting of, *inter alia*, the Ontario Data Centre assets in Brookfield free and clear of all encumbrances pursuant to the Confirmation Recognition Order previously granted by the CCAA Court.

13. On January 12, 2024, the Chapter 11 Debtors emerged from the Chapter 11 Cases in accordance with the Plan and became “Post Effective Date Debtors”. Prior to emerging from Chapter 11, the Chapter 11 Debtors filed two revisions to the plan supplement (the “**Plan Supplement Revisions**”). No corresponding Order has been granted by the US Bankruptcy Court with respect to the Plan Supplement Revisions as the previous order of the US Bankruptcy Court approving the Plan allows for revisions of the Plan Supplement without further order of the US Bankruptcy Court.

*Supplemental Assignment of Acquired Agreements Order - Cologix*

14. On January 2, 2024, the Debtors filed a Certificate of no Objection with respect to the Second Supplemental Assignment of Acquired Agreements Order which authorizes the assumption and assignment of additional executory contracts and unexpired leases relating to the Cologix Transaction. Three contracts are listed in the Order, none of which have cure costs associated with them (the “**Assigned Contracts**”).

15. On January 8, 2024, the US Bankruptcy Court granted the Second Supplemental Assignment of Acquired Agreements Order.

16. Under the Second Supplemental Assignment of Acquired Agreements Order, the US Bankruptcy Court made the following findings of fact:

- (a) the assumption and assignment of the Assigned Contracts is integral to the Cologix APA and a material component to the overall consideration provided by Cologix, does not constitute unfair discrimination, and will maintain the ongoing business of the Chapter 11 Debtors, limit the losses of Counterparties thereto, and maximizes the distributions available to the Creditors;
- (b) the Chapter 11 Debtors properly filed and served the Assumption and Assignment Notice on each applicable counterparty in accordance with the terms of the Contract Rejection/Assumption Procedures Order entered by the US Bankruptcy Court on June 29, 2023; and
- (c) Cologix has demonstrated that it can reasonably carry on the obligations under the Assigned Contracts.

17. It is appropriate that recognition of the assignments occurs on the basis that:

- (a) the Information Officer recommends the assignment of the Assigned Contract;
- (b) the US Bankruptcy Court has granted the Supplemental Assignment of Acquired Agreements Order ;

- (c) Cologix has the financial capability to perform the obligations;
- (d) it is appropriate that the assignments are recognized as it is a condition precedent of the Cologix APA that the assignments occur; and
- (e) the assignment of the Assigned Contracts will benefit the Debtors' stakeholders by providing for the continuation of the Business, including ongoing trade and employment relationships

*Seventh Interim Cash Management Order*

18. On October 11, 2023, this Honourable Court granted an Order recognizing, and giving effect in Canada to, a fifth interim cash management order (“**Fifth Interim Cash Management Order**”) and a cash transfer order (“**Cash Transfer Order**”).

19. On or around October 25, 2023, the US Bankruptcy Court granted a sixth interim cash management order (“**Sixth Interim Cash Management Order**”) on a certificate of no objection filed by the Chapter 11 Debtors. The Sixth Cash Management Order was granted a result of Bank of America not finalizing Communications ULC’s United States banking arrangements prior to the expiry of the Fifth Interim Cash Management Order and the Debtors requirement to obtain a final cash management order.

20. On December 11, 2023, the US Bankruptcy Court granted the Seventh Interim Cash Management Order. Given that the Seventh Interim Cash Management Order was issued prior to the Canadian Debtors emerging from the Chapter 11 Cases, the Canadian Debtors are seeking recognition of the Seventh Cash Management order retroactive to December 11, 2023.

21. CTI and the Debtors request that the Seventh Interim Cash Management Order be recognized and given effect in Canada by this Honourable Court pursuant to section 49 of the CCAA retroactive to December 11, 2023 to ensure continuity in the interim period to the closing of the Brookfield Transaction.

### **Recognition of the Aforementioned Orders is Appropriate**

22. The Recognition Order is necessary for the protection of the Debtors' property and the interests of the Debtors' creditors and furthers the policies contemplated by section 44 of the CCAA, namely:

- (a) cooperation between this Honourable Court and the US Bankruptcy Court;
- (b) the fair and efficient administration of the Chapter 11 Cases and these Recognition Proceedings to protect the interests of creditors, other interest persons and the Debtors;
- (c) protecting and maximizing the value of the Canadian Debtors' properties;
- (d) enhancing the prospects of rescuing the financially troubled business of the Debtors by allowing the continuing administration of the Debtors while the Brookfield Transaction and Cologix Transaction are being implemented and closed.

23. Accordingly, CTI and the Canadian Debtors request that the Recognition Order be granted and the orders referenced therein be given effect in Canada by this Honourable Court pursuant to section 49 of the CCAA.

### **Professional Fees and Disbursements**

24. The account of Gowling as Canadian counsel for the Foreign Representative and Debtors, as attached to the Li Affidavit #2, reflects the work performed by Gowling, and the account is accurate, fair, and reasonable.

25. The accounts of the Information Officer and McMillan reflect the work performed by them respectively, and their accounts are accurate, fair, and reasonable.

### **Further Grounds**

26. The further and other grounds set out in the Li Affidavit #2.

**Affidavit or other evidence to be used in support of this application:**

27. Affidavit of Eric Koza, sworn June 6, 2023.
28. Affidavit of Eric Koza #2, sworn June 30, 2023.
29. Affidavit of Eric Koza #3, sworn July 27, 2023.
30. Affidavit of Eric Koza #4, sworn September 1, 2023.
31. Affidavit of Eric Koza #5, sworn October 5, 2023.
32. Affidavit of Raymond Li, sworn November 17, 2023.
33. Affidavit of Raymond Li, sworn January 23, 2024 (the “**Li Affidavit #2**”).
34. Secretarial Affidavit of Kristy DeIure, sworn June 7, 2023.
35. Secretarial Affidavit of Kristy DeIure, to be sworn.
36. Affidavit of Service, to be sworn.
37. Fifth Report dated November 17, 2023 of Alvarez & Marsal Canada Inc. in its capacity as Information Officer in these recognition proceedings.
38. Sixth Report of Alvarez & Marsal Canada Inc. in its capacity as Information Officer in these recognition proceedings.
39. The materials filed in the Chapter 11 Proceedings.
40. Such further materials as counsel may advise and this Honourable Court may permit.

**Applicable Acts and regulations:**

41. *Companies’ Creditors Arrangement Act*, RSC 1995, c C-36, as amended.
42. *Business Corporations Act*, RSA 2000, c B-9.

43. The Alberta Rules of Court.
44. Such further and other legal basis as counsel may advise and this Honourable Court may allow.

**WARNING**

You are named as a respondent because you have made or are expected to make an adverse claim in respect of this originating application. If you do not come to Court either in person or by your lawyer, the Court may make an order declaring you and all persons claiming under you to be barred from taking any further proceedings as against the applicant(s) and as against all persons claiming under the applicant(s). You will be bound by any order the Court makes, or another order might be given or other proceedings taken which the applicant(s) is/are entitled to make without any further notice of them to you. If you want to take part in the application, you or your lawyer must attend in Court on the date and time shown at the beginning of this form. If you intend to give evidence in response to the application, you must reply by filing an affidavit or other evidence with the Court and serving a copy of that affidavit or other evidence on the applicant(s) a reasonable time before the application is to be heard or considered.

**APPENDIX “A”**  
**Virtual Court Room Details**

**Virtual Courtroom 01** has been assigned for the following matter:

Date: Jan 25, 2024 02:00 PM

Style of Cause: 2301 07385 - CYXTERA TECHNOLOGIES INC. v. COMPANIES

CREDITORS ARRANGEMENT ACT

Presiding Justice: NIXON (D.B.), ACJ

Virtual Courtroom Link:

<https://albertacourts.webex.com/meet/virtual.courtroom01>

**Instructions for Connecting to the Meeting**

1. Click on the link above or open up Chrome or Firefox and cut and paste it into your browser address bar.
2. If you do not have the Cisco Webex application already installed on your device, the site will have a button to install it. Follow installation instructions. Enter your full name and email address when prompted
3. Click on the **Open Cisco Webex Meeting**.
4. You will see a preview screen. Click on **Join Meeting**.

Key considerations for those attending:

1. Please connect to the courtroom **15 minutes prior** to the start of the hearing.
2. Please ensure that your microphone is muted and remains muted for the duration of the proceeding, unless you are speaking. Ensure that you state your name each time you speak.
3. If bandwidth becomes an issue, some participants may be asked to turn off their video and participate by audio only.
4. **Note: Recording or rebroadcasting of the video is prohibited.**
5. **Note: It is highly recommended you use headphones with a microphone or a headset when using Webex. This prevents feedback.**

For more information relating to Webex protocols and procedures, please visit:  
<https://www.albertacourts.ca/qb/court-operations-schedules/webex-remote-hearings-protocol>

You can also join the meeting via the “Cisco Webex Meetings” App on your smartphone/tablet or other smart device. You can download this via the App marketplace and join via the link provided above.

**SCHEDULE "A"**  
**Proposed Recognition Order**

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 **RECOGNITION ORDER**

ADDRESS FOR SERVICE AND CONTACT INFORMATION OF PARTY FILING THIS DOCUMENT  
Gowling WLG (Canada) LLP  
1600, 421 – 7<sup>th</sup> 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:** January 25, 2024

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

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

**UPON THE APPLICATION** by Cyxtera Technologies, Inc. (“**CTI**”), in its capacity as foreign representative (in such capacity, the “**Foreign Representative**”) of Cyxtera Canada LLC (“**Cyxtera LLC**”), Cyxtera Communications Canada, ULC (“**Communications ULC**”) and Cyxtera Canada TRS, ULC (“**TRS ULC**”, together with Cyxtera LLC and Communications ULC, the “**Canadian Debtors**”) in their cases (the “**Chapter 11 Cases**”) under chapter 11 of title 11 of

the United States *Bankruptcy Code* (the “**US Bankruptcy Code**”) before the United States Bankruptcy Court for the District of New Jersey (the “**US Bankruptcy Court**”) 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 Raymond Li sworn January 23, 2024 (the “**Li Affidavit**”), the sixth report of Alvarez and Marsal Canada Inc. in its capacity as information officer in these proceedings (the “**Information Officer**”) dated January 23, 2024 (the “**Sixth Report**”), the Secretarial Affidavit of Kristy DeIure, sworn January 23, 2024, and the Affidavit of Service of Darlene Calderon sworn January 23, 2024, each filed;

**AND UPON HEARING** the submissions of counsel for the Foreign Representative and the Canadian Debtors, counsel for the Information Officer, counsel for Cologix Canada, Inc., counsel for Phoenix Data Center Holdings LLC, counsel for the DIP/First Lien Group, and no one appearing for any other person on the service list, although properly served as appears from the Affidavit of Service, filed;

**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 Chapter 11 Cases, as defined in the Li Affidavit, are hereby recognized and given full force and effect in all provinces and territories of Canada pursuant to Section 49 of the CCAA:

- i. Seventh Interim Cash Management Order, a copy of which is attached hereto as **Schedule “1”**; and

- ii. Second Supplemental Assignment of Acquired Agreements Order, a copy of which is attached hereto as **Schedule “2”**.

### **FEE APPROVAL**

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

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

### **GENERAL**

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 Canadian 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 Canadian 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 Canadian Debtors, the Foreign Representative and the Information Officer and their respective agents in carrying out the terms of this Order.

7. Each of the Canadian Debtors, the Foreign Representative and the Information Officer are at liberty and are 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 Canadian Debtors, the Foreign Representative, the Information Officer, Gowling as counsel to the Canadian Debtors and the Foreign Representative, McMillan 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. Service of this Order shall be deemed good and sufficient by serving the same on the persons listed on the service list created in these proceedings, any other person served with notice of the application for this Order, any other parties attending or represented at the application for this Order, and Phoenix or Phoenix's solicitors, and by posting a copy of this Order on the Information Officer's website at <http://www.alvarezandmarsal.com/CyxteraCanada> and service on any other person is hereby dispensed with.

10. Service of this Order may be effected by facsimile, electronic mail, personal delivery or courier. Service is deemed to be effected the next business day following transmission or delivery of this Order.

11. 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 "1"**

**Seventh Interim Cash Management Order**

**Schedule "2"**

**Second Supplemental Assignment of Acquired Agreements Order**